Because the jury had not been instructed to make findings about the relative levels of fault, the court remanded the case for a new trial.

The court also provided some additional guidance for trial courts attempting to apply the new rule. First, the court noted that the prior exceptions to the contributory negligence rule such as last clear chance were no longer necessary. Second, the jury would compare the fault of all the defendants to that of the plaintiff in cases in which there were multiple defendants. Third, the court also ended the doctrine of joint and several liability. In the future, each defendant would pay according to its percentage of fault. Finally, the court recognized that defendants could plead that a nonparty to the action was responsible for the plaintiff's damages and thereby reduce their own liability.

Emotional Distress Recoverable Under Comprehensive General Liability Policy

Lavanant v. General Accident Co. of America, Case No. 98 (N.Y. Ct. App., decided June 4, 1992) (Lexis, state lib.).

Mental injury may be within the coverage of a comprehensive general liability policy that provides coverage for bodily injury, according to New York's highest court. In this case, the plaintiffs owned and managed apartments in New York City. During renovations, a portion of a ceiling collapsed. The tenants, though not physically injured, sued for emotional distress and won $400,000. The plaintiffs sought coverage under a general liability policy providing $500,000 of insurance per incident. General Accident argued that its coverage did not extend to emotional distress claims because the policy limited coverage to "bodily injury, sickness and disease." Applying general rules of interpretation to the language, the court found the term ambiguous and resolved doubts in favor of coverage.

The New York court initially noted that none of the state's prior decisions decided the issue. A prior case concerning the recovery for derivative claims such as loss of consortium was not applicable on its facts. Another case denying emotional distress claims under the Warsaw Convention did not control since the treaty was subject to different rules of interpretation. The court further noted that the states addressing the issue were split.

In making its decision, the court began with the standard rules for interpreting an insurance contract. If the terms were plain, then they would be given their ordinary meaning. If the terms were ambiguous, however, doubts would be resolved in favor coverage. The court found the term "bodily injury, sickness and disease" to be ambiguous for two reasons. First, "sickness and disease" to the average reader might include mental as well as physical injury. The insurer could have made the policy more specific in this regard but had not. Second, the court noted that a broader definition was consistent with the case law that increasingly recognized theories of recovery based on emotional distress. This legal development underscored the policy holder's expectation that comprehensive coverage extended to emotional injuries.

Repetitive Use Injury Classification Held Unconstitutional

Stephenson v. Sugar Creek Packing, 250 Kan. 768 (1992).

Using a test that normally results in a finding upholding a governmental classification, the Kansas Supreme Court nonetheless held that there was no rational basis to support a classification of repetitive use injury claimants that was different from those with the same injury resulting from a single trauma. The case presented a challenge to a Kansas statute that classified repetitive use syndrome injuries to a schedule that probably provided lower benefits to workers' compensation claimants than those that would be received if the same injury occurred in a single trauma. The claimant suffered carpal tunnel syndrome in her hands and wrists as a result of several years' work in a meat packing plant. She challenged her injury classification on the ground that it denied her equal protection. The Kansas Supreme Court agreed.

First, the court identified the classification scheme. The classification found in the statute provided that repetitive use injuries resulting from repeated small injuries would be classified under a schedule that generally specified the recovery. A similar resulting injury from a single trauma would result in a claim for partial general disability and a higher resulting recovery.

In judging the validity of the classification, the court initially addressed the various tests the United States Supreme Court has used to apply the equal protection clause. While each of the tests compares the fit between the classification and the goals that the classification is meant to further, the degree of fit varies with the kind of problem. On the low end, the rational basis test applied to most forms of economic regulation requires only that the fit be reasonable. The heightened scrutiny test normally applied to sex discrimination claims requires that the classification substantially further the legislative purpose. At the high end, the strict scrutiny test applied to race discrimination and infringements of fundamental rights requires that the classification be necessary to serve a compelling state interest. While several of the parties argued that heightened scrutiny be applied, the court relying on prior decisions concluded that the rational basis test was appropriate.

While the use of the rational basis test is normally the death knell to an equal protection challenge, this case was different. The court determined that the only apparent state purpose for the classification was the reduction of insurance costs. The court then found that the goal was not legitimate, concluding that the state could not pursue the objective of lower costs by discriminating among similarly situated groups. It was neither fair nor reasonable to distinguish between individuals suffering identical medical conditions. As there was no basis for the distinction other than to save money, the court held that the statute violated the right of equal protection.