

CALENDAR CALL

Volume 6, Issue 3

~A LOOK BACK AT 2008~

As a new year begins, we feel that it is a good time to look back at a few highlights as well as the great causes we have tried to help throughout this past year.

Our “Jeans Friday” project has been a great success as well as a favorite of the firm.

The concept is simple: if you would like to wear jeans on Friday, then you must contribute \$5 for the privilege. At the end of the month we tally up the money collected and all those funds goes to the charity that we selected for that month.

This year these monthly donations went to the following charities: Foster and Adoptive Parent Association, March of Dimes, The Ronald McDonald House, The USO, The Muscular Dystrophy

Association, CART—Center for Aids Research and Treatment/A Division of Infectious Diseases at North Shore University Hospital (we pledged a bicyclist from Jones Beach to Lake Placid), Crohn’s and Colitis Foundation, Autism Speaks Program, Juvenile Diabetes:(we sponsored a child who walked for “Brendan’s Buddies” in the 2008 walk to cure diabetes), and The Salvation Army.

In addition, we sponsored a participant to walk in the Avon Walk against Breast Cancer. That walker was **Maryanne Amato**, wife of partner **Vincent Gerbino**.

We were so proud of **Maryanne** who walked a total of 39 miles in two days and we were thrilled to help her raise money in sup-

port of the fight against breast cancer.

Other annual events included collecting food for Long Island Cares/The Harry Chapin Food bank as well as the Toys for Tots program sponsored by the United States Marine Corps.

Also during the year, as a break from the daily grind and hard work that all our employees endure, we held “A Day At The Races” at Belmont Park. A great time was had by all and everyone walked out winners (some more than others). We also participated in the Annual workplace Challenge at Jones Beach.

All in all it was another great year.

From all of us here at **Bruno Gerbino and Soriano**, we wish you a wonderful new year of peace and prosperity for all.

BRUNO GERBINO & SORIANO

TRAFFIC VIOLATION ~ NO BAR TO LAWSUIT

The Appellate division, Third Department unanimously affirmed a decision by the Schenectady County Supreme Court.

That decision held that a woman who had hit a police car and had been found guilty in Traffic court of failing to yield to the police, could nevertheless maintain a personal injury action against the police department.

It was acknowledged by the appellate court that the defendant police department had the right to assert that criminal finding against the plaintiff even though they were not a party to the criminal action.

However, the Court concluded "that petty infractions below the grade of misdemeanor..., like traffic violations" should not be held to be conclusive

of a material issue in a later case.

The Court concluded that traffic infractions are generally litigated in a brisk and informal manner. In addition, they often result in a relatively insignificant outcome. Therefore, it does not truly afford a party the opportunity or incentive to litigate thoroughly, and should not be used against the person found guilty.

STUPID HUMAN TRICKS

In Vino Veritas -
In wine there is truth.

The police in Bismarck, ND received an all too familiar 911 call reporting a drunken driver.

What made this call somewhat unusual, was that the caller was a 17 year old girl who was reporting herself for driving under the influence. The police responded to the location that she gave them, and arrested her after she failed a sobriety test.

During the arrest process she told the police that "...her life was spiraling out of control, and she had spent the majority of time drinking over the past two weeks."

She was released to her parents.

Nice try, but we are not alone.

A woman in West Valley City, Utah tried to avoid a drunk driving arrest by putting her 15 year old daughter in the drivers seat after running into some obstructions and blowing out her tire.

It would have been a great ploy, except she happened to be driving through the parking lot of a Costco and was seen by several dozen witnesses. Many of those witnesses came forward to tell the police who was actually driving.

She was arrested for DUI when it was determined that she had a blood alcohol level of .246 which is three times the legal limit.

Truly brilliant.

Merle Sorenson from Quincy, Wash., nearly drowned when he

drove his vehicle off a boat launch and into the Columbia River.

He said that he wanted to see how far he could drive his Humvee into the water and still back out. I guess he went a little too far!

A 49 year old man in Leavenworth, Kan., picked up an ATM machine with his front-end loader and tried to drop it off a 50 foot embankment in order to break it open and steal the money.

Unfortunately, he miscalculated. Both he and the front-end loader, as well as the ATM machine tumbled down the embankment.

Thankfully it was not a motor vehicle or the carrier would have been responsible for the no-fault payments.

