

Bond Case Briefs

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LIABILITY - NEW YORK

Gregware v. City of New York

Supreme Court, Appellate Division, First Department, New York - August 4, 2015 - N.Y.S.3d - 2015 WL 4615591 - 2015 N.Y. Slip Op. 06408

Motorist and his wife brought action against city and road construction contractor, seeking to recover damages for personal injuries allegedly sustained in motor vehicle accident that occurred in construction zone. The Supreme Court, New York County, entered judgment following jury trial, apportioning liability 65% against city and 35% against contractor, and awarding plaintiffs damages of \$2.2 million for past pain and suffering, \$3.8 million for future pain and suffering, \$700,000 for past loss of services and consortium, and \$425,000 for future loss of services and consortium, and denied defendants' posttrial motions to set aside verdict and city's posttrial motion for summary judgment on its cross claim for contractual indemnification against contractor. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Narrowing of highway due to lane closures was proximate cause of motorist's injuries;
- Both city and contractor owed duty of care to motorist;
- Neither rear-ending driver nor motorist were negligent with respect to accident;
- Apportionment of fault was against weight of evidence;
- Awards for past and future pain and suffering constituted reasonable compensation;
- Awards for past and future loss of services and society constituted reasonable compensation; and
- Contractor was liable to city under contractual indemnity provision.

Apportioning 65% liability to city and remaining 35% to road construction contractor was against weight of evidence in motorist's personal injury suit against city and contractor, seeking to recover damages related to motor vehicle accident that occurred in construction zone in which lane closures and need to reduce speed allegedly were not adequately marked, where contractor was responsible for setting up and maintaining traffic pattern alleged to have caused accident, and, although single city representative observed traffic pattern and looked for "obvious problem," he disavowed any responsibility for setting up lane closures or ensuring compliance with contract provisions regarding placement of traffic control devices.