The Emergency Doctrine As a Defense in Motor Vehicle Cases

by Nelson E. Timken [1]

The emergency doctrine remains a viable defense in motor-vehicle-accident cases. Numerous instances in which a driver would be ordinarily cast in a liability scenario can be negated through the successful interposition of the emergency doctrine as a defense, either by way of dispositive motion, or at trial.

The emergency doctrine recognizes that when an actor is faced with a sudden and unexpected circumstance not of his or her own making, which leaves little or no time for thought, deliberation, or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be held negligent if the actions taken are reasonable and prudent in the emergency context, even if it later appears that the actor made a wrong decision, provided the actor has not created the emergency [2]. The essence of the emergency doctrine is that, where a sudden and unexpected circumstance leaves a person without time to contemplate or weigh alternative courses of action, that person cannot reasonably be held to the standard of care required of one who has had a full opportunity to reflect, and therefore should not be found negligent unless the course chosen was unreasonable or imprudent in light of the emergent circumstances [3]. "This is not to say that an emergency automatically absolves one from liability for his conduct. The

standard then still remains that of a reasonable man under the given circumstances, except that the circumstances have changed." [4]

Although the existence of an emergency and the reasonableness of a party's response to it will ordinarily present questions of fact [5], they may, in appropriate circumstances, be determined as a matter of law by way of a summary-judgment motion.

Courts have summarily absolved defendants of liability within the context of an emergency situation, where, for example, a defendant attempted to avoid two vehicles which were spinning out of control [6], where an emergency stop was made by a bus operator only after distressed and panicking passengers urgently told the driver that a man had left a bomb on the bus [7], where a bus operator was forced to brake suddenly to avoid colliding with a vehicle that suddenly drove in front of the bus [8] , where a vehicle crashed into the wall of a highway, and suddenly came to rest blocking two traffic lanes, including the defendant's [9], or where another vehicle suddenly crosses over into the defendant's lane [10].

In addition, it is well settled that, under the emergency doctrine, "a driver is not required to anticipate that an automobile traveling in the opposite direction will cross over into oncoming traffic" [11]. Thus, there is a plethora of appellate authority for the proposition that summary judgment lies in cases where the defendant reacts to avoid a car which suddenly crosses over into opposing traffic [12].

The quintessential requirement in order to prevail by way of

dispositive motion is that the defendant encountered "a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration." As a practical matter, appellate authority has established the paradigmatic benchmark for meeting that requirement as one in which the defendant only has one or two seconds at most in order to react to the sudden circumstance with which he or she is confronted [13].

By contrast, a situation in which the emergency is one of the defendant's own making, or caused by the defendant's own actions, will not be held to be a qualifying emergency for purposes of invoking the emergency doctrine. This occurs, for example, where the defendant fails to maintain a safe distance between his/her own vehicle and the vehicle ahead of him/her [14], where the defendant fails to be aware of potential hazards presented by traffic conditions, including stoppages caused by accidents up ahead [15], or where the defendant simply strikes a completely-stopped vehicle in the rear [16].

Moreover, as a general proposition, weather and roadway conditions have been regarded as foreseeable and capable of being anticipated, and have, as a result, been held to be removed from the context of the emergency situation. The Court of Appeals, for example, has held that, when a defendant has an admitted knowledge of worsening weather conditions, where, at the time of the accident the temperature was well below freezing and it had been snowing, raining and hailing for at least two hours, the presence of ice and slippery road conditions at the location of the accident cannot be deemed a sudden, unforeseen, and unexpected emergency [17].

Appellate tribunals in the Second Department have followed

suit, applying the holding in *Caristo v. Sanzone*, *supra* [18], in a myriad of cases, holding that "[a]n emergency instruction should not be given where, as here, the defendant driver should reasonably have anticipated and been prepared to deal with the situation with which [he] was confronted." [19] Thus, wet, slippery, or icy roadway conditions have been held not to be emergencies, since they should be anticipated and dealt with by defendant driver [20].

At trial, the appropriate emergency charge to be given under qualifying circumstances is P.J.I. 2:14 [21], which is based upon the case of *Caristo v. Sanzone* [22]. In *Caristo*, the Court of Appeals defined the role of the trial judge in assessing the propriety of an emergency charge request, as follows:

> We require the Judge to make the threshold determination that there is some reasonable view of the evidence supporting the occurrence of a "qualifying emergency" (Rivera v New York City Tr. Auth., supra, 77 NY2d, at 327). Only then is a jury instructed to consider whether a defendant was faced with a sudden and unforeseen emergency not of the actor's own making and, if so, whether defendant's response to the situation was that of a reasonably prudent person (see, PJI 2:14 [3d ed]). The emergency instruction is, therefore, properly charged where the evidence supports a finding that the party requesting the charge was confronted by "a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration" (Rivera v New York City Tr. Auth., supra, 77 NY2d, at 327; Kuci v Manhattan & Bronx Surface Tr. Operating Auth., 88 NY2d 923, 924; see also, Restatement [Second] of Torts § 296) [23].

