TORT LAW

David M. Katz[†]

INTRODUCTION

This year, the courts of the State of New York decided hundreds—if not thousands—of cases involving the ever-expanding law of torts. This year's torts *Survey* focuses on a handful of those cases, which are meant to highlight areas where the law continues to evolve. Many of the cases involve reversals. Other cases involve dissenting opinions. All of the cases surveyed here share at least one commonality: all of the cases focus on substantive torts issues.

I. NEGLIGENCE

In *Calabrese v. City of Albany*, the Court of Appeals addressed a written notice statute.[1] Plaintiff "lost control of his motorcycle."[2] The incident occurred "in the general area where the [c]ity's Water Department had repaired a water main break approximately two months before."[3] In the period between the repair and the incident, the city "received a number of complaints about a defect in the road near the accident site," which included online SeeClickFix reports as well as

† Syracuse University College of Law L'17. Mr. Katz is admitted to practice in the Courts of the State of New York as well as the federal district courts of New York. Mr. Katz's views solely represent his personal views. Mr. Katz would like to thank his wife for her input on an early draft of this Article, and for her ongoing support in contributing to the *Survey*.

1. Calabrese v. City of Albany, 256 N.E.3d 654, 657 (N.Y. 2024) (discussing prior written notice statutes which are designed to curb municipal liability by obviating liability for defects unless written notice of the defect had been given prior to the incident).

2. *Id.*

3. *Id.* at 658.

"others . . . reported by telephone and entered into [SeeClickFix] by a [city] employee pursuant to [city] policy."[4]

Plaintiff alleged the incident "was caused by a road defect that the [c]ity knew about and had failed to repair."[5] The provision at issue here provided as follows:

> No civil action shall be maintained against the [c]ity for damages or injuries to person or property sustained in consequence of any street . . . being defective, out of repair, unsafe, dangerous or obstructed unless, previous to the occurrence resulting in such damages or injury, written notice of the defective, unsafe, dangerous or obstructed condition of said street . . . was actually given to the Commissioner of Public Works and there was a failure or neglect within a reasonable time after the receipt of such notice to repair or remove the defect, danger or obstruction complained of.[6]

On appeal, the Court of Appeals addressed whether a complaint made through an electronic system known as "SeeClickFix" could constitute prior written notice sufficient to allow Plaintiff's claim to proceed.[7] SeeClickFix "is an online reporting system maintained by the [c]ity that allows users to report, through a software application or website, 'anything that they see that should be addressed by any city department.'"[8] SeeClickFix is the city's "only system . . . to log, track, and follow up on road defect reports, including all road defect reports received from [city] employees in the field or from members of the public who call or submit reports by regular mail."[9] When a report is provided, "the system routes it automatically to the appropriate government office."[10] While "city officials . . . have encouraged the public to report road defects through" SeeClickFix, the terms of use for SeeClickFix also states that, "use of this system . . . does not constitute a valid notice of claim nor valid prior written notice as established under . . . state and local law."[11]

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4. *Id.*
5. *Id.* at 657.
6. *Calabrese*, 256 N.E.3d at 657–58.
7. *See id.* (discussing that alternatively, Plaintiff raised a question of fact as to whether the City of Albany affirmatively and negligently created the condition).
8. *Id.* at 658.
9. *Id.*
10. *Calabrese*, 256 N.E.3d at 658.
11. *Id.*

The Court held Plaintiff raised a triable issue of fact as to whether the SeeClickFix information constituted prior written notice.[12] The Court conceded at the outset that the provision enacted in 1983 "did not, and indeed could not yet, contemplate software applications capable of sending communications from the public over the Internet to municipal officials."[13] The Court nevertheless "agree[d] with the courts below that notices submitted electronically through [SeeClickFix] may satisfy the 'written notice' component of the statute."[14] The Court concluded a SeeClickFix report constituted "a 'written' communication."[15] In reaching its conclusion, the Court found the statute did not clearly *exclude* electronic communications from *written* communications.[16] Therefore, the Court explained the statute should be construed against the municipality.[17]

The Court also found a SeeClickFix report would be deemed "actually given" to the appropriate city official.[18] While "the notices here went to the appropriate municipal agency," the notices "were not addressed to, or personally reviewed by, the Commissioner of that agency, who is designated by title as the proper recipient."[19] However, the agency's "specific process for routing and maintaining the road defect reports" led the Court to accept the reports as "actually given" to the commissioner.[20] The Court noted the system "bypassed the need for the Commissioner's personal review."[21] Indeed, "[a]ny written complaints addressed to the Commissioner and actually mailed to [the agency] would be subject to the same process—that is, they would be routed to the . . . front desk and entered into" to SeeClickFix.[22] The Court concluded the city used SeeClickFix "to receive, track, and follow up on notices . . . and subsequent repairs were then documented in the same system."[23]

