New Trial for Quadriplegic Man Claiming Personal Injury Damages Resulting from Wheeling Himself to Retrieve Wrongfully Towed Car

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After evidence was presented in a trial in 2006, the judge dismissed a personal injury case brought by Delvin Sweeney. He appealed and won a new trial set to start this week in Bronx County, New York. The case is Sweeney v. Bruckner Plaza Associates.

It all stems from an incident on December 23, 1997 when Sweeney, a quadriplegic, drove his specialized vehicle to a shopping center, parked it and found it missing on his return a half hour later. He wheeled himself a mile or so to the tow yard and claims he thereby suffered substantial injuries - pneumonia from exposure to the cold weather and hand, wrist and forearm injuries from the bumpy ride along New York City sidewalks.

Plaintiff was left without his car, with just his wheelchair like this one:

Sweeney sued the tow company (as well as the parking lot owner) claiming it had no right to tow the car and it had no signs posted showing the phone number and location of the yard and therefore the yard caused his injuries.

A sign like this one may have avoided this whole lawsuit mess:

And there was (and is) the issue of causation. Or, as we lawyers say - **proximate cause**. The trial judge found there was an insufficient connection between defendant's actions and plaintiff's injuries. Two of the five appeals court judges dissented and agreed with the trial judge.

Here are some more of the facts in this case that have caused such judicial turmoil:

1. plaintiff parked in a handicapped parking spot but did not have handicap plates or a government issued placard allowing him to do so
2. plaintiff saw a tow company employee who told him he could get his car back at the tow yard about two blocks away

3. plaintiff twice called the police on his cell phone from the lot and was told to stay put but instead he decided to wheel himself to the tow yard, but it turns out it was 11 blocks away down a bumpy sidewalk in the cold weather
4. plaintiff, without a coat, wheeled himself but was with his teenage brother
5. defendant should have had signs in the lot with its phone number and address - it did not
6. defendant should not have towed the car because of the absence of the signs

So how would you rule on the issue of proximate cause? Here are some clues. When there is an **intervening act** (between defendant's negligence and plaintiff's injury), the determination of whether a defendant's conduct can be said to be a proximate or substantial cause of the plaintiff's injuries turns on **whether the intervening act was a foreseeable consequence of the defendant's negligence.** Judges will consider the following:

- were there other factors that contributed to the injury?
- was the defendant's negligence continuous up to the time of injury?
- how much time elapsed from the negligent act to the injury?

Now, you have the information needed to decide this case. **It's really a policy decision** and the courts are in agreement that the policy considerations underpinning the law of proximate cause serve to place manageable limits upon the liability that flows from negligent conduct. If you want to see a compendium of cases and issues dealing with **personal responsibility**, there's no better place to go than Overlawyered where Walter Olson chronicles it all.

So, **not every act of negligence combined with an injury should result in an injured party's courtroom win**. Plaintiff wins only when he can show proximate cause and if there are intervening factors - such as his own voluntary decision to wheel himself in the cold without a coat over New York City bumpy sidewalks - then it may be that despite being injured following another party's negligence there should be no recovery.

In Mr. Sweeney's case, we will find out soon enough whether he can convince a jury that his decision to wheel himself to the tow yard was an act that was foreseeable following his being left without a car and with insufficient knowledge of the tow yard's location.

The **defense will try to convince the jury that Sweeney's decision was not foreseeable** - especially in view of the facts that the police told him twice to stay where he was, he did not have a winter coat on and he did not use his cell phone to try another (safer) way to get home. And, too, the defense will argue that any injuries caused by defects in the city sidewalks cannot be the fault of the tow company under any circumstances.

Prediction: Defense verdict.

As always, **we will continue to follow this case and report on developments**.