JUST WHEN YOU THOUGHT IT WAS SAFE…

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A smattering of recent Oklahoma Supreme Court tort and insurance decisions

I know many of you may have thought the Court to be inactive these last many months when it comes to insurance and tort matters. Rest easy, – the Court has actually been pretty busy with some really interesting decisions ranging from res ipsa to slips and falls and all points in between. As you can see below, we have some interesting splits on the Court, and occasionally some rather forceful dissents (or two). So without further ado, let's go a-Courtin'…

1. Slip-Slidin'-Away…

The area of premises liability has been fairly steady and not overly active for the past, say, 50 years. Sure, there's been the occasional Spirgis v. Circle K Stores, 743 P.2d 682 (Okl. Ct. App. 1987) (pothole in a parking lot not necessarily open and obvious/MSJ not responded to doesn't guarantee a victory). But mostly, we've been dependent on Buck v. Del City Apartments, 431 P.2d 360 (Okla. 1967) for the proposition that where a hazard is open and obvious to an "invitee" (i.e., somebody who was invited there for a business reason – like a customer, for example), there is no liability for a landlord.

Until now, anyway. At least in a limited holding. The Oklahoma Supreme Court has at least partially modified that age-old stance in the new (and as of press time not released for publication) opinion of Wood v. Mercedes-Benz of OKC, 2014 OK 68, __ P.3d __ (July 16, 2014). In a 5-4 decision with not one but two very strong dissents (by Justices Taylor and Combs), the Court decided that liability existed against Mercedes-Benz of OKC because a sprinkler system had gone off, creating ice around the dealership, and Ms. Wood had to encounter that ice to get into the dealership where she was working for a caterer that day. The majority discarded nearly 50 years of "open and obvious" precedence and found "under the facts of this particular case" that liability did exist on the dealer. "We agree with Wood that under the peculiar facts of this case, Mercedes-Benz owed a duty to take remedial measures to protect her from the icy conditions surrounding the entry to its facility" Wood, at para. 9. So, expect the floodgates to open (pardon the pun) for slip-and-fall cases, despite the Court's language limiting the decision to the facts of that case.

2. Res Ipsa? Locate Her!

In another case that I'm still not sure I totally understand, the Court of Appeals has ruled that the doctrine of res ipsa loquitur was available to a plaintiff who was moved from one department of the hospital to another and somewhere in there they lost track of the female decedent for a period of time and she ultimately died. Rogers v. Mercy Health Center, 2014 OK Civ. App. 69 (2014). The Court of Appeals held that the plaintiff should have been allowed to utilize the res ipsa doctrine, based upon the fact that the defendants had control over the decedent when her health took a downward turn.

I certainly understand a negligence theory there, but not why res ipsa applies. If the treatment was sub-standard, that's certainly an available theory that, of course, the plaintiff would have to prove. But allowing plaintiff to use res ipsa to get past summary judgment and to a jury doesn't make much sense to me.

3. Claim? What claim? (Oh, THAT claim…)

And finally, we have the case of Chandler v. Valentine, 2014 OK 61, in which the defendant insurer tried to cancel a “claims made” policy when it had knowledge of a possible (but not yet asserted) claim against the insured. The company (with knowledge of the potential claim) had canceled the coverage, stating it was due to the “Company’s decision” and had offered him trial coverage. Then it sent the plaintiff ANOTHER letter dealing with premium refund issues and saying that the policy was canceled at his request. On this one, the Oklahoma Supreme Court hit it squarely:

“The issue in this matter is whether an insurer may agree to cancel a ‘claims made’ policy with the knowledge that a potential claim is pending without violating the statutory prohibition on retroactive annulment of an insurance policy following the injury, death, or damage for which the insured may be liable. See Okla. Stat. tit. 36, § 3625 (2011). This Court holds that it may not and affirms the holding of the trial court.”

Chandler, 2014 OK 61 at para. 1.

It’s really difficult to imagine what that insurance company was thinking. And that comes from a guy who represents insurance companies (though not this particular one). I’m a big student of the “two sides to every story” school, but I will admit this company’s actions have me stumped to come up with one here.

And that, as they say, is all she wrote. Until next time!