

MEMORANDUM

To: New York State Professional Fire Fighters Association, I.A.F.F., AFL-CIO

From: Hinman Straub P.C.

Re: Kabir v. County of Monroe (NYS Court of Appeals); 2011 N.Y. LEXIS 156

Date: February 23, 2011

By decision dated February 17, 2011, the New York State Court of Appeals determined that the reckless disregard standard of care for emergency vehicles set forth in Vehicle and Traffic Law (“VTL”) § 1104(e) was limited to accidents or incidents caused by the exercise of the privileges identified in VTL §1104(b). VTL § 1104(b) deals with emergency vehicles, when involved in emergency operations, proceeding past a steady red signal, speeding and other specifically authorized actions.

In the *Kabir* case, a marked police vehicle was responding to a radio dispatch regarding a burglary alarm. The officer did not activate the vehicle’s emergency lights and siren. While glancing down at his terminal to find the location of the alarm, the officer accidentally rear-ended a motorist (Kabir). Kabir filed a civil lawsuit against the officer, the county and others, seeking damages for injuries arising from the accident. At issue was whether the officer was only liable if he violated the “reckless disregard” standard in VTL § 1104(e) or whether a simple negligence standard was applicable.

The Court of Appeals found that the officer was not entitled to the “reckless disregard” standard because he was not involved in the specified and protected conduct set forth in VTL § 1104(b). As such, by rear-ending Kabir, it was presumed that the officer was negligent. A strongly worded dissent by Judge Graffeo argued that VTL § 1104 has long been understood to protect emergency responders when involved in emergency operations. VTL § 1104(b) protects emergency responders against otherwise illegal activity (passing through a red light, speeding, etc.) while §1104(e) provides civil protection for all incidents in the course of emergency operations.

This decision may require legislation to clarify the protections designed by VTL § 1104. We believe there will be widespread support from police, fire, paramedic and other emergency responders and the unions that represent them. Please feel free to contact us with any question or concerns you may have.