

December 28, 2005

**MINNESOTA SUPREME COURT PROVIDES “BRIGHT LINE” RULE FOR BYSTANDER
RECOVERY IN ENGLER v. ILLINIONS FARMERS INS. CO., FILE A04-115**

On December 15, 2005, the Minnesota Supreme Court ruled that, in limited situations, bystanders may recover damages for Negligent Infliction of Emotional Distress in a case involving a mother’s claim for damages sustained after seeing her son being struck by a motor vehicle. In April 1997, Plaintiff was riding in a vehicle with her boyfriend and two sons. Her 4 ½ year old son said he needed to use the bathroom, so they pulled over to the side of a rural road. Plaintiff stood by the vehicle as the son walked over to the tree line. Another car, driving in the opposite direction, swerved out of control towards the vehicle and the Plaintiff. The driver of that vehicle swerved to avoid the parked car and drove into the tree line, striking Plaintiff’s son. The boy was seriously injured in the accident, including (4) four days in the intensive care unit. Plaintiff also sought medical treatment after the accident because she “did not feel like herself.” She was diagnosed with post traumatic stress disorder (PTSD) and depression, both of which were treated with medication.

The lawsuit stems from plaintiff’s underinsured motorist (UIM) claim brought against Illinois Farmers. At the District Court, Plaintiff brought a motion seeking a clarification of the scope of recoverable damages. The District Court concluded Plaintiff is not entitled to damages for emotional distress she may have suffered as a result of either fearing for her son’s safety or witnessing her son’s injury. The Court of Appeals affirmed the District Court’s decision, noting an apparent reluctance of Minnesota Courts to extend liability and Negligent Infliction of Emotional Distress (NIED) claims, and concluding the Supreme Court has not recognized a duty of care to protect persons from distress caused by witnessing harm to another. The Minnesota Supreme Court granted review to determine the scope of damages recoverable in Plaintiff’s NIED claim. That is, could Plaintiff recover for both the emotional distress she suffered due to a fear for her own safety as well as for the safety of her son. This extension of damages caused by witnessing another’s injuries is referred to as “Bystander Recovery,” because the claim is brought by someone who is a bystander, or witness, to the injury of a third person.

After analyzing various tests to determine if Bystander Recovery is permitted in Minnesota, the Minnesota Supreme Court issued a bright line rule allowing such recovery in limited situations. The Court held, in order for a plaintiff to recover damages for distress caused by fearing for another person’s safety, or witnessing serious injury to another, the plaintiff must prove, in addition to the basic elements of a negligence claim (duty, breach, causation, and actual harm), these additional elements:

- 1) Plaintiff was in the zone of danger of physical impact;
- 2) Plaintiff had an objectively reasonable fear for his/her own safety;
- 3) Plaintiff suffered severe emotional distress with attendant physical manifestations;

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- 4) Plaintiff stands in a close and personal relationship to the third-party victim; and
- 5) The third-party victim must have suffered death or serious bodily injury.

The rationale for this bright-line test allowing Bystander Recovery is that when a defendant has threatened a plaintiff with bodily harm, the defendant has breached an original duty to the plaintiff to exercise care for his or her protection and is “thus liable for any harm suffered by the plaintiff due to the negligent conduct, even if it results in an unusual manner – i.e., from witnessing injury to others put in peril by that negligent conduct.”

The Court also confirmed that the additional elements requiring physical manifestations of an emotional injury, close relationship with the victim, and a victim who suffers serious bodily injury are necessary to ensure the scope of potential claims under this rule is sufficiently narrow. The Court was concerned this decision could be left open to interpretation and it wanted to make sure the case would be limited to these specific facts, or extremely similar cases.

According to the Court, the decision does not create a new cause of action; it merely expands the scope of damages recoverable in an NIED claim. The Court stated “our holding in this case simply recognizes the right of a plaintiff to whom the defendant owed and breached a duty of reasonable care to recover, as an element of damages, those damages attributable to his or her distress caused by fearing for the safety of another or witnessing the defendant’s negligent injury of another.”

Although we anticipate an increase of claims and lawsuits attempting to test the new law, it appears unlikely other actions with these specific set of facts will be prevalent. The Court stated, and we agree, it is the rare case that would satisfy the additional elements required by this decision. The Court specifically chose this rule so that the number of plaintiffs able to make a claim for emotional damages as a result of witnessing an injury to a third party is limited.

If you have any questions about this decision, please contact any of the litigation attorneys at Johnson & Condon at (952) 831-6544, or through our website, www.johnson-condon.com. A copy of this letter is also available on the News and Resources page at <http://www.johnson-condon.com/news-resources.htm>.

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