

Plaintiffs No Longer Have to Demonstrate the Absence of Comparative Fault to Avoid Summary Judgment in New York

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Litigation Alert

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On April 3, 2018, the New York Court of Appeals addressed a question that "has perplexed courts for some time," that is, whether a plaintiff must establish his or her own comparative negligence in order to obtain partial summary judgment in a comparative negligence case. The Court of Appeals held that to be entitled to partial summary judgment a plaintiff does not bear the "double burden" of establishing a *prima facie* case of defendant's liability, as well as the absence of his or her own comparative fault.

In *Rodriguez v. City of New York*, issues of fact existed as to whether a plaintiff employee was free from comparative fault when he was injured on the job. The Court of Appeals held that, even though issues of fact existed as to whether the plaintiff was at fault for his own injury, partial summary judgment could be granted on the issue of defendant's liability. In other words, the Court of Appeals held that a plaintiff no longer has to demonstrate the absence of his or her own comparative fault in order to obtain partial summary judgment on defendant's liability.

As noted by the dissenting opinion, the previous rule in New York was that to be entitled to summary judgment the plaintiff must demonstrate that there are no issues of fact concerning the defendant's negligence, and that the plaintiff had no comparative fault. The Court of Appeals held that this view was inconsistent with New York State's codified comparative negligence principles, Civil Practice Law & Rules (CPLR) Article 14-A.

The Court of Appeals explained that this decision will affect Pattern Jury Instructions going forward in liability cases. In cases where the plaintiff has been granted partial summary judgment as to defendant's liability, the jury will still be asked to determine whether the plaintiff was negligent, whether the plaintiff's negligence was a substantial factor in causing his or her own injuries and to determine the percentage of fault of both the plaintiff and defendant. However, the jury will no longer be asked to determine whether the defendant was negligent or whether the defendant's negligence was a substantial factor in causing the injury or accident.

If you have questions or would like additional information, please contact Andrew Hamelsky (hamelskya@whiteandwilliams.com; 212.631.4406) or Jenifer Scarcella (scarcellaj@whiteandwilliams.com; 212.714.3064).

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