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PENNSYLVANIA SUPREME COURT REVISES "CORPORATE NEGLIGENCE"

Late last November, the Supreme Court of Pennsylvania issued a much-anticipated decision on the tort of "corporate negligence," in **Scampone v. Highland Park Care Center**, 57 A.3d 582 (Pa. 2012). It is the first decision by the Court considering this cause of action in fifteen years, and only the third case in which the Pennsylvania Supreme Court has reconsidered this cause of action since it created it in **Thompson v Nason Hospital** in 1991.

The corporate negligence theory of liability was adopted 22 years ago in **Thompson**. That case arose from the care and treatment of a woman who had been involved in an auto accident and developed neurological complications due to the development of intracerebral hematoma during her post-accident hospital stay, while under the care of multiple physicians and hospital staff. Plaintiff sued the hospital, contending not only that it should be held liable if its employees were proven to have acted negligently (respondeat superior liability) or if a specific doctor was found to be negligent, (ostensible agency), but that the hospital as a legal actor in its own right could be held negligent for its corporate actions. The Supreme Court of Pennsylvania approved of this argument, and held that a hospital itself could be found liable if one of four duties was breached: (1) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; (2) a duty to select and retain only competent physicians (3) a duty to oversee all persons who practice medicine within its walls as to patient care, and (4) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

When it was adopted, this cause of action applied only to hospitals. This was due to the unique nature of a hospital as set forth by the Supreme Court in **Thompson**, in which the Court observed that "The corporate hospital of today has assumed the role of a comprehensive health center with responsibility for arranging and coordinating the total health care of its patients." Unsurprisingly, there was interest by some parties in expanding the corporate negligence doctrine to other kinds of corporations. This met with mixed results in the Courts which considered this proposed expansion. In 1998, the Pennsylvania Superior Court held that the theory could be used against a Health Maintenance Organization. But, in the same year, a federal court held that it could not be used against an optometry practice. Other court

decisions came down with mixed results when asked to apply the doctrine to physician's practices and corporations providing health care in prisons.

Thus the **Scampone** decision was met with great anticipation. In this case, the estate of a nursing home resident sued the nursing home alleging it was liable for corporate negligence, claiming that nursing home policies and practices caused the decedent to suffer dehydration and malnutrition, and ultimately die of a heart attack at the age of 94. At trial, former employees of the nursing home testified that they were understaffed and often lacked the resources they needed to provide residents with the care they required. Plaintiff asserted a corporate negligence claim against the nursing home (direct liability) and offered evidence of the negligence of nursing home personnel (vicarious liability). The jury found the nursing home liable in both respects and awarded \$193,500.

The nursing home appealed, contending that the corporate negligence cause of action should be applied only to hospitals. They contended that a nursing home does not provide extensive medical care but simply aids residents in performing daily activities (such as eating, dressing, bathing, etc..) or acts as a "gateway into the healthcare system." When necessary, residents employ their own physicians and may be admitted to hospitals. The nursing home did not employ the doctors rendering care to patients and could not direct or control their actions. Thus, they contended that a nursing home cannot be found to owe any "non-delegable duty" directly to its residents.

The nursing home also presented the Court with the problem that it was actually operated by two separate corporations. One corporation owned the property, contracted with residents, and employed the staff. The other corporation was a management company, which trained the staff, handled the books and accounting, and managed its inventory of supplies. It provided strictly administrative duties, and argued that it should not also be held liable under the same corporate negligence theory.

The Supreme Court approached the question from a different perspective. The Court disagreed with the notion that a corporation could not *already* be held directly liable under the law. In other words, it disagreed that hospitals were somehow

a special kind of corporation against whom a direct liability, “corporate negligence” claim could be made. To the contrary, the Court posited that under the law as it already exists, any corporation can be directly sued if it breaches a duty it owes to a person who is injured as a result.

The problem with this reasoning is that in the **Thompson** opinion, which “adopted” the corporate negligence cause of action against a hospital, the Court certainly seemed to think that it was adopting something new, and not merely establishing the parameters of an already existing cause of action. The Court reconciled this by essentially recasting the now twenty year old opinion as one in which the Court better defined the **duties** that a hospital might directly owe a patient, and thus face liability for their breach, and not one which created a completely new method of suing someone.

The Court declined to take the logical next step, and attempt to define what a nursing home’s duties to its patients might actually be, as it did about hospitals in **Thompson**. Instead, it remanded the case back to the trial court, directing it to determine whether the nursing home owed duties to the decedent resident, and to “articulate any specific duties it might find.” The Court directed that this should be done relative to *both* corporations operating the nursing home.

ANALYSIS

This decision could be viewed as one “expanding” the tort of corporate liability beyond hospitals, but the Court actually did much more than that, and did so in a way which was logical and well-founded in the common law even preceding the **Thompson** case. In **Scampone**, the Court has basically rewritten **Thompson**. As a general rule, any legal entity, whether it is a person, a corporation, or a governmental unit, is capable of being sued in tort directly, unless there is a reason that the law might make it immune from suit. Accordingly, the question before the Court – in its eyes – was not “can corporate liability be expanded to nursing homes,” but “are nursing homes capable of being sued like any other legal entity, or is there a reason they should be treated differently.”

Because the Court did not attempt to define the duties a nursing home might owe to its residents, this case might not have the same effect that the **Thompson** holding did. When the Court in

Thompson defined four duties which a hospital owed its patients, it wrote a prescription for “how to sue a hospital.” As a result, “corporate negligence” began to be alleged quite frequently, and many parties tried to apply this to other kinds of corporations as if it were a transferable pattern. This led to an awkward body of case law in which the Superior Court was looking at corporate entities to see if they looked more like a hospital, or more like a physician’s practice.

The Supreme Court has basically taken a step back, and pointed out that any corporation can be held liable to an injured party, if the plaintiff can articulate a duty which the corporation breached. This is a much more sound footing for the law, as it taps directly into the fundamental principles of tort law – duty, breach, causation, and damages – and requires any cause of action to be more properly rooted in these concepts, which have slowly developed in the law over hundreds of years. By not attempting to specify the duties a nursing home might owe, the Court did not create a new “prescription” for lawsuits against nursing homes, but left the task of defining what duties might be owed to be decided on a case-by-case basis.

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