The Court of Appeals addressed the complex issue of whether an entity created by another state is entitled to sovereign immunity based

12. *See id.* at 657.
13. *Id.* at 658.
14. *Id.* at 659–60.
15. *Calabrese*, 256 N.E.3d at 660.
16. *See id.*
17. *See id.* (noting however, that a municipality could avoid this result by defining "written notice" differently).
18. *See id.*
19. *Id.*
20. *Calabrese*, 256 N.E.3d at 661.
21. *Id.*
22. *Id.*
23. *Id.*

on United States Supreme Court precedent in *Colt v. New Jersey Transit Corporation*.[24] The case arose out of an accident involving a New Jersey Transit Corporation bus and a pedestrian in Manhattan.[25] The Supreme Court previously acknowledged the federal constitution both recognized the states' sovereign immunity and imposed an obligation among the states to recognize their respective sovereign immunities.[26] But "the Court did not address how to determine whether a state-created entity is entitled to this immunity."[27] The Court of Appeals explained, "the relevant inquiry is whether subjecting a state-created entity to suit in New York would offend that State's dignity as a sovereign."[28] More specifically, the Court held, "to answer this question, courts must analyze how the State defines the entity and its functions, its power to direct the entity's conduct, and the effect on the State of a judgment against the entity."[29]

The issue has taken new vitality after the Supreme Court's decision in *Franchise Tax Board of California v. Hyatt*.[30] As the Court of Appeals explained, *Hyatt* "fundamentally altered the landscape of interstate sovereign immunity," by eschewing the prior analytical framework under which "international-law notions of immunity" governed state sovereign immunity.[31] Instead, the Supreme Court re-focused the analysis as "an essential component of federalism."[32] Before this doctrinal shift, "few decisions explored which parties, other than a State itself, are entitled to invoke sovereign immunity in another State's courts."[33]

The majority harmonized this analysis by reference to federal court decisions analyzing state sovereign immunity under the Eleventh Amendment: "we deem it appropriate to conduct our analysis consistent with the Supreme Court's and other federal courts' arm-of-the-state jurisprudence."[34] Under that doctrine, courts weigh a variety of factors to determine whether an entity is an arm of the State: "the

24. *See* Colt v. N.J. Transit Co., 264 N.E.3d 774, 776 (N.Y. 2024), *cert. granted*, 145 S. Ct. 2871 (2025).

25. *See id.* at 776.

26. *See id.*

27. *Id.*

28. *Id.*

29. *Colt*, 264 N.E.3d at 776.

30. *See* Franchise Tax Bd. v. Hyatt, 587 U.S. 230 (2019), *overruling Nevada v. Hall*, 440 U.S. 410 (1979).

31. *Colt*, 264 N.E.3d at 778.

32. *Id.*

33. *Id.*

34. *Id.* at 780.

degree of the State's control over the entity, how state law characterizes the entity, whether the entity performs traditional state governmental functions, and whether the State would be liable, or financially responsible, for a judgment against the entity."[35] Finally, courts consider "whether there is evidence that the State structured the entity to enable it to enjoy the special constitutional protection of the States themselves."[36]

The majority, synthesizing these lines of precedent, established a three-factor test: "(1) how the State defines the entity and its functions, (2) the State's power to direct the entity's conduct, and (3) the effect on the State of a judgment against the entity."[37] However, the majority cautioned courts to carefully analyze the issue on a case-by-case basis with "the fundamental goal of determining whether allowing a suit against the foreign state-created entity to proceed in our courts would offend our sister State's dignity."[38]

Employing this analysis, the majority found the New Jersey Transit Corporation did not qualify to receive the benefit of the State of New Jersey's sovereign immunity.[39] As to the first factor, the Court found, "the State's own characterization of NJT conflicts somewhat as to whether it envisions NJT as a separate corporation serving the public or an extension of the State."[40] Reviewing the evidence, the Court concluded, "this factor leans toward according NJT sovereign immunity."[41] As to the second factor, the Court noted the New Jersey Transit Corporation "exercises significant independence from New Jersey's control" despite the fact that it "remains beholden to the State in some respects."[42] The Court concluded, "this factor does not weigh heavily in either direction."[43] As to the third factor, the Court noted New Jersey had "disclaimed any legal liability for judgments against" the New Jersey Transit Corporation, which cut against sovereign immunity.[44] Indeed, the third factor proved to be persuasive and "outweigh[ed] the relatively weak support provided by the other factors" because