When a reasonable view of the evidence supports the occurrence as "qualifying emergency", it is reversible error for the trial court not to give the emergency instruction to the jury. [24]

In conclusion, in order for a situation to fall within the context of a qualifying emergency, it must be a sudden, unanticipated, unforeseeable event. It can be invoked by way of summary-judgment motion, assuming that it can be established, as a matter of law, that the defendant was confronted with a sudden and unexpected circumstance which left him or her with little or no time for thought, deliberation or consideration. This must be established by admissible evidence, such as the uncontroverted deposition testimony of the parties, by a police accident report, in which a statement of a party, which is admissible, is utilized, [25] or through the affidavit of a party with knowledge. At trial, the question of the reasonableness of the defendant's conduct under the attendant circumstances is submitted to the jury when the trial judge determines that there is a reasonable view of the evidence supporting the occurrence as "qualifying emergency". Under those circumstances, it is error for the trial court not to give the emergency instruction to the jury. Thus, the emergency doctrine should be carefully considered as a viable option by defense counsel in motor-vehicle cases in which the defendant's conduct neither created nor contributed to the emergency, and where the circumstances surrounding the occurrence were neither foreseeable nor readily capable of being anticipated by the defendant-driver.

Endnotes

1. *Principal Law Clerk to Justice Janice A. Taylor, employed by the Unified Court System from 1994-present. Any views expressed herein are solely those of the author.*

2. *See, Caristo v. Sanzone*, 96 N.Y.2d 172, 174 (2001); *Rivera v. New York City Tr. Auth.*, 77 N.Y.2d 322, 327 (1991); *see also,*

Kuci v. Manhattan & Bronx Surface Tr. Operating Auth., 88 N.Y.2d 923 (1996); *Pawlukiewicz v. Boisson*, 275 A.D.2d 446 (2d Dept. 2000).

3. *See, Bello v. Transit Auth.*, 12 A.D.3d 58, 60 (2d Dept. 2004); *Amaro v. City of New York*, 40 N.Y.2d 30, 36 (1976).

4. *See, Ferrer v. Harris*, 55 N.Y.2d 285, 293 (1982).

5. *See, Morgan v. Ski Roundtop*, 290 A.D.2d 618 (3d Dept. 2002); *Cathey v. Gartner*, 15 A.D.3d 435(2d Dept. 2005); *Takle v. N.Y. City Transit Auth.*, 14 A.D.3d 608 (2d Dept. 2005); *Tseytlina v. N.Y. City Transit Auth.*, 12 A.D.3d 590 (2d Dept. 2004).

6. *See, Wenz v. Shafer*, 293 A.D.2d 742 (2d Dept. 2002).

7. *See, Bello v. Transit Auth., supra.*

8. *See, Roviello v. Schoolman Transp. Sys.*, 10 A.D.3d 356 (2d Dept. 2004); *Rivas v. Metropolitan Suburban Bus Auth.*, 203 A.D.2d 349 (2d Dept. 1994).

9. *See, Garcia v. Prado*, 15 A.D.3d 347 (2d Dept. 2005).

10. *See, e.g., Guevara v. Zaharakis*, 303 A.D.2d 555 (2d Dept. 2003); *Kyoung Ran Yoon v. Rechler*, 2 A.D.3d 690 (2d Dept. 2003).

11. *See, Huggins v. Figueroa*, 305 A.D.2d 460, 461 (2d Dept. 2003), *citing Bentley v. Moore*, 251 A.D.2d 612, 613 (2d Dept. 1998).

12. *See, e.g., Lyons v. Rumpler*, 254 A.D.2d 261 (2d Dept. 1998); *Huggins v. Figueroa*, 305 A.D.2d 460 (2d Dept. 2003); *Eichenwald v. Chaudhry*, 2005 N.Y. App. Div. LEXIS 3888 (2d Dept. 2005); *Foster v. Sanchez*, 792 N.Y.S.2d 579 (2d Dept. 2005); *Pawlukiewicz v. Boisson, supra*; *Stoebe v. Norton*, 278 A.D.2d 484 (2d Dept. 2000); *Coss v. Sunnydale Farms, Inc.*, 268 A.D.2d 499 (2d Dept. 2000); *Turner v. Mongitore*, 274 A.D.2d 512 (2d Dept. 2000).

