



# MondayMonday

## Leaving Well-Enough Alone

November 30, 2015

We were cheated last week and we still haven't recovered. Sure, there was turkey and stuffing, soup and wine, even pumpkin pie, no less, but there was no cranberry sauce. Our wonderful mother-in-law, who has honored our secret covenant for all these years ("I'll be nice to you and you don't return my daughter") had forgotten to serve the cranberry sauce on Thanksgiving.

Crushed. We were crushed. Cranberry sauce, whatever the hell it is, was the guilty pleasure of our Thanksgiving in East Flatbush. After all, it was uniquely American (no cranberries grew in Poland) and it was not a vegetable. It was like desert, but served in the *middle* of the meal. This was unbelievable. This was worth our grandparents having schlepped across war torn Europe after the first World War. We marveled at it all, even the imprint of the serial number on the bottom of the can on the cranberry sauce itself. We even convinced our little cousin that if the serial numbers did not match, he could die from eating unregistered cranberry sauce.

Look, let's be real about this. No one has ever lost sleep over missing cranberries. But we are, nonetheless, virtually dyspeptic over the absence of our cranberries. Moreover, this situation cannot be cured by having cranberry sauce for dinner tomorrow night, or on Christmas, or on Chanukah, or even on the Fourth of July. If cranberry sauce is not eaten on Thanksgiving, it ceases to be cranberry sauce. It's



something else.

We don't want "something else." We are getting older and rhythm has replaced a bit of substance in our life. We dislike change. It makes us uncomfortable and disquieted. We know where cranberry sauce belongs and it wasn't there. Assuming we are, we'll pay more attention to such matters next year.

In *Green/Laws v. Metropolitan Transit Authority*, Slip Op. 210 (11/19/15), a case with which we have some familiarity, the Court of Appeals reasserts a principle which all do-it-yourselfers have learned the hard way: Once you tighten the screw, overdoing it will only strip the nut, rendering all your effort meaningless and wasted. Obviously, the MTA had to learn that lesson the hard way.

Tyese Laws was a passenger in an MTA bus. She was asleep on her trip when the bus veered to its left, striking an auto driven by Switzerland Green. Both plaintiffs were injured, Green so severely that he remembered nothing about the accident. Submitted for your approval: Two plaintiffs, one who is asleep when the accident occurred; the other who remembered nothing of the occurrence as a result.

Enter the MTA. Rather than awaiting any examinations before trial, the MTA moved for summary judgment dismissing the complaints. In support of the motion it offered the affidavit of

the bus driver, who assured Supreme Court that the accident was not his fault. You see, what happened was that a van suddenly entered the roadway from his right-hand side, cutting in front of his bus's path and causing him to veer suddenly to his left, where he encountered the auto driven by Plaintiff Green. The van, being undamaged, drove away into the sunset, never to be seen again. The bus driver apparently never got the license plate number of the van. Of course, neither did the sleeping passenger nor the amnesiac car driver.

Practitioners of this delicate art that we call personal injury law recognized that van immediately. It was the MTA's "Phantom Van", a ubiquitous vehicle that had appeared before in summary judgment motions. Usually, however, the van appeared after depositions, but now, it appeared before them. This enigma the Court of Appeals found somewhat uncomfortable.

In a decision based on submissions alone, the Court made the "Phantom Van" go away, at least prior to depositions. "Whether the emergency doctrine precludes liability presents a question of fact and, therefore, summary judgment (for defendants) ... was inappropriate." The MTA had over-tightened the screw and stripped the nut outright. It would no longer hold, at least when used in advance of EBTs.

We'd be interested to know if the Phantom Van returns in one of your cases. Please keep us in mind. As for now, it's back in the garage. At least, that is, until the key, an EBT notice, unlocks the garage doors once again.

Strange? Not in the PI Zone. [Up closing theme music; roll credits]

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