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February 2021 Fourth Circuit Tort & Insurance Cases of Interest

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05.04.2021

Periodically, Nexsen Pruet member Marc Manos, a member of the SC Bar Torts and Insurance Practice Section Council, sheds light on a few recent cases from the Fourth Circuit Court of Appeals, focused in the areas of tort & insurance law.

Below are the tort and insurance cases of interest selected for February 2021 with links to the Fourth Circuit opinions referenced.

Funderburk v. CSXTransp., Inc.

No. 19-2220 (4th Cir. Feb. 2, 2021) (Unpublished) FEDERAL PREEMPTION STATE TORT LAW, EXPERT CAUSATION EVIDENCE Landowners sued railroad for flooding during Hurricane Joaquin, alleging that improperly maintained drains and culverts along rail line caused flooding. District Court granted summary judgment finding claims preempted by Section 10501(b) of the Interstate Commerce Commission Termination Act. Fourth Circuit did not reach preemption, but affirmed on independent ground in record. District Court excluded only evidence that culvert maintenance caused or worsened flooding because it found expert testimony "glaringly problematic." Appellants had no evidence of causation, summary judgment affirmed.

Wingate v. Fulford

No. 19-1700 (4th Cir. Feb. 4, 2021) (Published) 42 U.S.C. § 1983 UNLAWFUL ARREST Plaintiff drove his car around 2 AM when the check engine light came on. He pulled over in front of a car dealership, lifted the hood, pulled

tools out of the trunk and began to investigate. A Sheriff's deputy pulled over to assist. After speaking with Plaintiff, the deputy demanded identification. The plaintiff refused and asked if he was being detained. The deputy said no, but he wanted identification. The plaintiff asked if he was free to go, the deputy said not until you give me identification. The deputy called for backup and the driver was arrested for failure to identify himself under a county ordinance. The District Court granted summary judgment on all claims to the defendants. The Fourth Circuit reversed in part. Law enforcement may only demand that a citizen identify himself if it is conducting a lawful investigatory stop. An investigatory stop requires: (1) a reasonable and articulable facts (2) particularized to the person being stopped, that raise a reasonable suspicion of criminal activity by that person. There must be a particularized and objective basis for suspecting the particular person stopped of criminal activity. In a situation where an officer stops to aid a citizen or engages in question without that reasonable suspicion, the officer can ask for identification, but cannot demand it or threaten to arrest or punish the person if they refuse. The seven reasons for suspecting criminal activity articulated by the officers on the record all could be just as easily innocent conduct and did not rise to the standard. The Court reversed summary judgment on the claim for an unconstitutional investigatory stop and remanded for trial. The Fourth Circuit did affirm the summary judgment for unlawful arrest and violation of state law as the constitutional limits of the county ordinance had not been prescribed by any court prior to the incident and thus qualified immunity/good faith existed. That will no longer be a defense for similar ordinances in the Fourth Circuit.

Ledwell v. Ravenel

No. 20-1344 (4th Feb. 4, 2021) (Unpublished) ASSAULT—REMOVAL, ARBITRATION The nanny of Thomas Ravenel's children brought assault claims against Ravenel and corporations involved in the production and distribution of the TV show Southern Charm. The original claims were in SC state court, but after plaintiff settled with Ravenel, who remained a nominal defendant for cross-claim and third party purposes, the corporate defendants removed to U.S. District Court. The District Court denied plaintiff's motion to remand and granted the remaining defendants' motion to compel arbitration. The Fourth Circuit affirmed. Ravenel failed to consent to removal. Normally all defendants must consent to diversity removal, however here Ravenel became a nominal party when he settled. Plaintiff produced no evidence, just speculation, that Ravenel might still have an indemnification obligation or other involvement that would make him responsible. The arbitration agreements contained in plaintiff's appearance releases for the show could not be set aside. The publicity consideration received by plaintiff constituted sufficient consideration and they were not substantively unconscionable. Affirmed, case sent to arbitration.

Lifewise Family Fin. Sec., Inc. v. Triangle Capital Corp.

No. 19-2162 (4th Feb. 22, 2021) (Published) SECURITIES FRAUD, CLASS ACTION District Court dismissed class representative's First Amended Complaint for failing to allege fraud but gave leave to amend. District Court then denied motion to amend as futile for failure to allege facts sufficient to support scienter on the part of defendants. The Fourth Circuit affirmed. Scienter is one of six essential elements to a Section 10(b)/Rule 10b-5 fraud claim as brought by the plaintiff class. To establish scienter, the complaint must allege facts sufficient to show a mental state intending to deceive, manipulate or defraud—it encompasses severe recklessness as well. The Private Securities Litigation Reform Act of 1995 imposed a heightened pleading requirement for scienter, the complaint must state with particularity facts that give rise to a "strong inference" of scienter. 15 U.S.C. § 78u-4(b)(2). The facts alleged and supporting evidence allowed in the record from documents referenced in the complaint created an inference that an honest disagreement existed in the market as to the likely future success of the type of lending defendant did at worst, and this would not

support scienter. Dismissal with prejudice affirmed.

Sedar v. Reston Town Ctr. Prop., LLC

No. 19-1972 (4th Feb. 22, 2021) (Published) PREMISES LIABILITY, SLIP AND FALL (Va. Law) District Court granted summary judgment to property owner and property manage in case involved a trip and face first fall down a flight of concrete stairs at the end of a brick paved walk coming out of a parking garage and leading to the sidewalk into the shopping center. The court found no issue of material fact as to dangerous condition, Defendants' knowledge of the condition, and causation. The Fourth Circuit reversed. Witnesses, photographs, and an expert structural engineer all testified to loose brick and deteriorating caulk where the brick path met the concrete stairs. The nature of the brick path made the danger not open and obvious to a normal pedestrian. As to knowledge, the Fourth Circuit agreed that plaintiff's evidence failed to create an issue of actual knowledge, but the photographs and expert testimony created an issue of fact that the condition must be at least months old and should have been noticed on the routine maintenance inspections. Finally, circumstantial evidence sufficiently created an issue of fact that the plaintiff's fall may have been caused by the loose brick and deteriorating caulk. Reversed, remanded for proceedings consistent with opinion.

Dizzley v. Garrett

No. 19-6959 (4th Feb. 16, 2021) (unpublished) WRONGFUL ARREST—42 U.S.C. § 1983 Dizzley brought a claim for damages for wrongful arrest against the Georgetown County investigator who arrested him on a charge of murder. A jury convicted Dizzley for a 2008 murder and he was sentenced to 35 years. The District Court found that the lawsuit, if successful, would demonstrate the invalidity of the criminal convection and, therefore, dismissed under the Prison Litigation Reform Act. The Fourth Circuit reversed. A successful claim for wrongful arrest without probably cause does not by its nature call into question the validity of a conviction. Dizzley made clear he only sued for damages for wrongful arrest in his complaint. Vacated and remanded.