13. *See, Rivas v. Metropolitan Suburban Bus Auth.*, 203 A.D.2d 349 (2d Dept. 1994)(vehicle crossed over into the opposing lane of traffic leaving bus operator with only two seconds to react); *Rosario v. Morias*, 8 A.D.3d 108 (1st Dept. 2004) (defendant did not see the plaintiff until one second before the accident); *Edwards v. Gaines Serv. Leasing Corp.*, 244 A.D.2d 279 (1st Dept. 1997) ("just a second or two" elapsed after other vehicle was first observed by defendant); *Caban v. Vega*, 226 A.D.2d 109 (1st Dept. 1996) (defendant had only a fraction of a second to react

to an instantaneous cross-over emergency).

14. *See*, V.T.L. §1129(a); *Burke v. Kreger Truck Renting Co.*, 272 A.D.2d 494 (2d Dept. 2000); *Pappas v. Opitz*, 262 A.D.2d 471 (2d Dept. 1999); *Johnston v. El-Deiry*, 230 A.D.2d 715 (2d Dept. 1996); *Dawkins v. Craig*, 216 A.D.2d 436 (2d Dept. 1995).

15. *See, Cascio v. Metz*, 305 A.D.2d 354, 355 (2d Dept. 2003).

16. *See, e.g., Campanella v. Moore*, 266 A.D.2d 423, 424 (2d Dept. 1999); *Bournazos v. Malfitano*, 275 A.D.2d 437 (2d Dept. 2000).

17. *See, Caristo v. Sanzone*, 96 N.Y.2d 172, 175 (2001)(*Rosenblatt and Smith, JJ., dissenting*).

18. *See*, Endnote 17, *supra*.

19. *See, Muye v. Liben*, 282 A.D.2d 661 (2d Dept. 2001), *citing Pincus v. Cohen*, 198 A.D.2d 405, 406 (2d Dept. 1993); *see also, Cascio v. Metz*, 305 A.D.2d 354 (2d Dept. 2003); *Lamuraglia v. N.Y. City Transit Auth.*, 299 A.D.2d 321 (2d Dept. 2002).

20. *See, Marsicano v. Dealer Storage Corp.*, 8 A.D.3d 451 (2d Dept. 2004); *Bellantone v. Toddy Taxi, Inc.*, 307 A.D.2d 979 (2d Dept. 2003); *Gadon v. Oliva*, 294 A.D.2d 397 (2d Dept. 2002); *Muye v. Liben*, 282 A.D.2d 661 (2d Dept. 2001); *Pincus v. Cohen*, 198 A.D.2d 405 (2d Dept. 1993).

21. *See*, PJI 2:14(3d ed. 2005), entitled, Common Law Standard of Care--emergency Situation, which provides:

> A person faced with an emergency and who acts without opportunity to consider the alternatives is not negligent if (he, she) acts as a reasonably prudent person would act in the same emergency, even if it later appears that (he, she) did not make the safest choice or exercise the best judgment. A mistake in judgment or wrong choice of action is not negligence if the person is required to act quickly because of danger. This rule applies where a person is faced with a sudden condition, which could not have been reasonably anticipated, provided that the person did not cause or contribute to the emergency by (his, her) own negligence.
>
> If you find that (defendant, plaintiff) was faced with an emergency and that (his, her) response to the emergency was that of a reasonably prudent person, then

you will conclude that (defendant, plaintiff) was not negligent. If, however, you find that the situation facing (defendant, plaintiff) was not sudden, or should reasonably have been foreseen, or was created or contributed to by (defendant's, plaintiff's) own negligence, or that the (defendant's, plaintiff's) conduct in response to the emergency was not that of a reasonably prudent person, then you may find that (defendant, plaintiff) was negligent.

22. *Caristo v. Sanzone*, *supra* at 175.

23. *See*, Endnote 22, *supra*.

24. *See, e.g., Kyoung Ran Yoon v. Rechler*, 2 A.D.3d 690, 691 (2d Dept. 2003); *Cathey v. Gartner*, 15 A.D.3d 435 (2d Dept. 2005); *Sing-Lam Ng v. Beatty*, 300 A.D.2d 648 (2d Dept. 2002); *Whiteside v. City of New York*, 293 A.D.2d 743 (2d Dept. 2002).

25. *See, Guevara v. Zaharakis*, *supra*.