35. *Id.*
36. *Colt*, 264 N.E.3d at 780.
37. *Id.* at 781.
38. *Id.* ("Courts need not give equal weight to each consideration, and the underlying indicia may vary by case and from one party to another. We do not find it necessary to list more specific subfactors that might not be relevant to all cases.").
39. *See id.*
40. *Id.*
41. *Colt*, 264 N.E.3d at 782.
42. *Id.* at 782–83.
43. *Id.* at 783.
44. *Id.*

"allowing this suit to proceed would not be an affront to New Jersey's dignity because a judgment would not be imposed against the State, and the entity that would bear legal liability has a significant degree of autonomy from the State."[45]

Judge Halligan wrote a concurring opinion.[46] In her view, the majority's dignity-focused test introduces a "nebulous concept" that "raises more questions than it answers."[47] However, Judge Halligan ultimately agreed that the Eleventh Amendment "arm of the state" test serves as a "useful reference point" in the analysis under what the Judge described as "a unitary conception of state sovereign immunity."[48]

Chief Judge Wilson also wrote a concurring opinion, which proposed a different analysis to reach the same result.[49] Chief Judge Wilson took issue with the majority's approach insofar as, in his view, "would allow a State to extend its sovereign immunity to all sorts of functions without regard to whether those functions are truly the sort over which a State may claim sovereign immunity."[50] Chief Judge Wilson thus would have focused on "whether the function performed by the entity is what would, under customary international law and the common law, be considered a core governmental function to which sovereign immunity would have extended" both at common law and under international law principles, including, for example, "the exercise of police powers within its own borders, the election or appointment of its own officials, or the collection of taxes."[51]

Summarizing his analysis, the Chief Judge explained, "States [would be] immune in other States' courts for their activities that are core governmental functions—functions that concern the essential existence and administration of a government qua government."[52] The dissent's fundamental concern with the majority's approach is that the *State* creating the entity "could create an entity and vest it with sovereign immunity regardless of its function or location—even if it operated exclusively within another State's territory—so long as the

45. *Id.*

46. *See Colt*, 264 N.E.3d at 784 (Halligan, J., concurring).

47. *Id.* at 784–85.

48. *Id.* at 785; *see also id.* at 786 ("This approach has the additional virtue of ensuring that a non-state entity will be amenable to suit in both federal and state court, or neither, but not suable in one court and immune in the other.").

49. *See id.* at 790 (Wilson, C.J., concurring).

50. *Id.*

51. *Colt*, 264 N.E.3d at 791 (Wilson, C.J., concurring).

52. *Id.* at 800.

creating State announced its intent to make it a sovereign entity, directly controlled its actions, and would be responsible for a judgment against it."[53]

Chief Judge Wilson also took issue with the majority's reference to Eleventh Amendment case law because, in his view, "the relation of New Jersey to the United States is fundamentally different from the relation between New Jersey and New York."[54] Chief Judge Wilson conceptualized the Eleventh Amendment immunity as distinct from "sovereign immunity" and rather "a restriction of the judicial power of the federal courts alone."[55] These considerations were "unmoored from the dictates of law-of-nations or common-law conceptions of sovereignty, which the States are not free to modify."[56]

Judge Rivera filed a dissenting opinion employing a different version of the "arm of the state" analysis but reaching the opposite result.[57] The dissent's analysis emanates from the Supreme Court's *Hyatt* decision, using three recast factors: (1) whether the State "regards [an entity] as an arm of the State"; (2) whether the State "empowers [an entity] to perform an essential government function"; and (3) whether the State "endows [an entity] with exclusive powers of the State in furtherance of the enabling act's statutory purpose."[58] The dissent viewed the essential powers of the State as "eminent domain, police power, and ownership of tax-exempt property in the State's name."[59] Ultimately, though, the dissent found it highly persuasive that "New Jersey has consented to private suit against NJT for alleged injurious conduct only in its own state courts," which on the dissent's view meant New York State courts were "without constitutional power to ignore this choice and have no authority to demand that [New Jersey Transit Corporation] answer for its conduct in New York."[60]

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53. *Id.* at 806.

54. *Id.* at 791.

55. *Id.* at 803.

56. *Colt*, 264 N.E.3d at 803 (Wilson, C.J., concurring).

57. *Id.* at 808 (Rivera, J., dissenting).

58. *Id.*; *see also id.* at 813 ("The first and second factors are similar to those I have identified as relevant . . . . [t]he majority's most significant mistake is its adoption of a third factor . . .").

59. *Id.* at 808.

60. *Id.*; *see also id.* at 813 ("New Jersey has thus chosen to permit plaintiffs and others alleging injury by NJT to seek redress, but only in their own courts. We cannot refuse to honor that choice by elevating the interests of our residents in a New York forum over those of the State of New Jersey to decide whether and when to permit such private suit.").

