State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Wednesday, June 4, 2014

No. 134 Matter of New York Statewide Coalition of Hispanic Chambers of Commerce v New York City Dept. of Health and Mental Hygiene

The New York City Department of Health and Mental Hygiene (DOHMH) and Board of Health are asking this Court to reinstate their Portion Cap Rule, which restricts the sale of soda and other "sugary drinks" in containers larger than 16 ounces. Lower courts found the rule was adopted in violation of the separation of powers doctrine.

Then-Mayor Michael Bloomberg proposed the rule -- an amendment to Article 81 of the City Health Code -- in May 2012 to address rising obesity rates. Fourteen City Council members wrote to the mayor opposing the proposal and insisting it should be submitted to the Council for a vote. Instead, DOHMH submitted the amendment to the Board of Health, which held a public hearing. In September 2012, the Board adopted the rule without changes. The rule limits serving size for non-diet soft drinks, sweetened coffee and tea, energy and sports drinks, hot chocolate, and sweetened juices, but excludes alcoholic beverages, milkshakes, fruit smoothies, mixed coffee drinks, mochas and lattes, and 100 percent fruit juices. The so-called "soda ban" applies to restaurants, delis, fast-food franchises, movie theaters, stadiums and street carts, but not to grocery stores, convenience stores, corner markets, gas stations and similar businesses.

Labor unions and associations representing restaurant and theater owners, beverage producers and distributors, and small and minority-owned businesses brought this action to challenge the validity of the rule. Supreme Court declared the rule violated separation of powers principles based on Boreali v Axelrod (71 NY2d 1 [1987]), which struck down regulations adopted by the State Public Health Council to prohibit smoking in most indoor public areas.

The Appellate Division, First Department affirmed, finding the rule ran afoul of all four factors identified in Boreali for determining whether administrative rules violate the separation of powers. First, it said the Board of Health did not act "solely with a view toward public health" because the rule's exemptions "evince a compromise of social and economic concerns, as well as private interests.... By enacting a compromise measure..., the Board necessarily took into account its own non-health policy considerations." Second, the Board "did not fill a gap in an existing regulatory scheme but instead wrote on a clean slate." Third, the City Council and State Legislature "have attempted, albeit unsuccessfully, to target sugar sweetened beverages" and the Portion Cap Rule "addresses the same policy areas as the proposals rejected" by the legislative bodies. Finally, it said, "[W]e do not believe that the Board of Health exercised any special expertise or technical competence.... Indeed, the rule was drafted, written and proposed by the Office of the Mayor...."

The Board of Health and DOHMH argue the separation of powers doctrine does not apply because the Board has legislative authority in the area of public health, which it has previously exercised by requiring fluoridation of the water supply and posting of calorie counts on menus, and by restricting the use of lead paint in residences and trans fats in restaurants. They say the Board's legislative authority "has been confirmed in successive New York City Charters and upheld repeatedly by this and other appellate courts. Further, the adoption of the Portion Cap Rule was well within the Board's regulatory authority.... [W]hether characterized as legislative or regulatory in nature, the Board's authority is broad, and its special structure allows serious issues of public health to be addressed without being subjected to the vagaries of the political process."

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No. 135 People v Jose Maldonado

Jose Maldonado was driving a stolen minivan in April 2009 when police stopped him for a traffic infraction in Greenpoint, Brooklyn. As an officer approached him, he drove away at high speed, weaving through traffic and running red lights, and struck and killed a pedestrian, 37 year old Violetta Kryzak, in a crosswalk. Maldonado drove on at high speed for several blocks until he swerved to avoid an oncoming car and collided with a parked SUV. He was indicted on charges including murder in the second degree (depraved indifference murder) under Penal Law § 125.25(2), which applies "when, under circumstances evincing a depraved indifference to human life, [the defendant] recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person."

At the close of the prosecution's case, Maldonado moved for a trial order of dismissal on the ground there was insufficient evidence to establish that he acted with depraved indifference. Defense counsel said prosecutors "have to show a lot more than recklessness.... I don't believe the People made out that culpable mental state." Supreme Court denied the motion, and Maldonado was convicted of second-degree murder and other charges.

Maldonado renewed his motion after the verdict, which the court again denied, saying, "[T]he People established, and the jury so found, that the defendant drove at speeds in excess of 70 MPH while fleeing the police in a stolen minivan, on crowded streets through a residential neighborhood filled with pedestrians and vehicular traffic, during daytime hours. Defendant drove through several steady red lights, went the wrong way down a one-way street, and did not even apply the brakes when he eventually hit the victim in the crosswalk. This conduct demonstrated a wanton disregard of human life." Maldonado was sentenced to 20 years to life in prison. The Appellate Division, Second Department affirmed.

Maldonado argues the evidence established only recklessness, not depraved indifference. "During the pursuit, as numerous witnesses attested, he repeatedly swerved to avoid striking pedestrians or vehicles. He nevertheless struck and killed a pedestrian during one of these evasive maneuvers.... [A]fter he crashed into a parked vehicle after again swerving to avoid an accident, he told police he had deliberately crashed to avoid hitting anyone else. Rather than showing that appellant acted with the 'utter depravity, uncommon brutality and inhuman cruelty' required for depraved indifference..., this evidence demonstrated that appellant, while concededly operating the minivan recklessly, was not uncaring about whether anyone else lived or died. Therefore, ... like in [People v Prindle (16 NY3d 768)], to which this case was materially identical, appellant's conduct fell far short of that necessary to prove depraved indifference to human life."

