



MondayMonday

If The Shoe Fits, Don't Wake Up

May 12, 2014

Last Monday we took an operative hiatus to accompany the New York State Trial Lawyers Association on its annual trek to Albany for Lobby Day 2014. Albany, we are loath to report, remains unchanged notwithstanding the newly renovated Albany Hilton, formerly the Crowne Plaza, formerly the Omni. In Albany, nothing ever dies; it just doesn't live. While everything was fresh and stylish, even a new lobby bar taxed to its limits by NYSTLA attendees, Albany itself is still The Dark City, bright with the Rockefeller Mall, housing a moribund legislative idiom which defies common sense. In the rest of the world, no good deed goes unpunished; in Albany, that's not a problem.

We are, perhaps, a tad unfair. Other legislative bodies, we trust, suffer from the same problems. Re-election is the only thing of value and the funds to attain that are a close second. How else would a small group of heavily monied construction companies hope to adversely affect the health, safety and welfare of the working people of the state by attempting to derail the Labor Law? Where else (other than in the four other states who do) could an antiquated Wrongful Death law



see the light of day, except where insurance companies could successfully argue that, hell, they just don't want to pay? Where else could those same insurance companies claim that they have the right to hide low-cost SUM coverage from their insureds because the profit is low and, once again, hell, they just don't want to pay those claims? Doctors leaving New York in caravans of Porsches because they may be held liable for a malpracticed patient who is actually lucky enough to discover their errors after only 2 1/2 years? The fantasy continues, just like that hotel.

Albany. Suspend belief. It's a political Disneyland for tortfeasors with big wallets. Doubt that? Where else could NYSTLA be taken to task by the Governor himself for being *too effective* in fighting for New York citizens? Only in Albany, where the Governor was supposed to be doing that all along.

Ever wake up in a cold sweat after dreaming that you were called on in Civil Procedure and asked to recite on *International Shoe*? Well, don't put that nightmare away so quickly. In

Waggaman v. Art Arauzo, 2014 NY Slip Op 03259 (2d Dep't 5/7/14), the Second Department had the occasion to resurrect that nightmare, discussing the "minimum contacts" analysis (easy there) of *International Shoe* with regard to the Supreme Court's recent decision in *Walden v. Fiore*, 134 S.Ct. 1115 (2/25/14). In *Walden*, Justice Thomas, writing for the entire Court, cautioned that the plaintiff can't be the only link between the defendant and the forum state; jurisdiction requires that defendant's own conduct be the basis for the forum state's jurisdiction. The defendant, not anyone else, must be the basis for the forum state's hold.

Here, defendant doctor treated a New York plaintiff's mother in Texas and Florida, allegedly prescribing drugs improperly without ever examining her. Those actions caused dependency and confusion, destroying her social and family life, which ultimately resulted in her death. Plaintiff sued for damages to himself and in his role as his mother's sole survivor.

After satisfying CPLR 302(a)(3) (ii), a court must still make an "assessment . . . as to whether a finding of personal jurisdiction satisfies due process." That's the rub here, as defendant did not satisfy the "minimum contacts" rule of *International Shoe*, especially in light of the Court's limitations in *Walden*.

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