Balancing the factors would have led the dissent to determine New Jersey Transit Corporation could not be sued because it was entitled to sovereign immunity in New York State courts. First, the dissent would have found New Jersey Transit Corporation was an arm of the State because New Jersey "expressly declare[d]" it as "an instrumentality of the State."[61] Second, the dissent would have found the Legislature "endowed" New Jersey Transit Corporation "with core powers of that State," which included the ability "acquire property through eminent domain," to be free from taxes, and to run its own security force.[62] Third, the dissent would have found "New Jersey's political branches wield significant control over" New Jersey Transit Corporation "by way of appointment and veto powers."[63]

The Court of Appeals addressed a municipality's duty to children in foster care in *Weisbrod-Moore v. Cayuga County*.[64] There, in the context of a Child Victims Act case, Plaintiff sued Cayuga County for its alleged failure to properly oversee its foster care system.[65] Plaintiff alleged she "suffered horrific abuse . . . over the course of approximately seven years" in a foster home selected by the county.[66] Plaintiff asserted claims for negligent selection, retention, and supervision.[67] The county made a motion to dismiss, arguing its operation of the foster care system constituted a governmental function for which it could not generally be held liable and that a special duty with Plaintiff had not adhered.[68] The parties agreed operating a foster care system constituted a government function.[69]

The parties disputed the analytical framework from which to analyze the special duty issue.[70] At Plaintiff's invitation, the Court found the standard special duty analysis was not developed to apply where the person is in governmental custody, which constitutes "a pre-existing and well-established category of common-law special relationships."[71] Indeed, that special relationship analysis had been applied to people in the municipality's "direct physical control," such as

61. *Colt*, 264 N.E.3d at 811 (Rivera, J., dissenting).
62. *Id.* at 811–12.
63. *Id.* at 812.
64. *See* Weisbrod-Moore v. Cayuga Cnty, 44 N.Y.3d 187 (App. Div. 2025).
65. *See id.* at 190.
66. *Id.*
67. *See id.*
68. *See id.* at 191.
69. *See Weisbrod-Moore*, 44 N.Y.3d at 192.
70. *See id.*
71. *Id.*

"incarcerated persons, juveniles in delinquency facilities, and school children."[72] As the Court noted, "with respect to children in its custody, the government's duty derives from the fact that the government, by assuming custody over the child effectively takes the place of parents and guardians."[73]

The Court held, "[f]oster children are no exception."[74] The Court noted the municipality "assum[es] legal custody over the foster child" and municipal officials step in "as the sole legal authority responsible for determining who has daily control over the child's life."[75] Therefore, "a municipality owes a duty to a foster child over whom it has assumed legal custody to guard the child from foreseeable risks of harm arising from the child's placement with the municipality's choice of foster parent."[76] The Court reasoned, "by assuming custody of plaintiff, and thus assuming the authority to control where and with whom plaintiff lived, the County necessarily assumed a duty to her beyond what is owed to the public generally."[77] The majority specifically declined to distinguish between cases were the municipality "assumes physical custody over an individual as opposed to legal custody," which the majority found neither "compelling nor dispositive."[78] Judge Singas dissented.[79] In her view, "the majority . . . rashly enacted a staggering expansion of municipal liability."[80] The dissent found no judicial reason to depart from the judicially-established framework for special relationship claims.[81] Instead, the dissent would have left any such expansion "for the political branches."[82]

The Court of Appeals again addressed a claim arising out of the Child Victims Act in *Nellenback v. Madison County*.[83] There, Plaintiff's parents had previously "had him designated as a person in need

72. *Id.* at 193.
73. *Id.*
74. *Weisbrod-Moore*, 44 N.Y.3d at 193.
75. *Id.* at 193–94.
76. *Id*.
77. *Id.* at 195.
78. *Id.* at 195–96.
79. *Weisbrod-Moore*, 44 N.Y.3d at 198 (Singas, J., dissenting).
80. *Id.*
81. *See id.* at 200 ("Today the majority ignores our precedent, which squarely rejects the recognition of duties outside of that framework under these circumstances, and adds an asterisk to the special duty rule, opening municipalities to liability for a new class of plaintiffs: every child under the age of 18 in the foster care system. Doing so comes at significant financial and operational cost to local governments, and may worsen outcomes for children in foster care.").
82. *Id.* at 203.
83. *See Nellenback v. Madison Cnty*, 273 N.E.3d 228 (N.Y. 2025).

