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New York Law of Torts

New York Practice Series, Volumes 14, 15 and 16

Enclosed are the 2023 Supplements to New York Law of Torts. This enclosure replaces the prior 2022 Supplements. Please note that for ease of handling, the materials in this shipment may ship in more than one box.

Filing Instructions

REMOVE and RECYCLE the 2022 Supplements.

PLACE the new 2023 Supplements for Volumes 14, 15 and 16 on your shelf next to the corresponding bound volume.

Highlights

New features and recent developments in these 2023 Supplements include:

- *Courtney Anderson v. Commack Fire District*, in which the New York Court of Appeals held that the actions of volunteer firefighters should have been measured by the reckless disregard standard that is applied to the actions of professional firefighters. These cases were complicated by the fact that the actions of volunteer firefighters are apparently governed by two competing laws but the Court found that VTL § 1104, the later enacted statute, establishes the duties of volunteer firefighters in this context.
- *Grady v. Chenango Valley Central School District*, which included two consolidated cases involving the issue of assumption of risk in the context of injuries sustained while engaging in athletic activities. In the lower court decision in *Secky v. New Paltz Central School District*, the court held that the risk of colliding with an open and obvious structure near a basketball court was inherent in playing on that court while in *Grady v. Chenango Valley Central School District*, the lower court both ruled that the plaintiff was an experienced player, familiar with the drill that resulted in the injury, and thus, that he had assumed the risk of injury. The Court of Appeals upheld the *Secky* decision but reversed in the *Grady* matter, finding that the drill in fact created a dangerous condition over and above the usual dangers inherent in baseball.
- *Howell v. City of New York*, where the Court of Appeals, addressing the special duty test, concluded that the mere existence of an order of

protection, standing alone, will not prove justifiable reliance, and warned that sympathy for victims of domestic violence should not “tempt us to disregard settled law in order to permit individual recovery.”

- *State of New York v. Vayu*, where the Court of Appeals found, even in this age of restrictive jurisprudence, long-arm jurisdiction where an out-of-state commercial defendant entered into an agreement with a New York plaintiff. Though there was very little in-person communication, the parties communicated frequently via email and telephone to discuss current and possible future business opportunities.
- *Nemeth v. Brenntag*, where the Court of Appeals ruled that the testimony of plaintiff’s experts was insufficient to establish that the wife’s exposure to contaminated talcum powder was the proximate cause of her mesothelioma.
- *Cutai v. Board of Managers of 160/170 Varick St. Condominium*, where the Court of Appeals ruled that plaintiff was not entitled to summary judgement on the issue of liability, where plaintiff failed to establish that the condition of the ladder, or the absence or inadequacy of additional safety devices was the proximate cause of the accident.

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