

OREGON LAW UPDATE

Avoiding Liability in a Death Case: Is a General Denial Enough?

From the desk of Matt Ukishima: Often a defendant seeks to avoid liability to a plaintiff by claiming the plaintiff or a co-defendant should be held responsible instead. If a plaintiff takes a minimalist approach to allegations of fault regarding the co-defendant, what does a defendant need to do? Is a general denial in the answer enough?

Claims Pointer: If a defendant seeks to raise an additional allegation of fault against a co-defendant (i.e., intoxication) that is not specifically pled in the complaint, the defendant needs to plead it as an affirmative defense; a general denial and even a cross-claim for contribution is not sufficient.

Lasley v. Combined Transport, Inc., In the Supreme Court of Oregon (2011 WL 4389890, September 22, 2011).

A truck owned and operated by Combined Transport dropped several large panes of glass while traveling on I-5. In response to the glass clean up, traffic stopped completely for one hour, and then began to move slowly. As Mark Lasley approached the traffic, an intoxicated driver named Judy Clemmer drove her vehicle into his pickup, causing leaks in Lasley's fuel system that eventually ignited and killed him. Lasley's estate sued both Combined Transport and Clemmer. Clemmer admitted she was negligent. Combined Transport argued it was not negligent and its conduct did not foreseeably result in Lasley's death. The trial court granted a motion to exclude evidence of Clemmer's intoxication, and the jury found Combined Transport twenty-two percent at fault and Clemmer seventy-eight percent at fault. Combined Transport appealed to the Court of Appeals, and the Court of Appeals reversed, holding the evidence of Clemmer's intoxication was relevant. Plaintiff appealed to the Supreme Court, which granted review.

On review, the Supreme Court looked at the relevance of Clemmer's intoxication to the degree of fault for both Clemmer and Combined Transport, and also its relevance to the determination of causation. Regarding causation, the Court found that Clemmer admitted her conduct was a substantial factor in causing Lasley's death, and expert testimony showed that the impact of the collision would not have been as great if Lasley's vehicle was moving when Clemmer hit him. Clemmer's intoxication would not make her conduct any more significant in the causation analysis, thus the Court held her intoxication not to be relevant towards causation.

Regarding the apportionment of fault, the Court found Combined Transport should have raised the issue of Clemmer's intoxication as an affirmative defense in its answer. Combined Transport did not, but instead filed a general denial in its answer and a cross-claim against Clemmer for contribution that included the allegation that Clemmer was negligent for driving while intoxicated. Due to the circumstances of the case, notably that at the time of trial the proper pleading was unclear, the Court decided to construe Combined Transport's cross-claim as the equivalent of an affirmative defense. Because the fact of Clemmer's intoxication was alleged in the cross-claim, Combined Transport's evidence on that issue should have been considered by the trial court and was relevant to the apportionment of fault. (Interestingly, the Court held intoxication was not relevant on the issues of causation, liability or damages.) As such, the case was remanded for a new trial to determine the degree of fault attributable to each defendant.

case in point...



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