

Law Court Declines to Expand Liability for Negligence, Negligent Infliction of Emotional Distress

In a recent decision with potentially far-reaching implications, the Maine Supreme Judicial Court accepted the argument made by Attorneys Matthew T. Mehalic and Trevor D. Savage and held that: (1) a plaintiff's allegation of post-traumatic stress disorder ("PTSD") did not constitute a "physical injury" for purposes of establishing a claim for general negligence; and (2) in the absence of special circumstances, a defendant does not owe a plaintiff any duty of care to avoid causing her emotional harm

The case, *Boivin v. Somatex, Inc.*, arose from an incident that occurred in Rumford, Maine, in August 2014. Defendant Somatex, Inc., was hired by NewPage Paper Company—Ms. Boivin's employer—to repair one of NewPage's overhead cranes, and Ms. Boivin's supervisor requested that she work with Somatex employees while they repaired the crane. To determine why the crane was not operating correctly, one of the Somatex employees climbed onto the crane to ride it while it was running. The Somatex employees instructed Ms. Boivin to operate the crane while the Somatex employee was on it, and after initially refusing to do so, Ms. Boivin agreed.

While Ms. Boivin moved the crane, the Somatex employee unexpectedly stood up and was crushed between an overhead truss beam and the moving crane. The Somatex employee was knocked out of the crane and fell approximately thirty feet to the floor, where he landed in front of Ms. Boivin. The Somatex employee died as a result of his injuries, and Ms. Boivin alleged that she suffered PTSD and related mental, emotional, and behavioral disorders as a result of the incident.

Ms. Boivin sued Somatex, arguing that Somatex—as NewPage's subcontractor—owed her a duty of care not to endanger NewPage employees and to ensure that its employees safely performed the crane repair. The Superior Court entered summary judgment in Somatex's favor, holding that: (1) although Ms. Boivin's expert opined that her PTSD was a "physical disorder," she failed to establish any *physical injury* as a result of witnessing the Somatex employee's fall; and (2) the working relationship between Ms. Boivin and Somatex did not create a duty on behalf of Somatex to protect Ms. Boivin from emotional injury.

The Maine Supreme Judicial Court affirmed the judgment on appeal, concluding that the duty of care applicable to claims for general negligence is the duty to "avoid causing *physical harm* to others," and that Ms. Boivin failed to submit any evidence that "physical manifestations of an emotional injury meet the legal definition of a 'physical injury.'" With respect to Ms. Boivin's claim for NIED, the Court observed that the duty to act reasonably to avoid harm to others applied only in "very limited circumstances": specifically, in so-called "bystander" cases where the plaintiff had a "close relationship" with the victim; and where a "special relationship" existed between the allegedly negligent actor and the person emotionally harmed. As the Court concluded, Ms. Boivin did not have a "close relationship" with the deceased Somatex employee, and nor did Somatex—a company contracted by her employer—have a "special relationship" with her. Accordingly, Somatex did not owe any duty of care to avoid causing her emotional harm, and Somatex was entitled judgment as a matter of law.

For more information regarding the decision in *Boivin v. Somatex, Inc.* or its ramifications, please contact Matthew T. Mehalic or Trevor D. Savage at mmehalic@nhdlaw.com or tsavage@nhdlaw.com, respectively.



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