GENERAL LIABILITY

March 2020

TAYLOR WELLONS POLITZ DUHE

New Orleans, LA
Baton Rouge, LA
Jackson, MS

Paul Verlander, Partner

Paul is an experienced and talented trial lawyer and appellate counsel. He believes that the meaning and value of his work come from helping his clients to resolve the problems that confront them in the most efficient and cost effective manner possible. Paul believes that effectively implementing his professional philosophy requires, first and foremost, really *listening* to understand his client's needs and objectives clearly from the outset.

Paul practices out of our New Orleans office in a broad array of complex litigation matters, including construction litigation, commercial litigation, environmental and toxic torts, class actions, labor and employment matters, insurance coverage litigation, medical malpractice defense, products liability, and school law and policy.

Away from work, Paul's hands are full with his two teenagers and their sports activities. He carves out time for gardening and the occasional foray into bread baking and beer making. He tries to stay fit enough to pursue his love of the solitude of the mountains, despite an almost equal love for good food and fine wine.

IN THIS ISSUE:

PLAINTIFF MUST TIMELY INVESTIGATE CAUSE OF CANCER

The plaintiff filed suit against his employer over three years after he was diagnosed with cancer alleging that the cancer was caused by exposure to benzene during his employment. The plaintiff claimed that he was not aware of a possible connection between cancer and benzene because the defendants concealed and misrepresented the health hazards. The defendants sought dismissal of the suit arguing that the action was untimely, which the trial court sustained.

On appeal, the court explained that the deadline to bring a lawsuit "does not commence running until the facts necessary to state a cause of action are known or reasonably knowable to the plaintiff." The court also noted that while the time period does not begin to run at the earliest possible indication of a wrongdoing, a plaintiff is responsible to seek out those whom he believes may be responsible for a specific injury. Whether a suit is timely depends upon whether the plaintiff was reasonable to delay filing suit in light of the information and diagnoses he received.

In determining whether the plaintiff was reasonable, the court considered the plaintiff's inquiries to his treating physician regarding the source of the cancer, his education level, his access to computers and newspapers, and decades of reports on the alleged health hazards of benzene. The court found that it was unreasonable for the plaintiff to rely upon his doctor's statement that he did not know what caused the plaintiff's cancer. Citing cases in which prescription began to run against the plaintiff at the time of diagnosis rather than at the time of exposure to a toxic substance, the court held that the plaintiff must take some action following diagnosis to determine the cause of the cancer. *Guerin v. Travelers Indem. Co.*, 2019-0861 (La. App. 1 Cir. 2/21/20), 2020 WL 859598.

SUPREME COURT UNWILLING TO INFER KNOWLEDGE OF DANGEROUS CONDITION IN A SLIP-AND-FALL CASE

The plaintiff slipped and fell in a grocery store. She then moved for summary judgment in the resulting merchant liability claim.

Because such a claim requires the plaintiff to prove that the merchant "either created or had actual or constructive notice of the condition," she introduced a video showing the relevant area of the supermarket for 70 minutes prior to her fall. The video did not show the puddle of liquid or any customer creating the puddle. The plaintiff therefore invited the court to infer that the liquid had been there prior to the beginning of the video. The trial court granted summary judgment to the plaintiff.

On appeal, the Supreme Court reversed the judgment finding that the video did not positively establish the existence of the puddle at any time prior to the plaintiff's fall. Moreover, the suggested inference was questionable; the footage showed "two separate families with buggies stop, shop, and leave, with no issues or seeming awareness of liquid on the ground." *Guidry v. Brookshire Grocery Co.*, 2019-1999 (La. 2/26/20), 2020 WL 930348.

PLAINTIFF CANNOT RECOVER FROM INSURERS TWICE ON SAME LOSS

In an auto accident case, the plaintiff agreed to a total loss settlement under the defendant driver's Geico policy. The plaintiff then sued Geico under his own insurance policy, seeking the deductible, all property damage, rental car fees, and bad faith penalties. The first-party Geico insurer moved for summary judgment arguing that the plaintiff had been fully compensated by Geico's liability insurer, and the collateral source rule did not apply.

The court took this opportunity to clarify the double-recovery rule with respect to insurance policies explaining that "an insured may recover under each policy providing coverage until the total loss sustained is indemnified," and "an insured cannot recover an amount greater than his loss." Thus, because the plaintiff had already recovered his property damage from the Geico liability insurer, he would doubly recover if he received payment from the first-party Geico insurer. The court similarly rejected the plaintiff's argument that the collateral source rule applied, because Geico was not a tortfeasor and would not stand to benefit from the plaintiff's prior recovery. *Pelle v. Munos*, 2019-0549 (La. App. 1 Cir. 2/19/20), 2020 WL 853730.

MISSISSIPPI LANDOWNER PROTECTION ACT

Last year Mississippi enacted legislation that addressed landowner liability for the intentional torts of third parties on their premises. Under the old law, a person injured by a third-party could sue the landowner if the owner had actual or constructive knowledge (1) of the assailant's violent nature, or (2) that an atmosphere of violence existed on the premises. The real kicker was that the landowner was not allowed to apportion fault to the third-party assailant.

Under the new law, a plaintiff must prove that similar violent conduct occurred on the subject property 3 or more times within 3 years before the incident. Additionally, the 3 separate events must have resulted in 3 or more arraignments of an individual for a felony involving an act of violence. Furthermore, the landowner must have actual knowledge of the prior violent nature of said third party. And, a jury is now allowed to apportion fault to the landowner and/or the third party assailant/tortfeasor.

The Act did not address, however, whether it would apply retroactively. This led to motion practice in many cases seeking interpretation on whether the Act applied retroactively. The Mississippi Supreme Court recently denied a request to appeal from an appellate court holding that the Act should not be retroactively applied, effectively ending the debate. *JFM, INC., D/B/A Jr. Food Mart v. Charlene Griffin, et al.*, No. 2019-M-01790-SCT.

TWPD

TAYLOR WELLONS POLITZ DUHE

BATON ROUGE, LA	NEW ORLEANS, LA	JACKSON, MS
(225) 387-9888	(504) 525-9888	(769) 300-2988

For more information about our firm, please visit our website

WWW.TWPDLAW.COM