

Brief Insights

BASCH & KEEGAN
PERSONAL INJURY ATTORNEYS



July 2023



John A. DeGasperis Forces Progressive Insurance Company to Settle by Proving Vehicle and Traffic Law Violations Caused Motorcycle Crash

"Rules of the road exist for a reason. Violate those rules and you should expect to be held accountable." said John A. DeGasperis, who recently represented a motorcyclist who was seriously injured in a motorcycle crash. The crash was caused by the negligence of another driver who violated New York's Vehicle and Traffic Laws.

Basch & Keegan's client was an experienced motorcycle rider, but this experience alone will not keep riders safe. On the day of the crash, our client was riding his motorcycle west on Route 28 in the Town of Hurley in Upstate New York. He approached the intersection with Maverick Road when another car pulled out from a stop sign. The driver of the car failed to yield right of way and violated multiple sections of New York's Vehicle and Traffic Law. These violations resulted in a crash. Basch & Keegan's client fractured his leg.

The other driver was insured by Progressive Insurance Company. According to John, Progressive is one of the worst car insurance companies in the business. "From day one, my client's injuries were worth well more than the available insurance coverage of \$245,000. From day one, Progressive played games by refusing to offer full value. Progressive tried to settle the case for a fraction of what my client was legally entitled to."

John laughed at the initial offer, and he prosecuted his case. Over time, Progressive increased its offer by increments of \$10,000. John rejected each offer until Progressive finally offered the full policy limits. "Progressive is disgraceful. They wasted everyone's time and money by taking such a long time to tender the policy limits," said John.

Insurance companies often offer low settlements far below the full available coverage hoping the injured person is impatient and poor. This is an extremely disheartening and dishonest act by these large insurance corporations. Basch & Keegan will never back down and will fight for the recovery that its clients deserve. Insurance companies do not scare us.

Because of John's experience and perseverance, our client received the full recovery for his motorcycle accident. The \$245,000 will help our client and his family get back on his feet and back on his bike after this injury.

If you've been injured on your bike, let's make it right. Basch & Keegan, Here to Help and Never Give Up.



Derek J. Spada Strikes Again by Winning 2 Appeals in 2 Weeks

Derek J. Spada handles all the appeals for the firm. He writes the appellate briefs and argues each case before a panel of judges in the appeals court. Derek has won more than 75 appeals in his career and can add two more to that number as he just won two appeals in two weeks.

Both appeals were brought by the defense after losing summary judgement motions. The defense basically asking the court to dismiss the case. Their requests were denied and the defense in each case appealed. While cases are sometimes dismissed, the appellate court recognized that “summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it should be employed when there is no doubt as to the absence of triable issues.” In other words, summary judgment should only be granted if there are no questions about the facts. When the court denied the defense motions and they appealed, Basch & Keegan did not back down. The appellate court found that the defense in both of these cases did not meet the criteria for summary judgment.

The first appeal was a slip and fall on ice in a parking lot at a casino. Our client sustained serious injuries due to this fall. The defense submitted a summary judgement motion, which was denied. The defense then appealed that decision, and Derek won the appeal. The defense tried to argue the “storm in progress” defense. Under NYS law a property owner is under a duty to maintain the property in a reasonably safe condition, including snow removal and laying salt or sand on walkways. However, the “storm in progress” defense suspends a property owner’s duty of reasonable efforts to remedy dangerous conditions resulting from an existing storm – such as shoveling and salting ice. The property owner’s duty to rectify any unsafe conditions related to the storm is not brought back until after the storm has ended. This gives the property owner time for the storm to end before needing to clear the snow/ice.

Derek argued in front of the appellant division that the summary judgment motion was properly denied because the storm was no longer in progress. The defense hired two meteorologists who alleged that there was a storm in progress. However, Derek provided evidence from weather reports and witness testimony that no storm occurred the day our client was injured. The Appellate Division agreed with Derek and our client won the appeal.

The second appeal revolved around a fall on a staircase. Our client worked at veterinarian’s office. Two weeks before the incident, the property owner hired a third party to replace the staircase and handrails outside our client’s employee entrance. The property owner did not obtain a building permit and did not notify the town about this project. The new staircase was made of smooth concrete without materials applied to the stair treads to provide traction, such as grip strips or paint with sand. Water dripped onto the stair treads from an awning above the staircase. Furthermore, the handrails were made from 2 by 4 boards which made them difficult to grip.