COURT'S ATTEMPT TO KILL GRAVES

The Kings County Supreme Court in an effort to chip away at the **Graves Amendment** found that a car dealership was the “owner” of a loaner car and was therefore liable for the negligence of the driver under Vehicle and Traffic Law (VTL) section 388.

VTL 388 is a state law in New York which provides that an owner of a motor vehicle is vicariously liable for the negligence of the driver of the vehicle unless used without permission.

The **Graves Amendment** is a federal law that negates any state law which holds a professional automobile leasing or rental company vicariously liable for the negligence of the driver of the leased or rented vehicle. The reasoning behind this amendment is very simple and very sound.

Both rental and leasing companies totally relinquish control of “their” vehicles to anyone who tenders the rental or lease payments. It would therefore be both unfair and unnecessary to burden these companies with financial responsibility for any damage caused by some-

one who simply rented or leased their cars. In addition they would also be liable for the negligence of the people to whom those customers lent “their” car.

This is especially galling as regards leasing companies. In most instances, a car “buyer” makes the choice between a lease and a purchase solely on the basis of cost and tax consequences. It is rarely, if ever, made on the basis of who retains ownership.

This historical analysis is important because the court, in the case at issue, also goes to considerable lengths to analyze these statutes. Indeed the court even notes that “...the Graves Amendment was not part of the original ...Act...” as if it is a somehow less important law.

I can only imagine what this Judge thinks of the **Bill of Rights** since they were not part of the original Constitution.

Lest there be any confusion about this court’s desire to protect a plaintiff’s right to access to a deep pocket, the trial judge states that “... the Court is mindful that ... the determined scope of the Graves

Amendment will undermine the policy of the State’s Vehicle and Traffic Law”.

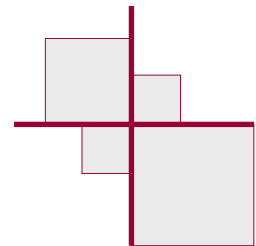
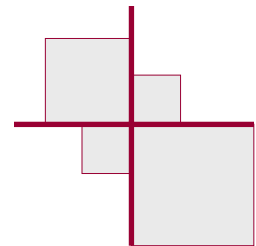
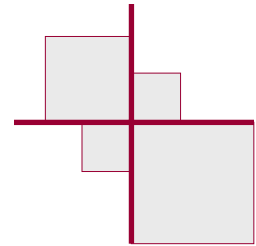
That policy, according to case law, is that “... one injured by the negligent operation of a motor vehicle should have recourse to a financially responsible defendant ... [and] the owner of the automobile is the obvious candidate, for he can most easily carry insurance to cover the risk”.

Of course it never occurs to the court that the driver of the loaner car is the owner of a vehicle, that is the vehicle that is being serviced.

In any event, the court finds that a loaner car is neither a “lease” nor a “rental”.

It makes no difference that this “loaner” car is given out only after the customer signs a rental agreement and provides a credit card to cover any charges.

This court concludes that “ However it may be characterized for other purposes, the loan of the subject vehicle ... was a simple bailment” and therefore not subject to the **Graves Amendment** protection.



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MALLELA ESTABLISHED BY CONSENT DECREE

A plaintiff insurance company brought an action in Supreme Court, Queens County to recoup no-fault payments against the defendant Arthur Luban, M.D. and a number of professional corporations operating under his name. The action was based upon the Court of Appeals holding in Mallela which found that a fraudulently licensed medical corporation is not eligible to receive payments for no-fault treatments.

The basis of the insurer's case was a series of Consent and Decree Orders the defen-

dant had entered into with the NYS Department of Health, State Board for Professional misconduct. What was contained in those documents was the doctor's admission under oath that he did not, in fact, control the various medical facilities that were operating under his name. The doctor also acknowledged that these corporate entities were acting in violation of Article 15 of the Business Corporation Law.

It is undeniable that the most fundamental provision of no-fault law is the requirement that insurers reimburse

patients or their medical providers for medical treatments incurred as the result of an automobile accident.

However, the regulations establish that a medical provider is not eligible for reimbursement "if the provider fails to meet any ...State or local licensing requirements".

This court found that the Consent Orders were sufficient proof to establish that these defendants were not eligible to receive no-fault payments and therefore awarded judgment in excess of \$60,000. to the insurance carrier.
