

Victory on Appeal: Second Department Affirms Directed Verdict in Insurance Defense Case

FEATURED ATTORNEY



Melanie I. Wiener

Partner

Effective Advocacy Leads to the Affirmation of Key Rulings on Witness Testimonies and Judgments

Case Information:

Sarah Smith v. Muhammad Usman, et al

2023 WL 4611333

Decision Date:

July 19, 2023

Court:

Second Department, Appellate Division

Attorneys Working on Matter/Case:

Melanie Wiener, on behalf of Defendant Muhammad Usman as trial attorney in underlying matter

Practice Area:

Insurance Defense/Commercial Litigation

Case Description

The plaintiff commenced this action seeking to recover damages for injuries she allegedly sustained in a motor vehicle collision. Based on defendant's objection, the trial court precluded the plaintiff from calling two nonparty witnesses because they were not available to testify that day and were not disclosed as witnesses during discovery. At the close of the plaintiff's case on the issue of liability, defendant Muhammad Usman made an application pursuant to CPLR 4401 for judgment as a matter of law

dismissing the complaint insofar as asserted against each of them. The court granted the applications and thereafter entered a judgment in favor of Usman and co-defendant and against the plaintiff dismissing the complaint insofar as asserted against those defendants. The plaintiff appealed and the Appellate Division affirmed. Contrary to the plaintiff's contention, the Supreme Court providently exercised its discretion in precluding the plaintiff from calling nonparty witnesses whom she had previously failed to identify as witnesses during the discovery process and who were unavailable to testify on the day of the trial.