The day the incident occurred our client released an uninjured bird that was brought to the animal hospital. The bird then went beneath an employee’s car, and our client wanted to check on the bird to be sure it was not injured. There was light rain falling at the time and the stairs were wet. There was an awning above the employee door that covered only the top landing, and the awning was sloped in a manner that caused water to flow off the awning and onto the steps. Due to the pitch of the stair treads, water collected on the surface of the smooth concrete steps.

Our client slipped while going down the staircase and tried to grab the railing but could not grasp it because of the defective design. She landed hard on the concrete steps and continued to slide down the staircase. Derek argued that this would not have happened if either (1) the stair treads were not smooth, but rather had an adequate form of traction; (2) the awning above the landing did not discharge water directly on the stairs; (3) if the handrail had been built in accordance with the building code and was not too wide to grasp when our client tried to grab onto it. As a direct result of this fall, our client sustained significant injuries and required shoulder surgery.

The defense made a motion for summary judgment. Derek fought this motion and beat their summary judgment in court. The defendant appealed this decision, and Derek won the appeal. Do you see the pattern here?

The burden of proof is on the party that brings the summary judgment motion. Derek argued that the defendant failed to present any evidence to establish that the stairs were constructed in a reasonably safe condition, or that the staircase complied with building codes. He hired an expert to testify, provided pictures as evidence and gathered testimony from witnesses. The defense did not submit any expert opinion demonstrating that the staircase was reasonably safe, but rather submitted an expert report demonstrating that the staircase violated numerous sections of the Building Code. All these factors lead to the win for our client.

By having both appeals denied, Derek ensured that justice was not denied for our clients.

Having an attorney in the firm who is as knowledgeable as Derek with the ability to write compelling and detailed briefs is incomparable. He is well versed in all the facts of the case and has the resources to get the briefs and arguments right. His reputation for winning appeals is well known by lawyers, judges and insurance companies. This is one of the many reasons you want Basch & Keegan on your side.

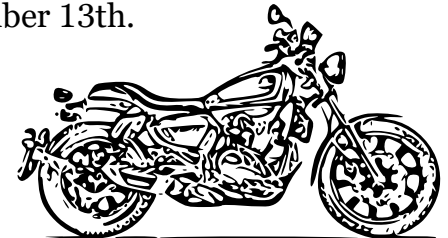
We're Back This Season at Woodstock Harley-Davidson "Cruise In 2023"



Basch & Keegan, LLP is excited to be the Presenting Sponsor again this year of "Cruise In 2023" Bike, Car, Trike and Antique Nights at Woodstock Harley-Davidson! Happening from 4pm -7pm on the 2nd Wednesday of the month starting in June, Basch & Keegan will be supplying food, giving away merchandise and raffling off \$100 gift card to the dealership at each event: Woodstock Harley-Davidson, 949 State Route 28 Kingston, NY.

As leading personal injury attorneys in the Hudson Valley, we understand the risk our friends on two wheels take, and want to make sure everyone on the road is aware of motorcyclists. If an injury does happen on your bike, we are Here to Help.

This event was cancelled due to the rain in June, but we are hoping for sun this month! "Cruise In 2023" dates are July 12th, August 9th, and September 13th.



Episode 6 of Upstate & Litigate: Jury Selection

Derek Spada and John DeGasperis released Episode 6 of Upstate & Litigate: Jury Selection this month! New Episodes are released the first Tuesday of every month. You can watch all six Episodes of Upstate & Litigate on YouTube.



**NEW DATE FOR BASCH & KEEGAN NIGHT:
Saugerties Stallion Game, July 24th at 7pm!**



Basch & Keegan Night at Saugerties Stallion Game: New Date of July 24th!

Join us on Monday, July 24th at Cantine Feilds at 7pm for Basch & Keegan Night at the Saugerties Stallion Game! The date in June was cancelled from the rain and we are looking forward to cheering on the team in July! Someone from our team will be throwing the first pitch, and we'll be giving away custom ball caps along with other free Basch & Keegan swag!

COMMUNITY NEWS & *Local Events*

Basch & Keegan is Here to Help the Community.

Here is a list of the sponsorships we have coming up:

- **July 12th:** Woodstock Harley-Davidson Cruise In, 4pm - 7pm.
- **July 17th:** 4th Annual Raising Your Awareness about Narcotics Drive Fore Recovery Golf Tournament at Wiltwyck Golf Club, 9am.
- **July 24th:** Basch & Keegan Night at Saugerties Stallion Game, 7pm.

As a law firm, we contribute to many local charities and sponsor community events. We love to get involved in what's going on in Kingston, and we love to get out and see our neighbors at local events. If you have an event coming up and are seeking sponsorships, tell us about it by scanning the QR code and filling out the form on our website!

