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California Holds Ski Lift Operators to Higher Standard of Care in Tort Cases

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Attorney's Fees

(continued from page 103)

district court to determine the appropriate compensation.

Trial and Appellate Opinions

The trial court found that the percentage fees were reasonable. It granted Patterson's request for attorney's fees but reduced his co-representative earnings. The court also awarded NCNB's sum as corporate representative, but denied NCNB's compensation request for extraordinary services.

The Daughters appealed to the Fourth District Court of Appeals and argued that the trial court had incorrectly applied the statute governing probate fees. They contended that section 733.617, Florida Statutes (1987), detailed several factors to consider in order to set these type of fees, one of which was the amount of time and effort involved in representing the client. The Daughters further argued that nothing in the provisions of section 733.617 prevented the application of an hourly rate to help assess a reasonable fee. The appellate court, however, upheld the trial court's assignment of fees based on the value of the decedent's estate. The Daughters appealed to the Florida Supreme Court.

Reasonable Fee is Correct Standard

The Supreme Court of Florida examined the legislative history of section 733.617 to ascertain whether a sliding percentage scale was the appropriate method for calculating compensation. The section's predecessor statute expressly provided for a sliding percentage fee scale based on the size of the estate handled by the attorney. However, in 1974 this section was replaced, and attorneys and other professionals were to receive reasonable compensation for their services, rather than a percentage of the estate. The factors later added to assist a trial judge in determining reasonable fees included, among others, consideration of: (1) the time and labor involved in the case and the skills needed to provide the service; (2) the restrictions placed on other employment while providing the service; (3) the fees customarily charged in the community for comparable service; (4) the nature and duration of the relationship between the professional and the decedent; and (5) the amount of time and effort involved and the results obtained. The Florida Legislature instructed that one or more of these factors should be used to determine reasonable compensation.

Consequently, the Florida Supreme Court found that legislative intent dictated that a reasonable fee, not a percentage rate, should be the standard used to determine compensation. The court recognized that since section 733.617 applied to various professionals employed to handle an estate, all provisions would not apply to all professional categories. However, all factors which applied to a specific category of professionals should be consistently applied within that profession so that a reasonable fee in one case would be consistent with others fees in similar cases. Thus, the court reasoned that the value of an estate should not be the controlling factor, but one of several elements for attorneys to consider when determining fees.

Goal is Consistent Results

The court explicitly rejected an argument proposed by the Real Property, Probate and Trust Law Section of the Florida Bar, which presented a supplemental brief in support of Patterson. The court disagreed that the "one or more of the following" language in the statute permitted a judge to find attorney's fees based on the value of the estate alone or in combination with any of the other factors listed under section 733.617. The Florida Supreme Court stated that allowing such random assessments among judges would leave the public without consistent results in probate cases.

Hourly Rate Part of Determination

Lastly, the court held that the hourly rate approach should be employed to help ascertain a reasonable attorney's fee because this method mirrored the approach to fee assessment taken in section 733.617. In this case, however, the trial court's records were unclear as to which of the services provided by Patterson's staff should be categorized as attorney's fees and which should be considered additional fees. Thus, the Florida Supreme Court remanded the case back to the trial court for conclusive determinations.

Clarinda Gipson

California Holds Ski Lift Operators to Higher Standard of Care in Tort Cases

In *Squaw Valley Ski Corporation v. Superior Court of Placer County*, 3 Cal. Rptr. 2d 897 (Cal. Ct. App. 1992), the California Court of Appeals for the Third District held that ski lift operators are common carriers and therefore are held to a higher standard of care for the purpose of determining liability in tort cases.

Background

Squaw Valley Ski Corporation ("Squaw Valley") operates skiing facilities in California. In order to use Squaw Valley ski lifts, patrons must have skis, bindings, boots, and valid lift passes. Patricia Bowles ("Bowles"), having complied with these requirements, approached one of Squaw Valley's chair lifts in April of 1986. As she attempted to board, a chair struck Bowles in the head causing injuries.

Bowles sued Squaw Valley in the Superior Court of Placer County, California, asserting that the company negligently operated the ski lift because no employees were present to help patrons board. Prior to trial, Bowles asked the court to establish that Squaw Valley was a common carrier for the purpose of determining tort liability.

The basic standard of care in negligence cases is ordinary care, the measures a reasonable, prudent person would use under the circumstances. A common carrier, on the other hand, is held to a higher standard of care because a California liability statute imposes a duty

on common carriers to exercise the utmost care and diligence toward patrons. However, common carriers do not act as insurers of their passengers' safety and must only exercise care consistent with the practical operation of the carrier's business.

