

CHICAGO LAWYER®

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CLIFFORD'S NOTES

A

well-respected and experienced horse jockey was tragically paralyzed during a race at Arlington International Racecourse.

Rene Douglas was knocked off his horse in 2009. The Polytrack track surface was made of a synthetic surface that apparently did not provide sufficient shear for a person to slide when falling. In Douglas' case, that meant his body was unable to slide and instead he "pocketed" into the surface, causing a fracture of his T5 vertebrae that resulted in paralysis from the chest down.

Douglas alleged that the racetrack and its owner did not properly care for the track so that its "dynamic shear" would provide a safer surface. Douglas brought a negligence action in Cook County Circuit Court, suing the racetrack and its owner as well as the distributor and manufacturer of the surface material. The latter two settled before trial. A jury found in favor of the defendants based on a confusing jury instruction regarding proximate cause coupled with a vague special interrogatory.

Defendants argued multiple differing causes could have caused plaintiff's injuries. The trial court allowed, over plaintiff's objection, to have the jury instructed on sole proximate cause with Illinois Pattern Jury Instruction Civil No. 12.04 (2008).

A majority of the appellate court agreed with giving the instruction, but Justice Robert E. Gordon, in a strong dissent, wrote that the majority's interpretation of sole proximate cause was improperly applied in this instance because the theories of liability against the two nonparty defendants were totally different.

"More than one person may be to blame for causing an injury. If you decide that the defendants were negligent and that their negligence was a proximate cause of injury to the plaintiffs, it is not a defense that some third person who is not a party to the suit may also have been to blame." I.P.I. Civil (2008) No. 12.04. Defendants argued that the cause of Douglas' injury was the clipping of another horse, and the jury was instructed that the sole proximate cause meant that two or more nonparty actors could be the cause of the injury, which in this case was the manufacturer and the other jockey.

The trial court also allowed a special interrogatory to be given that read: "On the date of the accident and at the time and place of the accident in question in this case, was the conduct of some person other than the defendants the sole prox-



IS 'SOLE' SOLE?

A racetrack accident questions sole proximate cause

By **BOB CLIFFORD**

imate cause of the plaintiff's injuries." The jury answered this in the affirmative.

The jury returned a verdict for the defendants but the trial court granted plaintiff's motion for a new trial because defendants were allowed to present evidence of "two distinct, unrelated causes of plaintiff's injuries other than defendant's conduct," as Gordon wrote, yet the jury heard the instruction on sole proximate cause. The trial court held this was improper and prejudiced plaintiffs, thereby warranting a new trial.

The trial court also found the special interrogatory was "vague" and coupled with the sole proximate cause instruction was "improper." The trial court questioned defense counsel's theory that there could be two separate "sole" proximate causes of plaintiff's injuries.

The appellate court reversed and remanded the case with directions to reinstate the jury verdict. *Douglas v. Arlington Park Racecourse*, 2018 IL App (1st) 162962.

Gordon points out that even several theories regarding the track's safety itself were introduced by defense experts including the biomechanics, the materials and the maintenance procedures and guidelines of the track surface. Therefore, the "scope of the product itself and whatever defects are in the product" were called into question. All of this led, not only to confusing the jury, but to the

impropriety of the issuance of the jury instruction on sole proximate cause.

Gordon called the majority's interpretation "strained" and he went on to quote the Oxford English Dictionary that says "The sole proximate cause instruction contemplates just that — the 'sole' proximate cause of the plaintiff's injury. 'Sole' is defined as '[o]ne and only' or '[b]elonging or restricted to one person or group of people.' ... The majority attempts to torture the definition of this word to suggest that 'the word "sole" does not necessarily imply only the singular.' "

What compounded the error here, according to Gordon, was the erroneous and ambiguous special interrogatory "which exacerbates the effect of the error in the instruction." Hopefully, future courts will follow Gordon's approach and rely on two significant decisions on sole proximate cause: *Clayton v. County of Cook*, 346 Ill. App. 3d 367 (2004) and *Abruzzo v. Park Ridge*, 2013 IL App (1st) 122360, both of which held that there can be only one "sole" proximate cause of an injury. ☐

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