

Ankle Fracture Claim Dismissed Following Successful Arbitration

Mikelus v. Town of Bridgewater

Pierce Davis & Perritano lawyer John Wilusz recently obtained the dismissal of a claim for serious personal injuries suffered in a May 2014 trip and fall at the Bridgewater Municipal Solid Waste Transfer Station. The claimant, a 49-year old woman, claimed she fell at the Transfer Station as she was exiting her vehicle to drop off trash and recycling. The plaintiff suffered a left trimalleolar ankle fracture and underwent two surgeries for the installation and subsequent removal of hardware. She claimed medical bills and expenses in excess of \$50,000, and lost wages of approximately \$7,000.

The plaintiff alleged she fell due to the “uneven and dangerous” ground beside her vehicle. The Town, she alleged, negligently maintained the busy Transfer Station, failed “to follow best management practices to control storm water drainages and runoff,” and failed “to implement an erosion control plan.” The Station was staffed by a single Transfer Station Agent, who kept an office on site and was present during all operating hours. After plaintiff filed suit in Plymouth Superior Court, but before the Town had responded to the Complaint, the parties agreed to submit the matter to binding arbitration. During the single-day arbitration proceeding, the plaintiff argued that post-accident improvements to the area were evidence of the Town’s negligence. Witnesses testified that the plaintiff parked her vehicle close to one of the Station’s compactor/dumpsters, directly adjacent to a grade change that led to the base of the dumpster, leaving the plaintiff little room to safely navigate the area on foot. While exiting the vehicle, plaintiff lost her footing and fell into an 18” deep ditch between the vehicle driveway area and the dumpster, fracturing her ankle.

During the arbitration, PDP argued that the Town was immune from plaintiff’s claims under the Massachusetts Tort Claims Act, M.G.L. c. 258, § 10(b), as the Town’s decision to place a low retaining wall between the drive-through area and the dumpsters was discretionary, and plaintiff’s claims – though framed as negligent maintenance – were barred by the statute of repose. M.G.L. c. 260, § 2B. Further, counsel argued that plaintiff had failed to meet the elements of her negligence claim, as the evidence showed the Town performed yearly repairs to the area and monitored it for defects and maintenance issues. Counsel also argued that the danger posed from walking in the area of plaintiff’s fall was open and obvious, and that plaintiff had failed to exercise due care for her own safety by parking and/or attempting to walk on the upper edge of an open and obvious hazard, a shallow ditch.

The Arbitrator found in the Town’s favor in all respects, holding that the Town was not negligent and that the plaintiff had failed to establish the elements of her claim. Plaintiff filed a Motion for Reconsideration, which PDP successfully opposed. The Arbitrator denied the Motion for Reconsideration, and plaintiff agreed to dismiss her claim from Plymouth Superior Court.