TAYLOR WELLONS POLITZ & DUHE

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LOUISIANA GENERAL LIABILITY NEWSLETTER

RECENT CASES AND NEWS

FIRST CIRCUIT COURT OF APPEAL REDUCES AWARDS OF SURVIVAL AND WRONGFUL DEATH DAMAGES FINDING AN ABUSE OF JURY DISCRETION

In *Gerald Wayne Glaser, et al. v. Hartford Fire Insurance Company, et al.*, the First Circuit Court of Appeal reversed a trial court judgment awarding $10,000,000 in survival damages and $1,500,000 in wrongful death damages to each of seven plaintiffs.

The case arose out of an automobile collision in the Town of Lottie, Louisiana. On May 13, 2020, three employees of Rail 1, LLC were operating tractor-trailers pulled by semi-trucks and traveling in a caravan. At some point on their route, the Rail 1 drivers realized they had missed a turn. The drivers then pulled to the shoulder of Highway 190 West, with the intention of "spotting" one another in attempting to execute a left U-turn. One of the Rail 1 drivers, a Mr. Cowart, got the all clear from his co-employee to proceed with his U-turn; however, when Mr. Cowart attempted to make the U-turn, the front of his semi-truck cab collided with the plaintiff, Mr. Glaser's pickup truck.

Initially, Mr. Glaser was able to walk and exit his vehicle to be transported by ambulance to the hospital. However, on the fifth day after the accident, Mr. Glaser's condition worsened, and he was diagnosed with a significant intestinal injury. Despite efforts by medical providers to alleviate the intestinal disorder, Mr. Glaser's colon perforated and he died not long after, approximately two weeks after the accident, at the age of eighty-nine.

Mr. Glaser's seven children filed a survival action as his representatives, and they also each filed a wrongful death action on their own behalf. The jury awarded $10 million in survival damages and $1.5 million in wrongful death damages to each of Mr. Glaser's children. However, the Court of Appeal found that the survival damages award "shocks the conscience and offends reasonable inferences from the evidence." In reaching that conclusion, the court relied on the fact that Mr. Glaser was initially able to walk about the accident scene and actually improved during the first six days of his hospital stay. The Court therefore reduced the survival action award to $2 million based on comparison to similar cases. Similarly, the Court found that the jury abused its discretion with respect to the wrongful death damages. The Court focused on the fact that all of the plaintiffs were grown and had long since relied upon Mr. Glaser for support. The Court therefore reduced the wrongful death awards to $500,000 for each of Mr. Glaser's children.

Attorney Spotlight

George O. Luce
Partner

George's route to the legal profession has been circuitous. He studied piano performance in college in the 1980s, and then went to business school and became a Certified Public Accountant. He later worked for about 10 years as a computer programmer before going to law school. After law school, he clerked for the Honorable James Brady in the federal Middle District of Louisiana from 2005-2006, and has been in private practice since. He joined TWPD at the end of 2019. He lives in Prairieville with his wife and canine family members.

APPELLATE COURT BEING APPLYING "OPEN AND OBVIOUS" ANALYSIS HANDED DOWN BY LOUISIANA SUPREME COURT

The August edition of the TWPD Newsletter advised of a victory earlier this year at the Louisiana Supreme Court, in *Farrell v. Circle K. Stores*, which clarified the "open and obvious condition" standard. The Court held that whether a condition is open and obvious is a part of the breach analysis and not the duty analysis, when applying the traditional duty/risk analysis to determine liability. As a result of the *Farrell* ruling, the presence of an open and obvious condition would now be part of the "likelihood and magnitude of harm" factor to be considered in the risk-utility balancing test as part of the breach analysis. Recently, two Louisiana Appellate Courts have issued opinions applying the *Farrell* holding.

In June, the Louisiana Second Circuit found *Farrell* controlling in *Lambert v. Zurich American Ins. Co., et al*, when applying the duty/risk analysis to determine if a wheel stop in a parking garage was an unreasonably dangerous condition. The case arose out of a slip-and-fall in a casino parking garage in Bossier City, Louisiana. Plaintiff's daughter drove Plaintiff to the casino and parked in a handicap parking space in the parking garage. The car was parked improperly, with the wheels overlapping an adjacent loading zone. The loading zone was clearly distinguished by blue and white stripes and included a wheel stop painted bright yellow that ran parallel to the car's passenger side door. Plaintiff managed to exit the vehicle and traverse the wheel stop in order to enter the casino. Upon returning to the vehicle, Plaintiff again stepped over the wheel stop without issue. Plaintiff then exited the vehicle, intending to walk towards a garbage can and throw away some trash. When she passed the wheel stop for the third time, she claimed she tripped and fell over the wheel stop.

Defendants filed a Motion for Summary Judgment on a lack of liability, arguing that the allegedly hazardous condition of the wheel stop did not pose an unreasonable risk of harm and was open and obvious to a reasonable person exercising ordinary care. The district court denied that motion, but the Second Circuit reversed that decision. In doing so, the Second Circuit first noted it was clear from *Farrell* that summary judgment may be granted, when reasonable persons would agree a condition was not unreasonably dangerous, and therefore, there was no breach of a duty owed.

In evaluating the likelihood and magnitude of harm, the Court noted the bright yellow wheel stop was located within a clearly distinguished loading zone, and Plaintiff was able to navigate the condition two prior times before the alleged fall. Furthermore, while the wheel stop was close to Plaintiff's door, the Court reasoned the only reason it was located so near was that Plaintiff's daughter parked incorrectly, outside of the designated parking space. If the vehicle had been parked properly, Plaintiff would not have been so close to the wheel stop. Lastly, the Court concluded that reasonable persons would agree that a wheel stop painted yellow, located within a loading zone painted white and blue, would not present a likelihood of great harm. The Court therefore concluded there was no breach of a duty owed to plaintiff.

In October, the Louisiana Fifth Circuit also applied *Farrell* in *Snyder v. Bourgeois*. This case arose out of a slip-and-fall into a pond in Paulina, Louisiana, which resulted in fatal injuries. The pond was located on private property and was being excavated for fill dirt. The plaintiffs contended that there was a hidden danger in the form of a quicksand-like substance under the "murky water" of the pond. Applying *Farrell*, the Fifth Circuit considered the likelihood and magnitude of the harm presented by the pond. Ultimately, the Court concluded that while the property owner owed a duty to plaintiffs, that duty was not breached as the pond was open and obvious. This was a much less detailed analysis that what the court provided in *Lambert* and was more like the pre-Farrell analysis of open and obvious conditions. Regardless, the good news is that so far, courts appear to be applying *Farrell* in a way that still allows for summary dismissal of claims involving open and obvious conditions.

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