of supervision (PINS) and placed in the care of Madison County's Department of Social Services."[84] Madison County assigned a caseworker to Plaintiff's case.[85] The social worker sexually abused Plaintiff over a three-year period.[86] "It turned out that [the employee] had sexually abused several other children to whose cases he was assigned."[87] The Court of Appeals addressed one issue on appeal: "whether Mr. Nellenback raised a triable issue of fact on his negligent supervision claim."[88]

The majority held Plaintiff failed to raise a triable issue of fact as to whether "the County was on notice of the abuse and that it negligently placed Mr. Hoch in a position to cause harm."[89] The majority reasoned, "the County had no actual knowledge that Mr. Hoch had previously committed or had any propensity to commit sexual abuse," and therefore Plaintiff could only raise a question of fact if he could establish the county had "constructive knowledge."[90] Plaintiff, echoing the dissent at the appellate division, argued the Madison County Department of Social Services' commissioner failed to review the employee's case notes, which would have revealed a failure to document their interactions and in turn should have raised a question as to whether "untoward behavior" had occurred.[91] But the majority rejected that contention for two reasons. First, the majority found there was no evidence that the employee did not keep notes, but rather that the records could have been routinely destroyed.[92] Second, the majority noted "Mr. Nellenback does not claim that any records . . . would have contained evidence of abuse."[93] Broadly, the majority noted the tension between the Child Victims Act's revival provision and the substantive and procedural issues that arise in the cases:

> Mr. Nellenback is disadvantaged, as are many CVA plaintiffs, by the passage of time. The absence of records poses a significant obstacle to plaintiffs' efforts to learn the causes that may have produced and enabled abuse. Although those evidentiary difficulties exist, the

84. *Id.* at 228.
85. *Id.* at 229.
86. *See id.*
87. *Id.*
88. *Nellenback*, 273 N.E.3d at 229.
89. *Id.*
90. *Id.* at 231.
91. *See id.* at 232.
92. *See id.*
93. *Nellenback*, 273 N.E.3d at 233.

> standard for summary judgment on a CVA claim, like any other claim, is whether there is sufficient proof to raise a triable issue of fact. . . . Proving anything is more difficult in a case where the underlying events happened 30 years ago as compared to one in which the events were recent; the standards are the same; the access to evidence is different.[94]

The dissent would have found a triable issue of fact precluded summary judgment.[95] In the dissent's view, "[t]he majority applies what is essentially a heightened standard for constructive notice in negligent supervision cases involving sexually abused children that is contrary to law and a barrier to relief for plaintiffs."[96] The dissent would have focused on the evidence presented that the county had engaged in "lax supervision largely reliant on self-reporting, which a factfinder could readily conclude constituted a breach of the County's duty of care."[97] Likewise, the dissent would have accorded weight, in determining whether a question of fact existed, as to whether "the County's own dereliction insulated its personnel from the very information that might have uncovered the caseworker's abuse."[98] Based on these facts the dissent would have found a question of fact.[99]

The Second Department likewise addressed a claim arising out of the Child Victims Act in *Stanton v. Longwood Central School District*.[100] Plaintiff was sexually abused by her math teacher as a minor.[101] She alleged the school negligently hired, retained, and supervised the teacher.[102] The majority found "the district failed to meet its prima facie burden of demonstrating that it was not negligent with respect to the hiring, retention, and supervision of Faralan or that it was not negligent with respect to its supervision of the plaintiff."[103] Specifically, the majority found, "[t]he district submitted no evidence regarding its hiring, retention, or supervision of Faralan, who was a

94. *Id.* at 235, 235 n.8.
95. *See id.* at 236 (Rivera, J., dissenting).
96. *Id.*
97. *Id.* at 240.
98. *Nellenback*, 273 N.E.3d at 240.; *see also id.* at 240 ("This self-reporting system all but ensured that a predator like the caseworker would have unfettered opportunity to groom plaintiff and other children in his care—which he did.").
99. *See id.* at 239.
100. *See Stanton v. Longwood Cent. Sch. Dist.*, 226 N.Y.S.3d 85 (App. Div. 2024).
101. *See id.* at 87.
102. *See id.*
103. *Id.* at 89.

probationary employee during the time when he sexually abused the plaintiff on school grounds, including times when he was tutoring her one-on-one."[104] Moreover, the majority found, "the district failed to establish, prima facie, that it lacked constructive notice of Faralan's abusive propensities and conduct, particularly given the frequency of the abuse, which occurred several times per week over an extended period of time in the same classroom and hallway during tutoring sessions and at times when others were present."[105]

