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Bystander Liability Clarified by Maine Supreme Court

BY: Jonathan W. Brogan, Esq. Recently the Maine Supreme Court made a significant decision regarding bystander claims of negligent infliction of emotional distress. *Coward v. Gagne and Sons Concrete Blocks, Inc.,* 2020 ME 112 (9/17/2020). The longstanding test in Maine was decided in a case called *Culbert v. Sampson Supermarket* which stated that there would be bystander liability if the bystander was (1) present at the scene of the accident, (2) suffered serious mental distress as a result of seeing the accident and the ensuing danger of the victim, and (3) was closely related to the victim. That has been the test in the Maine courts since 1982. Since that time, there has been a gradual change in the law, in other states, regarding these three factors. In Coward v. Gagne and Sons Concrete, our Supreme Court was presented with a horrific case. Thomas Coward and his wife, Lisa Coward, brought a claim against Gagne and Sons Concrete after their son was killed in a crush injury by steel re-bar being delivered to their place of business. Thomas Coward did not see the accident but heard the accident occur, arrived "seconds later" and witnessed his son die. Though the Superior Court granted Gagne and Sons' motion for summary judgment, the Supreme Court overturned that summary judgment and remanded Mr. Coward's claim for negligent infliction of emotional distress and Mrs. Coward's claim for loss of consortium to the Superior Court for further action. The underlying wrongful death was tried and a more than $2,000,000 verdict was entered for the Estate of Phil Gagne, the decedent. Throughout the years, we have always used the *Culbert* test in determining whether a bystander had a claim. The issue in the Gagne and Sons case was contemporaneous perception. It was decided that being within a 100 feet of the accident, hearing the crashing re-bar and the victim's screams and arriving within seconds to witness the aftermath met the plaintiffs' burden. The issue of what contemporaneous perception means, in Maine, has been somewhat nebulous. The Court has now said that it does not mean that the bystander is required to directly witness and immediately be aware that an injury causing event is taking place. The Court concluded that perception of an accident can arise from any of a person's senses, not just sight. The bystander's observation of the victim's injuries must occur in the immediate aftermath of the injury producing event, but they cannot be called to the scene or otherwise not be present at the scene, and the bystander must have perceived the injuries or death of the victim as an immediate result of their perception of the injury producing event. No specific time was established by the Court for this perception of injury however the Court did state that a "brief amount of time" is enough. In other words, learning through indirect means of an accident and then going to the scene would not be enough, but hearing or seeing the event and then immediately perceiving the damage is enough. The Court's lengthy decision (26 pages) does not extensively change the law as it has been interpreted in the Superior Court for many years. However, this Supreme Court case finally ends the belief that bystander liability is limited to actually seeing the event and perceiving it contemporaneously as opposed to perceiving the event and, within a reasonable amount of time, understanding what has happened. If you have any questions about this decision or its ramifications, please do not hesitate to contact any of us here at Norman Hanson & DeTroy to discuss it.

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