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No. 136 In re: Thelen LLP (Geron v Seyfarth Shaw LLP)
No. 137 In re: Coudert Brothers, LLP (Development Specialists, Inc. v K&L Gates LLP)

These federal cases arise from the dissolution of two insolvent New York law firms, Thelen LLP in 2008 and Coudert Brothers LLP in 2005. Partners departing the insolvent firms took many of their unfinished cases with them to their new law firms. Thelen's bankruptcy trustee, Yann Geron, brought a federal suit against Seyfarth Shaw LLP, which had hired 11 former Thelen partners, seeking to recover the value of hourly fee and contingency fee cases that were pending when Thelen dissolved. Geron argued that those unfinished cases were the property of Thelen's estate under the "unfinished business doctrine." The administrator of Coudert's bankruptcy estate, Development Specialists, Inc. (DSI), brought a similar suit against Jones Day and nine other law firms (collectively, the "Firms") that hired former Coudert partners to recover, under the unfinished business doctrine, any profits derived from completing hourly fee matters that were pending when Coudert dissolved.

In each case, judges of U.S. District Court for the Southern District of New York found that pending contingent fee cases are assets of a dissolved partnership under the unfinished business doctrine, but they reached conflicting conclusions about whether New York courts would extend the doctrine to pending hourly fee matters. In Thelen, the court said applying the doctrine to hourly fee cases "would result in an unjust windfall for the Thelen estate, as 'compensating a former partner out of that fee would reduce the compensation of the attorneys performing the work.'.... In an hourly fee case, unlike a contingency fee case, all post-dissolution fees that a lawyer earns are due to that lawyer's 'post-dissolution efforts, skill and diligence.'" In Coudert, the court said, "Although the New York Court of Appeals has not addressed this precise issue, I believe that it would conclude that the method by which the Client Matters were billed does not alter the nature of Coudert's property interest in them."

The U.S. Court of Appeals for the Second Circuit is asking this Court to resolve the issue in a pair of certified questions: "Under New York law, is a client matter that is billed on an hourly basis the property of a law firm, such that, upon dissolution and in related bankruptcy proceedings, the law firm is entitled to the profit earned on such matters as the 'unfinished business' of the firm? If so, how does New York law define a 'client matter' for purposes of the unfinished business doctrine and what proportion of the profit derived from an ongoing hourly matter may the new law firm retain?"

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To be argued Wednesday, June 4, 2014

No. 138 Reis v Volvo Cars of North America

Manuel Reis was injured in May 2002 at the Yonkers home of Americo Silva, who had recently purchased a 1987 Volvo station wagon. The vehicle was not equipped with a starter interlock switch, a safety device that prevents a car with a manual transmission from starting unless the clutch is disengaged. While Reis was inspecting the engine, Silva offered to start it. He reached through the driver's side window and turned on the ignition. The car, which was in gear, lurched forward and crushed Reis's leg against a wall, requiring amputation above the knee.

Reis brought this products liability and negligence action against Volvo Cars of North America and its parent company. Based on testimony of plaintiff's experts that many, but not all major car manufacturers in 1987 installed starter interlock devices in vehicles with manual transmissions, Supreme Court included Pattern Jury Instruction (PJI) 2:16 in its charge, permitting the jury to determine whether the use of starter interlocks was a customary business practice and, if so, to consider that in deciding whether Volvo exercised reasonable care in designing the vehicle. The jury found Volvo was negligent in failing to install a starter interlock switch in the vehicle, but on the strict products liability claim found the vehicle was not defective without the safety device. Reis stipulated to a damages award of $1,145,990.

The Appellate Division, First Department reduced the damages award by $168,000 and otherwise affirmed in a 3-2 decision. "The proof adduced at trial was sufficient to permit a jury to conclude that the practice [of installing starter interlocks] was fairly well defined in the car manufacturing industry. Plaintiffs were not required to prove universal application of the practice in order for the jury to consider this question...," it said. The trial court did not err in charging the jury on customary business practices because the charge "did not confuse the jury or create any doubt as to the principle of law to be applied." The court said, "Defendants' argument that the jury's verdict is inconsistent because it found that the 1987 Volvo was not defective without a starter interlock device, but that defendants were nevertheless negligent in how they designed this vehicle, is a claim not preserved for appeal.... Defendants did not raise this objection before the jury was discharged, although they had the opportunity to do so."

The dissenters argued that a new trial should be ordered on the negligence claim because the trial court erred in charging the jury on customary business practices. "It was undisputed that in 1987, some manufacturers used safety switches, while others did not. Thus, there was no evidence of a customary procedure or policy that was 'reflective of an industry standard or a generally-accepted safety practice'.... Given that the jury's verdict was inconsistent in that it found in favor of Volvo on the strict liability theory of recovery, but against Volvo on the negligence claim, I differ with the majority's view that the charge did not confuse the jury."

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