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CONCLUSORY AFFIDAVIT CANNOT STOP DISMISSAL

In a medical malpractice case, Plaintiffs filed suit on behalf of their deceased father who suffered from bed sores, which became infected leading to his lower leg and foot being amputated. Plaintiffs alleged that the defendant nursing home breached the standard of care by allowing sores to become infected. Defendant argued that Plaintiff's family was timely issued orders for wound care and notified of the existence of the bed sores.

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Plaintiffs' claim was submitted to a medical review panel, which concluded that Defendant did not breach any standard of care. Defendant then sought dismissal of Plaintiffs' suit based on Plaintiffs' inability to produce any expert medical opinion showing a breach in Defendant's standard of care, which caused Plaintiff's alleged injuries. Plaintiffs opposed the dismissal based upon an affidavit from a medical expert, which merely stated that the defendant's failure to treat within the proper standards of care was the proximate cause of the decedent's injuries. The trial court found that Plaintiffs' medical expert "strictly conclusory" opinion and dismissed the suit.

On appeal, the Third Circuit affirmed the trial court's ruling holding that the affidavit only provided conclusory statements and was completely devoid of any underlying and supporting facts regarding a standard of care that was breached, the actions or inactions of Defendant's nursing home, or how any such breach caused the alleged injuries of Plaintiff. In determining whether any standard of care was breached, the court looked passed the assertions made by Plaintiffs' medical expert and to the foundation of her assertion. In this case, no evidence was presented showing Defendant's action or inaction that would constitute a breach of any standard of care. *Simon v. Allen Oaks, LLC*, 20-5 (La. App. 3 Cir. 06/10/20); 2020 WL 3071599.

Attorney Spotlight



Deanne B. McCauley

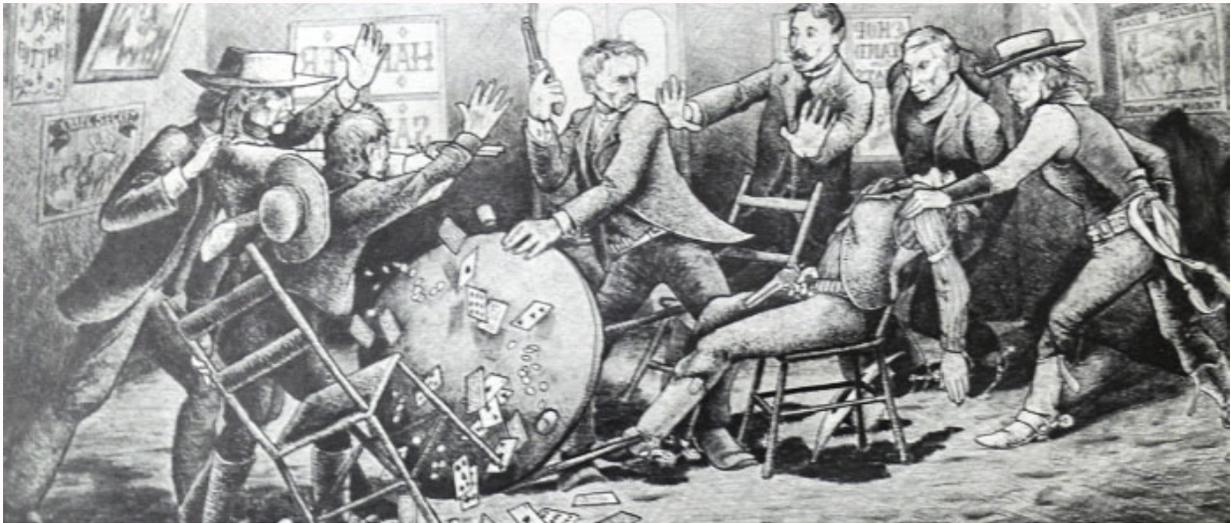
For more than 27 years, Deanne has successfully litigated Louisiana workers' compensation claims and longshore claims, and she has a wide-range of expertise, including litigation involving admiralty/maritime law, personal injury liability defense, commercial liability defense, premises liability, construction law, medical, dental and nursing home malpractice, professional liability and subrogation claims. Deanne has lectured with the Louisiana Association of Self-Insured Employers (LASIE) and has provided various training seminars to clients to guide them through claims in the Louisiana Workers' Compensation system and LHWCA for both beginners and advanced claims administrative professionals.



DRIVER NOT OBLIGATED TO REMOVE CAR STOPPED ON ROAD WAY BECAUSE OF CONGESTED TRAFFIC

Plaintiff family brought a wrongful death and survival action for fatal injuries that were the result of a multi-car collision that began when a third-party driver stopped in the middle of the road way due to zero-visibility fog. The decedent rear-ended a tractor trailer that had stopped to avoid striking another truck, which had stopped due to an accident. The family filed suit against the truck driver, his employer, and the employer's insurer alleging that the death was caused by the truck driver's failure to move the truck from the road. Defendants sought dismissal of the claim arguing that the accident arose from a sudden emergency. Plaintiffs opposed the dismissal arguing that the truck driver failed to remove his truck from the road as required by Louisiana Revised Statutes 32:141. The trial court ruled in favor of Defendants and dismissed Plaintiffs' claim.

On appeal, the court explained that Louisiana Revised Statute 32:141 is designed to prevent the risk of inattentive drivers colliding with obstructions and has not been applied to cars stopped on the road way because of congested traffic caused by prior accidents. The court also noted that when drivers are faced with greatly obscured visibility, they have a duty to stop and wait until conditions permit them to resume travel in reasonable safety. In the two minutes that he was stopped, the driver was assessing the traffic situation in front of him and believed that traffic would move, unaware of the collision in front of him. He had no intention to remain stopped at his location. Therefore, Louisiana Revised Statutes 32:141 was not applicable and the driver had no duty to move his vehicle from the roadway. *Jenkins v. Hernandez*, 2019-0874 (La. App. 1 Cir. 06/03/20); 2020 WL 2898123.



CRIMINAL ACT BY PATRON DOES NOT EXTEND DEADLINE TO FILE SUIT AGAINST PROPERTY OWNER

In a case that involved a barroom brawl, Plaintiff filed suit against the bar owner two years after the fight occurred alleging that the owner failed to provide adequate security.

Defendant sought to have the claim dismissed as untimely, which the trial court granted. Plaintiff appealed the trial court's ruling arguing that Louisiana's two-year prescriptive period should apply because the claim was based upon a crime of violence occurred.

The Third Circuit rejected the plaintiff's argument explaining that the alleged negligence of the bar owner was separate from the alleged acts of the third-party, who instigated the fight. The plaintiff did not allege that the bar owner engaged in a crime of violence; thus, the two-year period did not apply. *Smith v. Vick Investments, LLC*, 19-622 (La. App. 3 Cir. 06/03/20); 2020 WL 2896653.



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