Plaintiff's Comparative Fault No Longer a Fact Question to Defeat Summary Judgment in New York

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On April 3, 2018, the New York Court of Appeals, in a split decision, overturned a trial court order denying summary judgment to a sanitation worker injured on the job, by holding that a plaintiff's comparative fault does not raise a fact question to defeat summary judgment. A plaintiff does not have to "demonstrate the absence of his own comparative fault" to achieve summary judgment. The decision in *Carlos Rodriguez v. City of New York* will have a significant impact on litigation strategy for both plaintiffs and defendants in personal injury matters in New York state.

The plaintiff in Rodriguez sued his employer, the City of New York, and alleged he was injured while putting tire chains on trucks used to plow snow from City streets. Rodriguez was pinned against a rack of tires, and injured his back. He underwent spinal fusion surgery and claims to be permanently disabled.

After discovery closed, Rodriguez moved for partial summary judgment on liability, and the City cross-moved. The trial court denied both motions, finding issues of fact regarding foreseeability, causation, and comparative negligence. Both Rodriguez and the City appealed, and the First Department Appellate Division affirmed the denial of Rodriguez's motion. Rodriguez then appealed to the Court of Appeals, the highest level appellate court in New York state. The majority held that plaintiffs in personal injury and wrongful death actions should not have to establish the absence of his or her own comparative fault to obtain partial summary judgment. The court reasoned that comparative negligence is only a consideration in assessing plaintiff's damages, and must be proven by defendants.

Plaintiffs may now obtain partial summary judgment on defendant's liability, even if the defendant raises an issue of fact on the plaintiff's comparative negligence, which facts previously, would have denied the motion. The decision in Rodriguez will likely increase the number of summary judgment motions filed on the issue of a defendant's liability, and change the landscape of defending personal injury actions in New York state. Where a plaintiff obtains summary judgement on liability, juries will still hear testimony and evidence related to the conduct of all parties, but will not be asked to determine whether plaintiff's injuries were proximately caused by defendant's negligence, as that will already be established. Taking the liability decision out of the jury's hands could cause fewer pre-trial settlements and inflated settlement demands from plaintiffs. Trials may also become more damages focused, potentially leading to larger plaintiff's verdicts.