Two justices dissented.[106] As to the negligent hiring, retention, and supervision claims, the dissent would have found the district met its initial burden through deposition testimony establishing "there were no complaints or rumors about Faralan's behavior" as well as through "Faralan's complete personnel file, which included Faralan's educational credentials, application for employment, including references, appointment by the defendant's superintendent and Board of Education, and Faralan's appointment as a substitute teacher at Longwood High School beginning in December 2000."[107] Indeed, after receiving his permanent appointment, "the personnel file included at least 11 separate classroom observations, 4 yearly evaluations by Bozza, all of which were positive, and a letter dated October 7, 2023, appointing Faralan to permanent tenure."[108] The dissent also would have focused specifically on whether the school district could have known about the abuse.[109] In the dissent's view, "plaintiff's testimony establishes that any incidents that took place inside of the school were either in the presence of other students, but not observed by those students, or took place in a public hallway and were specifically designed to avoid suspicion."[110]

Granath v. Monroe County arose out of a "motor vehicle collision that occurred in an intersection and involved a police vehicle driven by defendant Khadija H. Fong, a Monroe County Sheriff's Deputy."[111] At the time, "Fong was responding to a call for an unrelated motor vehicle accident with heavy damage" and had "proceed[ed] through a red traffic signal" while Plaintiffs' vehicle was "proceeding through a

104. *Id.*
105. *Stanton*, 226 N.Y.S.3d at 89.
106. *See id.* at 90 (Love, J., dissenting; Maltese, J., concurring).
107. *Id.* at 91.
108. *Id.*
109. *See id*. at 92.
110. *Stanton*, 226 N.Y.S.3d at 91.
111. Granath v. Monroe Cnty, 233 N.Y.S.3d 842, 842 (App. Div. 2025).

green traffic signal."[112] The Appellate Division, Fourth Department issued split decision regarding the applicability of New York Vehicle and Traffic Law § 1104, which obviates liability for authorized emergency vehicles responding to emergencies absent reckless conduct.[113] "Factors considered in determining whether a police officer acted recklessly in operating an emergency vehicle include the nature of the underlying police call, road conditions, traffic, weather, time of day, the speed of the officer's vehicle, and whether the officer followed departmental guidelines."[114] The majority found Defendants had met their initial summary judgment burden.[115] The majority noted, "Fong took several precautions before proceeding into the intersection against the red traffic signal, including bringing her vehicle to a complete stop, looking in all directions, activating her emergency lights, and proceeding slowly into the intersection."[116] The majority further found Plaintiffs did not raise triable issue of fact because "any deposition testimony suggesting that Fong's view may have been obstructed is speculative and insufficient to raise a triable issue of fact" and "whether Fong timely engaged her emergency lights and whether she used a siren or horn prior to entering the intersection, and whether such a failure to do so violated departmental policy," did not raise any question of fact.[117]

Two justices dissented.[118] The dissent noted at the outset that § 1104 requires "certain safety precautions [to be] observed," which is a "fact-specific inquiry."[119] The dissent noted Fong's vehicle was the first of three police vehicles responding to the incident, yet "the deputies driving the second and third patrol vehicles did not join Fong in

112. *Id*.

113. *See id*. As relevant here, the statute permits a qualifying vehicle to "Proceed past a steady red signal . . . but only after slowing down as may be necessary for safe operation." N.Y. VEH. & TRAF. LAW § 1104(b)(2) (Consol. 2026). More generally, the reckless disregard standard requires "[E]vidence that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome." *Granath*, 233 N.Y.S.3d at 842.

114. *Granath*, 233 N.Y.S.3d at 842.

115. *See id.* at 843 ("[D]efendants established that Fong's conduct did not rise to a level of reckless disregard for the safety of others.").

116. *Id*.

117. *Id*.

118. *See id.* (Bannister and Nowak, J.J., dissenting).

119. *Granath*, 233 N.Y.S.3d at 843–44.

entering the intersection against the red light."[120] The dissent also noted (1) varying testimony as to whether and when Fong activated her emergency lights and siren, (2) testimony potentially establishing a failure to follow departmental policy, and (3) varying testimony as to whether Fong had an obstructed view of the intersection.[121] Based on this evidence, the dissent would have denied Defendants' motion for summary judgment because "a jury could find based on the facts adduced in defendants' own submissions that Fong entered the intersection in disregard of the traffic signal, that she failed to activate her emergency lights and siren in the presence of an obstructed view, and that her actions were in violation of departmental policy and, consequently, that Fong acted with reckless disregard for the safety of others."[122]

