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"Rescue Doctrine" Can't Save Lawsuit Over Freak Accident

The legal system generally tries to encourage good deeds or at least not punish them. Thus, under "good Samaritan" laws, an injured person usually can't sue a someone who attempts to help but accidentally makes the injury worse.

If it is the good Samaritan himself who is injured, on the other hand, he can sue the person responsible for the accident or problematic situation. Under the "rescue doctrine," if a passerby tries to save someone from danger but is injured in the attempt, the rescuer can sue the third party who put the original victim in danger.

But the rescue doctrine has limits — the same limits that would apply to an injury suit by the rescued person against the one who caused the danger. According to a recent California appellate decision, a rescuer can't hold someone liable for his injuries if the person being rescued couldn't have done so, if he'd been injured. *Tucker v. CBS Radio Stations Inc.*

The case grew out of a large race for off-road vehicles in the California desert. As the race was wrapping up, a number of competitors and others took an unapproved short cut across railroad tracks to beat the crowds back to the staging area for a concert and raffle.

One competitor, David Kendle, got his vehicle stuck on the tracks. At that point, a non-competitor just along for the ride, Aaron Tucker, stopped to help him. Kendle did escape from his vehicle, but as the two struggled to free the vehicle from the tracks, a train hit it. The vehicle plowed into Tucker and injured him.

Tucker sued the organizers of the event, claiming that it was their poorly managed event and badly designed course that put Kendle at risk and led to his own rescue attempt. The trial court ruled against him, and the appellate court affirmed.

The event organizers, including a CBS radio station, argued initially that Tucker was injured trying to rescue Kendle's vehicle, not Kendle himself. But the court held the rescue doctrine applied because the two men were trying to prevent danger to other people nearby and on the train.

Under the doctrine, a rescuer may "recover from the person whose negligence created the peril which necessitated the rescue." But the rescuer sues only "on the basis of defendant's initial negligence toward the party rescued," the appellate court said.

In this case, the race organizers, including a CBS radio station, had no duty to protect competitors from freak accidents when they wander off course, the court indicated. The collision between the train and the vehicle was so unusual as to be unforeseeable.

Therefore, Kendle could not have sued had he been injured, and Tucker, as the rescuer, couldn't sue either.

Put another way, "there was not a 'close' connection between [the organizers'] conduct and [Tucker's] injuries," the court found.

"The factual series of events leading to [Tucker's] injuries involved an extended sequence of multiple occurrences not reasonably foreseeable generally and, even less so, in the particular circumstances of this case," the court held.

Pretrial Settlements Under 998: Be Careful What You Offer

Before taking a lawsuit to trial, it makes a lot of sense to offer the other side a compromise. According to first-impression rulings from two different appellate courts, it makes even more sense to be careful how you phrase those offers.

California Code of Civil Procedure Section 998 encourages litigants to settle cases by attaching a stick to the back end of any settlement-offer's carrot. Under Section 998, if one side rejects a written settlement offer before trial but then ends up with a worse result at the end of trial, then the rejecting litigant may have to pay the offering litigant's costs, expert fees and other expenses.

California courts have said that Section 998 should be interpreted in ways to encourage settlements. Therefore, the language of written settlement offers don't have to track exactly the language of the statute, so long as they are clear.

But they do have to obey the meaning of the statute, one appellate court ruled. The problem in *Puerta v. Torres* was that the statute had been amended to impose a new requirement.

In this case, the plaintiff claimed the defendant had bumped into his car with her car. The defendant said no such collision took place, and a police officer and an expert backed her up.

The defense submitted a 998 offer proposing that the case be dismissed, with each side to pay his or her own costs. The plaintiff refused, went to trial and lost. Because the plaintiff had rejected the offer, the defendant then asked the court to award her costs, including the expert witness's fees, which the trial judge did.

The appellate court, however, reversed on that point. It noted that beginning in 2006, Section 998 required that compromise offers must include "a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted."

The defendant's offer in this case did not include language allowing the plaintiff to accept the offer by signing a statement indicating acceptance. Therefore, under the mandate of the amended code section, the defendant's 998 offer was invalid, the court held.

"The statute's new language seeks to eliminate uncertainty by removing the possibility that an oral acceptance might be valid, which is a legitimate concern," the court explained. Any Section 998 offer now must include "at least *some* indication of how to accept" the offer.

A second appellate ruling shows that sometimes a Section 998 offer that looks clear to one side isn't clear to the other.

In *Martinez v. Los Angeles County Metropolitan Transportation Authority*, a woman sued claiming disability discrimination because she wasn't allowed to bring her service dog on the bus. The bus authority offered to settle the lawsuit for $2,501 with "each side to bear their own costs."

The woman accepted but then petitioned the court to make the defendant pay her attorney fees. Attorney fees generally are awarded by statute to plaintiffs who win disability discrimination cases.

The trial court agreed, but the appellate court said no. Under Section 998 and other civil procedure code sections, attorneys fees are included under the rubric of costs, meaning that the disabled woman here had agreed to bear her own fees.

"Unless the offer expressly states otherwise, an offer of a monetary compromise under section 998 that excludes 'costs' also excludes attorney fees," the court held.

Firm News:

The Rodolff Law Firm is committed to supporting business, professional and community organizations. Recently, we were pleased to sponsor the RIMS-Orange County Chapter golf tournament, aimed at raising money for the organization's scholarship fund. Our support even included a fun raffle for an iPad2! Barry Rodolff has written a recent article for the organization and spoken to the Chapter in the past.

Barry L. Rodolff

The founder and president of The Rodolff Law Firm, APC, Barry L. Rodolff, is a highly experienced lawyer who has been assisting clients faced with civil litigation for more than two decades. Mr. Rodolff developed his skills with two well-respected defense firms, Schell & Delamer, and Haight, Brown & Bonesteel. He also worked in-house at Travelers Insurance Company, representing a variety of insured companies in many types of litigation. His clients have ranged from small businesses to multinational corporations. Mr. Rodolff brings extensive experience and knowledge in the defense of litigation involving premises liability, business, product liability, personal injury, employment, construction defect, and intentional torts.

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