Squaw Valley asserted four reasons why it was not responsible for the heightened level of care. First, Squaw Valley argued that it was not a common carrier under the state liability statute. Second, even if Squaw Valley was a common carrier, a California utilities statute exempted it from common carrier status. This statute exempted ski lift operators from the definition of a common carrier for regulation by the California Public Utilities Commission. Third, Squaw Valley asserted that it was not liable because the carrier-passenger relationship had not commenced at the time of the accident. Finally, Squaw Valley argued that public policy dictates that chair lift operators be exempt from common carrier status.

The trial court held that Squaw Valley was a common carrier and that the state utilities statute exempted ski lift operators from common carrier status for public utilities regulation purposes only. Squaw Valley appealed this ruling to the California Court of Appeals for the Third District.

Common Carrier Status Applies

The California liability statute, Civil Code section 2168, defines a common carrier as any entity that holds itself out to the public as transporting goods or persons from place to place for profit. The appellate court reasoned that Squaw Valley fit this definition because it offered the ski lift facilities to the public for a fixed charge.

Squaw Valley, however, argued that it did not offer its lift facilities to the general public because use of the lift was restricted to persons who used the proper equipment and who purported to have the ability to ski. The court rejected this argument, stating that an offering to the public does not mean an offering to everyone at all times; an enterprise need only be available to the extent that members of the general public may use it if they choose to. The Squaw Valley requirements were merely conditions required by the sport of skiing. Any person complying with the necessities of the sport could avail themselves of the service, therefore, the court ruled that Squaw Valley offered its facilities to the public.

No Exemption From Common Carrier Status

Squaw Valley argued that because ski lift operators are exempted from common carrier status under the California utilities statute, they are also exempted from common carrier status for purposes of tort liability. The appellate court rejected this argument, stating that the legislature not only enacted the utilities and liabilities laws as part of distinctly different statutory schemes but also for different purposes.

Prior to enactment of the utilities statute, the California Public Utilities Commission rendered an administrative opinion that ski lift facilities were not common carriers subject to its regulatory jurisdiction. The court found that the legislature's purpose in enacting the utilities statute was merely to codify this decision and not to further exempt ski lift operators from common carrier status for tort liability. If the legislature intended the further exemption it would have directly amended or referred to the liability statute. Therefore, the court held that the California utilities statute did not exempt Squaw Valley from common carrier status for determining tort liability.

Carrier-Passenger Relationship Had Begun

Squaw Valley further argued that common carrier status did not apply because Bowles had not actually boarded the ski lift at the time of the accident, and therefore, the carrier-passenger relationship had not yet commenced. The court disagreed, stating that the carrier-passenger relationship commences when a person goes to the place of departure intending in good faith to become a passenger and the carrier takes some action in acceptance. Bowles paid for her lift ticket and was attempting to board the chair lift at the boarding area at the time of injury. The court ruled that the carrier-passenger relationship had commenced and therefore held that the common carrier status applied to Squaw Valley.

Public Policy Argument Fails

Finally, Squaw Valley claimed that public policy demands ski lift facilities be exempted from common carriers status for tort liability purposes. Boarding a moving ski lift, Squaw Valley asserted, involves inherent risks that cannot be eliminated. Ski lifts, therefore, differ significantly from typical common carriers such as taxicabs or buses and holding ski lift operators to a higher standard of care was impractical. The court, however, refused to consider the public policy argument, holding that the legislature, not the court, was the proper forum for these considerations.

Scott R. Anderson

Texas Court of Appeals Denies Summary Judgment Due To Temporary Suspension of Statute of Limitations In Misbranded Drug Case

In ***Parker v. Yen and Revco Discount Drug Centers, Inc.***, 823 S.W. 2d 359 (Tex. App. Dallas 1991), the Texas Court of Appeals for the Fifth District held that summary judgement could not be granted in a case involving medical malpractice, negligence, and the Deceptive Trade Practices Act while there were genuine issues of fact as to the statute of limitations and proximate cause.

Background

Charles A. Parker ("Parker") sued on behalf of himself and Mrs. Rosalie C. Parker, alleging that Garry Robert Yen ("Yen"), a pharmacist employed by Revco Discount Drug Centers, Inc. ("Revco"), misfilled a prescription for

(continued on page 106)