**Oklahoma Case Summaries**

**2018:**

***Lind v. Barnes Tag Agency,*** 2018 OK 35, ---P3d---.

Question: whether the sole shareholder of a company, who individually owns a property where an employee of the corporation sustained fatal injuries, is immune from negligence suit under the Workers’ Compensation Act for his or her own negligent acts in maintaining the property. This case predates the Administrative system and applies Title 85.

Answer: No.

Facts: James Lind was hired to do maintenance work on property owned by Jim Barnes, who was sole stockholder of BTA, which operated on the property. Lind was injured in an explosion on the property. He later died from his injuries. Lind’s children filed a Form 3A in the Workers’ Compensation Court, seeking death benefits. The WCA determined Lind’s injury arose in the course and scope of his employment with BTA and that Lind was not an employee of Barnes individually (Barnes was dismissed from that action).

Family members later filed a wrongful death action in District Court, naming both BTA and Barnes, who moved for summary judgment asserting the workers’ compensation exclusive remedy. The trial court granted summary judgment. The COCA affirmed.

On *certiorari* review, the Supreme Court first affirmed BTA was immune under the exclusive remedy (Lind had not disputed this holding).

The Court then turned to Barnes, individually.

First, the Court agreed with the COCA that Barnes was not a “co-employee” of Lind, protect by 85 O.S. § 44 (Claims Against Third-Parties). This is because owners were excluded from the definition of co-employee by 85 O.S. § 3 unless the company’s workers’ compensation insurance contains and endorsement making the owner an “employee,” which BTA’s policy did not contain.

Then the Court turned to the “primary” argument, and determined Barnes was not immune. Barnes claimed protection under 85 O.S. §§ 12 and 44, due to his status as owner and sole shareholder of BTA. He cited sections of the later adopted Administrative Act (AWCA) which he claimed “merely codified an established tenet” that shareholders and corporate officers are afforded the same immunity as are employers.

The Court disagreed, citing its recent decision in *Odom v. Penske Truck Leasing Co.,* 2018 OK 23, ---P3d---, holding the new Administrative Code does not provide that immunity. But, said the Court, that decision (*Odom)* did not address the interplay between sections 12 and 44 under Title 85. The Court noted that an earlier decision, *Kenkel v.Parker,*2015 OK 81, 362 P.3d 1145, holds that a shareholder cannot be holed liable for the negligence of the company. But that does not mean that an owner cannot be held liable for his or her *own negligence* by simply virtue of the exclusive remedy.

The Court contrasts the facts here with the “Dual Capacity Doctrine,” where the employee seeks to hold the *employer* (as opposed to an owner) liable because the *employer* operates in a dual capacity (such as employer and owner of land on which injury occurs). Here, by contrast, the employer was not the owner of the land, but an individual owner was. The court cites 2A Arthur Larson, *Workers’ Compensation* § 72.82 (1986)*,* noting the last paragraph of the section which says some jurisdictions recognize an exception where the owner’s status as a distinct legal entity from the employer corporation eliminates their immunity for torts based upon their separate status as owner of property. In *Lind* the Court adopts that rule with respect to suit under the old workers’ compensation system (OWCA). The Court then notes the legislature has abrogated this rule in the new administrative system (AWCA) with 85A O.S. § 5 which adds immunity for stockholders even when sued for allegedly independent tortious conduct.

I am testing a new trick insurance companies are using to trick us dumb plaintiff’s attorneys. They use white “ink” when composing and then the recipient selects all and changes it to black and the words magically appear. When we request emails and documents in discovery the produce paper copies and we never know about the secret messages inserted into otherwise innocuous looking emails and documents. Bastards!