II. DOMESTIC ANIMALS

The Court of Appeals addressed liability for injuries ensuing after dog bites in *Flanders v. Goodfellow*.[123] "Plaintiff Rebecca Flanders, a postal carrier, was bitten by a dog owned by defendants Stephen and Michelle Goodfellow while delivering a package to their residence."[124] Plaintiff sought recovery under negligence and strict liability theories.[125] As the Court of Appeals noted, "an owner of a domestic animal who has actual or constructive knowledge of their animal's vicious propensities will be held strictly liable for harm caused as a result of those propensities."[126] The Court unanimously held, "a triable issue of fact as to whether the Goodfellows had constructive knowledge of their dog's vicious propensities," which should have precluded summary judgment.[127] The Court of Appeals, in reaching its decision, overruled its 2006 decision in *Bard v. Jahnke*, under which the Court refused to allow liability in negligence at common law for harms caused by domestic animals.[128] In overruling its prior precedent, the Court noted, "experience has shown that this rule is in

120. *Id.* at 844 ("The driver of the third patrol vehicle testified at her deposition that her plan was to wait at the light until it turned green and that she was not intending to go through the intersection against the red light as Fong did.").

121. *See id.* at 844.

122. *Id.* at 844.

123. *See* Flanders v. Goodfellow, 267 N.E.3d 622, 624 (N.Y. 2025).

124. *Id.*

125. *See id.*

126. *Id.*

127. *Id.*

128. *See Flanders*, 267 N.E.3d at 624.

tension with ordinary tort principles, unworkable, and, in some circumstances, unfair."[129] Therefore, the Court explained, "adherence to *Bard* therefore would not achieve the stability, predictability, and uniformity in the application of the law that the doctrine of stare decisis seeks to promote."[130]

As to Plaintiff's strict liability claim, the Court "conclude[d] that the record evidence creates a triable issue of fact as to whether the Goodfellows had constructive knowledge of their dog's propensity to bite" based on affidavits that explained, "anyone in the Goodfellows' home would have been aware of the dog's aggressive behavior, which included growling, snarling, barking, slamming into windows, and trying to bite at the postal workers through the glass."[131] Moreover, the Goodfellows "admitted that the dog got into a fight with another dog during its brief stint with its trainer, and Michelle testified that the dog had not previously interacted with strangers because they were not allowed in the house, without explaining whether concerns about the dog prompted that practice."[132]

As to Plaintiff's negligence claim, which turned on whether *Bard* had continued vitality, the Court explained, "[a] single idea unites" its case law imposing duties in negligence: "when people go about their daily lives, the law generally requires them to take reasonable steps to prevent foreseeable harm."[133] But, "[b]y exempting owners of domestic animals from negligence liability, *Bard* departed from these principles and the standard incentives in our tort system."[134] While *Bard*'s value turned, in part, on its value as a bright line rule, the Court noted any such advantage had "been much eroded by later decisions that carve out various exceptions to a blanket preclusion of negligence liability," such that the principles underlying *stare decisis* did not apply.[135]

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129. *Id*.

130. *Id.*

131. *Id.* at 626.

132. *Id.* at 627.

133. *Flanders*, 267 N.E.3d at 631.

134. *Id.* at 630. ("For one thing, foreclosing negligence liability shifts both the burden of due care and cost of injuries away from owners of domestic animals to parties injured by those animals. And by allowing liability only upon proof that their owner had actual or constructive knowledge of a vicious propensity, the rule gives owners of domestic animals little reason to familiarize themselves with any potential proclivities that might lead the animal to cause harm, and in turn, to take reasonable steps to prevent any harm that may result.").

135. *Id.* at 632. ("These developments confirm that *Bard*'s bright-line rule has been muddied by various carve-outs that allow negligence liability against owners

The Court summarized the import of its decision on future dog bite cases: "[a] plaintiff who suffers an animal-induced injury therefore has a choice."[136] On the one hand, "[i]f the owner knew or should have known the animal had vicious propensities, the plaintiff may seek to hold them strictly liable."[137] On the other hand, "they can rely on rules of ordinary negligence and seek to prove that the defendant failed to exercise due care under the circumstances that caused their injury."[138] And, for the avoidance of doubt, the Court explained, "a plaintiff might also assert both theories of liability."[139]

The Supreme Court of Kings County also addressed the evolution of the common law as it relates to domestic animals in *DeBlase v. Hill*.[140] There, the Defendant argued Plaintiff could not recover for negligent infliction of emotional distress arising out of the death of a pet under the common law.[141] In the course of its analysis, the court noted, "New York's legal framework concerning household pets has significantly evolved from treating them as mere property," which followed societal norms.[142] Reasoning a "carve out" for negligent infliction of emotional distress claims where a domestic animal is killed by a motorist in front of its human family, the court noted, "[t]he type of compensatory award permitted herein also serves as a strong deterrent, discouraging negligent driving behavior around pets physically tethered to their owners, thus encouraging more responsible conduct to prevent future harm of this type."[143]

III. ASSUMPTION OF THE RISK

The Court of Appeals also addressed the assumption of the risk doctrine in a pair of sport-related cases.

