



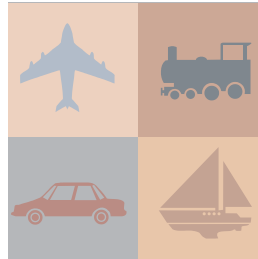
# MondayMonday

## Thais Bollman Lives On

November 18, 2013

Apparently the culinary world was put into a state of shock last month when it learned of a fire which would put the Gabila's knish factory out of business until Christmas. We find this very strange, for Gabila's has not exactly been the nec plus ultra of knishes in our small corner of New York. In fact, we have always viewed Gabila's as a supermarket or tourist knish, inferior but readily available. While it's called a "Coney Island knish," we've always given that crown to Mrs. Stahl's, of blessed memory.

We don't intend to get involved in a knish war here, but instead use this as an opportunity to give credence to the knishes of our life. There's Knish Knosh on Queens Boulevard where we used to sit with our Uncle Harvey on sunny weekday mornings (having just finished at Queens Supreme); just the two of us, stealing time together over a cup of tea and a pair of kasha lovelies. Or the quiet solitude of Yonah Shimmel's (in the old days) at 10:30 in the morning (after calendar call at 100 Centre Street) as the potato knishes would come up on the dumbwaiter as if by magic. Finally, there were Ruby's Knishes, sold from a metal



pushcart, salted from a tin salt shaker secured by a chain, and pushed through the fence at our Brooklyn Junior High School. These are to food what diamonds are to mere minerals; precious with an intrinsic value that grows more as years pass. Just a potato pie? No. We think not.

They try, oh, they try. A number of years ago, in a case with which we have some familiarity, the First Department expressed this simple rule: Under § 7106 of the Unconsolidated Laws, the Port Authority could be sued in any county "situated wholly or partially within the port of New York district." *Bollman v. Port Authority*, 17 A.D.3d 182 (1st Dep't 2005). So, for instance, Thais Bollman, who was injured at Kennedy Airport in Queens, could nonetheless venue her action in Bronx County. Section 7106 is a special statute and, as such, trumps the general venue provisions of the CPLR.

The Port Authority has viewed *Bollman* as a thorn in its litigation side for years. So, it engineered a grand attack on this simple rule of statutory

construction. This past week, the First Department turned again to the *Bollman* principle in *Velez v. Port Authority*, 2013 NY Slip Op 07424 (1st Dep't 11/12/13). Consolidating no less than 10 appeals, the PA argued that venue in Bronx County was improper because the PA did not have its principal office in The Bronx, nor did the injuries complained of arise in that county.

*Bollman* still rules, however. "Where, as here, a special statute (*i.e.*, Uncons. Laws § 7106) is in conflict with a general act covering the same subject matter (*i.e.*, CPLR 505[a]), the special statute 'controls the case and repeals the general statute insofar as the special act applies' (*Bollman*, 17 A.D.3d at 182-183)."

### **HIR Plaintiff-Style**

Strange things happen when a plaintiff gets hit in the rear and dares to move for summary judgment.

In *Osborne v. NYC Dept of Parks*, 2013 NY Slip Op 07545 (1st Dep't 11/14/13), defendant hit plaintiff while the latter was stopped at a red light. Why? Because maybe his brakes failed? Or maybe the road was slippery? Or maybe aliens? Questions of fact, the White Rabbit says. SJ is denied and all is well in Area 51.

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