

FLEMING AND SETAR OBTAIN SUMMARY JUDGMENT IN PREMISES LIABILITY CASE

Pennsylvania - Fowler Hirtzel McNulty & Spaulding, LLC

Alison Fleming and EJ Setar secured an Order granting summary judgment on behalf of the firm's client, a local Township. The Plaintiff's Complaint alleged that he was injured when tree branches from a tree on land owned by the Township fell onto his vehicle when he was parked on the side of the road. Our client was the only defendant.

As a result of the alleged incident, Plaintiff underwent a laminectomy. During the discovery process, Fleming and Setar unearthed that Plaintiff was not actually injured by the tree branches falling from the tree, but rather that he was injured when he decided to remove the tree branches from his vehicle. The tree did not look dead, but upon further inspection after the incident it was found by the Township to be hollow and was removed.

However, before the end of discovery, Plaintiff failed to establish actual or constructive notice that the tree posed a

dangerous risk meeting the immunity exception under the Tort Claims Act. Additionally, Plaintiff did not provide an expert report opining that he sustained a permanent loss of bodily function, as required by the Tort Claims act for recovery of non-economic damages, i.e. pain and suffering.

In turn, Fleming and Setar filed a Motion for Summary Judgment on the ground that Plaintiff was barred from recovering pursuant to the Tort Claims Act. They additionally argued that Plaintiff failed to establish a prima facie case of negligence, that Plaintiff assumed the risk of removing the tree branches from his vehicle, and that Plaintiff was not entitled to pain and suffering, as he did not suffer a permanent loss of bodily function.

The Court granted their motion in its entirety and dismissed Plaintiff's Complaint.

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