



**TORTS &  
PRODUCTS  
LIABILITY  
DEFENSE**

Thomas B. Cronmiller  
585.295.4424  
tcronmiller@hblaw.com

Gary H. Abelson  
Jessica M. Baker  
Frank V. Balon  
Robert A. Barrer  
Neil D. Breslin  
Samuel J. Burruano  
David B. Cabaniss  
Brian D. Casey  
John R. Casey  
Linda J. Clark  
David M. Cost  
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## Court of Appeals Holds That Defendant's Stipulation to a Trial Court's Damages Additur Does Not Waive Defendant's Rights to Appeal Other Issues

In the recently decided case *Adams v. Genie Industries, Inc.*, the New York State Court of Appeals revised the long-standing rule in *Batavia Turf Farms v. County of Genesee*, that a party who stipulates to a modification of damages forfeits their right to appeal on all other issues. This rule was premised on the rationale that a party who consented to the order's existence could not later claim to be aggrieved by any part of it.

New York's Highest Court now finds that "it is unfair to bar a party from raising legitimate appellate issues simply because a party has made an unrelated agreement on the amount of damages." The Court reasoned that the *Batavia* rule posed a trap to parties stipulating to additur and remittur who are unlikely to foresee the counterintuitive result that *all* of their appellate claims will be forfeited. Thus, this aspect of the *Batavia* holding should no longer be followed.

In the *Adams* case, the plaintiff was standing 12 feet off the ground in the basket of a personnel lift manufactured by the defendant when the lift tipped over. Plaintiff suffered injuries to his wrist and knee and brought an action against defendant manufacturer based upon strict products liability and negligence. Plaintiff alleged that the machine's removable stabilizing outriggers should have been interlocked so that the lift would be inoperable unless the outriggers were in place, and introduced evidence at trial that the product was defective when sold and that a safer design was feasible using inexpensive technology that was then available. The trial court also allowed the plaintiff to present evidence to support an alternative theory that the defendant manufacturer breached a continuing duty of care by failing to retrofit or recall the personnel lift during the 11 year period between the date of sale and the accident.

The jury found for the plaintiff awarding special damages, \$100,000 for past pain and suffering, and \$400,000 for future pain and suffering. Following the trial, the defendant moved to set aside the verdict and for a new trial on the issue of liability, and plaintiff cross-moved to set aside the verdict and for a new trial on the issue of damages.

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The trial court denied the defendant's motion and granted plaintiff's cross-motion ordering a new trial on the issue of past and future pain and suffering unless the manufacturer agreed to increase those awards to \$500,000 and \$750,000 respectively.

Defendant appealed the denial of its motion to set aside the verdict arguing that the trial court improperly granted plaintiff's cross-motion and erred by improperly allowing plaintiff to present evidence to the jury which supported an alternative theory of liability at trial. The First Department affirmed the trial court's decision. Sometime after the First Department's affirmance, the defendant stipulated to the additur, agreeing to increase those awards to \$500,000 and \$750,000 rather than go forward with a new trial on the issue of damages, but appealed the other portion of the First Department's decision to the Court of Appeals.

Defendant argued before the Court of Appeals that Plaintiff should have been prohibited from presenting evidence to the jury that the manufacturer owed and breached a continuing duty of care because such a duty did not exist in New York State. Plaintiff countered that under the *Batavia* rule, by stipulating to the additur, the manufacturer had waived its rights to appeal. The Court of Appeals rejected plaintiff's argument finding that the manufacturer did not waive its right to appeal by failing to challenge the trial court's damages additur.

The Court reasoned that the defendant manufacturer was not seeking to appeal the additur and had never abandoned its argument that it had no liability to the plaintiff or, in the alternative, was entitled to a new liability trial. The Court then proceeded to consider the merits of the appeal. The Court of Appeals found that the trial court should not have submitted the alternative theory of liability to the jury because New York has not imposed a post-sale duty to recall or retrofit a product, but ultimately affirmed judgment for the plaintiff, finding that in this case the error was harmless. ■

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