First, in *Maharaj v. City of New York*, the Court of Appeals issued a split decision arising out of a trip-and-fall action where Plaintiff

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of domestic animals. The availability of a negligence action appears increasingly unpredictable, perhaps constrained only by the creativity of lawyers seeking recovery for those harmed by a domestic animal. The benefits the *Bard* court anticipated from its blanket preclusion of negligence liability have been much diminished by the subsequent exceptions to the rule.").

136. *Id.* at 633.

137. *Id.*

138. *Flanders*, 267 N.E.3d at 633.

139. *Id.*

140. *See* DeBlase v. Hill, 239 N.Y.S.3d 770, 773 (Sup. Ct. 2025).

141. *See id.* at 778.

142. *Id.* at 789.

143. *Id.* at 792.

tripped on a crack in a tennis court.[144] The majority found "the risks of tripping and falling while playing on an irregular surface are inherent in the game of cricket."[145] Moreover, the majority explained, "[t]here is no evidence in the record that the irregularity in the playing field—the cracked and uneven surface of the tennis court—unreasonably enhanced the ordinary risk of playing cricket on an irregular surface."[146] Therefore, the majority affirmed the appellate division's order granting summary judgment.[147]

Judge Rivera, dissenting, would have reversed.[148] Judge Rivera wrote that "the assumption of risk doctrine is not a complete defense to plaintiff's negligence action, which is based on defendants' alleged failure to maintain the park in a reasonably safe condition for purposes of sport and recreational activities."[149] In the dissent's view, "[p]laintiff showed, through testimony, an expert report, and pictures, that there was a gaping fissure in the park that was far more severe than the ordinary irregularities one would expect on an outdoor surface," which measured "seven feet long," and was "laden with holes that created tripping hazards, and ran through one of the park's tennis courts."[150] Further, the dissent noted, "[t]he fissure was inherently dangerous to anyone on the premises, whether they were playing cricket or tennis, running, or merely walking; it was therefore wholly unrelated to the nature of playing cricket or any other athletic activity."[151]

Second, the Court of Appeals addressed the assumption of the risk doctrine in *Katleski v. Cazenovia Golf Club, Inc.*[152] The decision arose out of two appeals, one involving an errant golf ball and another involving being struck by a car in a parking lot of a golf course.[153] One Plaintiff, Katleski, "was struck by an errant golf ball while competing in a golf tournament."[154] The other Plaintiff, Galante, "was struck by a car in the parking lot of a golf course before she began to

144. *See* Maharaj v. City of New York, 267 N.E.3d 1186, 1187 (N.Y. 2025).
145. *Id.*
146. *Id.*
147. *See id.*
148. *Id.* at 1197 (Rivera, J., dissenting).
149. *Maharaj*, 267 N.E.3d at 1191 (Rivera, J., dissenting).
150. *Id.* at 1196.
151. *Id.*
152. *See* Katleski v. Cazenovia Golf Club, Inc., 44 N.Y.3d 212, 215 (App. Div. 2025).
153. *See id.* at 215–16.
154. *Id.* at 215.

play the course."[155] The Court held Katleski's claims were barred while Galante's claims could proceed.[156]

As the Court explained, Katleski "was struck by a mishit golf ball, which no one disputes is a risk that naturally inheres in the sport of golf."[157] However, Katleski argued his claim should not be barred because "he raised a triable question of fact that the placement of tee box A on the third hole unreasonably enhanced that risk."[158] While the Court acknowledged, "[t]he risks of a sport can also be unreasonably enhanced through the negligent design or operation of a sports venue," the Court ultimately explained, "[i]t is not enough for Katleski to show that the layout of the course was less safe than it ideally could have been; he must show that the design enhanced the inherent risk of being struck by a ball beyond what is *customary in the sport*," which Katleski failed to do."[159]

But, the Court of Appeals explained, Galante's claims should have survived "because Galante was not playing, observing, or otherwise participating in an athletic or recreative activity at the time she was injured."[160] Because "Galante was merely driving a golf cart in a parking lot at the time of her injury," the Court of Appeals reasoned, "the fact that the accident occurred adjacent to a designed venue for golf does not alter" the negligence analysis.[161]

CONCLUSION

This *Survey* year proved interesting as the courts continue to work through the ever-present issues in tort law. Since the end of the *Survey* year, courts have been issuing new decisions, which continue to write and rewrite the law of torts. As always, stay tuned.

155. *Id.* at 215–16.
156. *See Katleski*, 44 N.Y.3d at 216.
157. *Id.* at 219.
158. *Id.*
159. *Id.* at 221.
160. *Id.* at 222.
161. *Katleski*, 44 N.Y.3d at 223.