

Herrick v. Wilson, 2012 W.L. 6757947

A New Jersey Law Division Court addressed the issue **“Whether or not a defendant, in the context of a personal injury action, must produce a copy of video surveillance of the accident at issue in the lawsuit prior to the deposition of the plaintiff.”**

On May 6, 2009, the plaintiffs Valerie and James Herrick were allegedly struck by a motor vehicle and injured while walking across a valet service road adjacent to the Trump Taj Mahal Casino in Atlantic City, NJ. At the time of the incident, the motor vehicle, owned by Thomas Megonigle, was being operated by the defendant Adrian Wilson, an employee at defendant Trump Taj Mahal Casino. The event was captured on security cameras owned by the Taj Mahal.

The plaintiff served supplemental interrogatories and a Notice to Produce requesting that the videotape of the incident be produced. The defendants refused to produce the videotape. The plaintiffs filed a motion to strike the answer and suppress the defenses of the defendant for failing to provide the video footage. In opposition to the motion, the defendants asserted that the plaintiffs’ review of the videotape prior to the taking of their depositions would preclude the defendants from obtaining the plaintiffs’ independent recollection of the accident.

The plaintiffs countered that New Jersey Form C Uniform Interrogatories requires each defendant in a personal injury case to attach copies of any photographs and videotapes relative to the subject matter of the complaint. Further, the Court Rules require that “every question propounded by a uniform interrogatory must be answered unless the court has otherwise ordered.” The court found that the videotape was clearly discoverable pursuant to R. 4:10-2. The defendants did not dispute the videotape was relevant but sought to postpone production of the tape based on the case of Jenkins v. Rainer, 69 N.J. 50 (1976). Jenkins concerned a case of post-accident surveillance of the plaintiff taken two years after the incident and after the plaintiff was deposed. The New Jersey Supreme Court held that video surveillance had to be produced by the defendant but only after the plaintiff was deposed again.

In Herrick, the court found that holding in Jenkins was not controlling. The court noted a fundamental difference between video surveillance prepared during the course of litigation for the purpose of impeachment and routine surveillance conducted in the normal course of business. The court also noted that if the defendant were permitted to withhold the video, it would open up a floodgate of motion practice as parties would routinely refuse to produce all evidence that would be more beneficial to produce after depositions are conducted.

Lastly, the court did find some merit to the defendant’s argument that if the video was produced prior to plaintiff’s deposition, then the plaintiff’s unfettered independent recollection would be forever tainted. However, the court noted the same argument could be advanced with respect to a limitless list of frequently produced discovery including police reports, witness statements, party admissions, e-mails, etc. The court then ordered that the videotape be produced prior to the deposition.