March 2021 Fourth Circuit Tort & Insurance Cases of Interest

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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 March 2021 with links to the Fourth Circuit opinions referenced.

Variety Stores, Inc. v. Walmart, Inc.

No. 19-1631 (4th Mar. 29, 2021) (Unpublished) TRADEMARK, WILLFULNESS District Court entered judgment against Walmart for $95,500,000 for infringe BACKYARD BBQ® and unregistered marks. While most of the decision deals with issues unique to trademark law, the Fourth Circuit reversed and remanded for a new trial based on the district court's failure to define willfulness in a jury instruction. It did so under the plain error doctrine as Walmart failed to preserve the issues (pp. 19-25). While the court found sufficient evidence that a reasonable jury could find willfulness, the failure of the court to define willfulness as something more than mere volition, a conscious act, required a new trial. Willfulness in the trademark context (and for any unfair competition or other tort case in my opinion) required the jury to understand that the evidence is more than a conscious act or even negligence, but the legal meaning requires recklessness, intentional disregard, or a purpose to harm or here an intent to infringe.

View case here.

Morris v. Lincoln Nat'l Life Ins. Co.

No. 19-1546 (4th Mar. 30, 2021) (Unpublished) LIFE INSURANCE, ERISA Employee diagnosed with leukemia left work in October 2014 when he showed active symptoms. Never returned to work before his death in September 2015. His group life insurance moved from one provider to Lincoln National on January 1, 2015 and he purchased basic and supplemental life coverage. Policies included a requirement that an employee must be actively employed and at work on January 1, 2015 and he was totally disabled on that date. The district court granted summary judgment for the insurer. The Fourth Circuit affirmed that the insurer can be both the plan administrator and the insurer without an irreparable conflict of interest, but reversed and found coverage for the employee. Both polices, as described in the amended plan for 2015, contained a Prior Insurance Credit (PIC) provision that allowed an employee who had those coverage under the prior plan to continue them under the new plan, even if not actively working on January 1, 2015 so long as the employee met the other terms of the PIC clause. The PIC clause does not apply if an employee is totally disabled on January 1, 2015. The total disability definition in the policy states that the condition causing disability must have continued for at least 180 days prior to the effective date of January 1, 2015. The employee had only been disabled for 60 days on that date so the Fourth Circuit reversed summary judgment of no coverage and remanded for entry of summary judgement in favor of plaintiff.

View case here.

Mays v. Sprinkle

No. 19-1964 (4th Mar. 30, 2021) (Published) CIVIL RIGHTS, 8th and 14th AMENDMENTS, DELIBERATE INDIFFERENCE TO MEDICAL NEEDS Plaintiffs decedent (Mays) was arrested on consecutive nights for public intoxication after being found passed out in the seat of a vehicle. On the first night he had a bag of prescription bottles and told the deputy he took gabapentin and alprazolam. On the second night a 911 call reported Mays "extremely intoxicated" from alcohol and prescription medicines. The caller asked for help getting Mays out of the vehicle and specifically asked for medical care. Deputies on the scene noted Mays could barely lift his head, could not get out of the vehicle without their help, and when finally standing laid down in the bed of the pickup truck even though it was full of water. They found a bag of prescription drugs gabapentin and citalopram. The gabapentin had been prescribed three days earlier and was missing ninety-one capsules. The citalopram was from almost three weeks earlier and was missing all thirty capsules. Mays was passed out during transport, could not leave the patrol car without assistance, had to be propped up in court, and the magistrate ordered him held until he sobered up. Mays needed assistance to take off his shoes, glasses and other personal effects at the jail and could not speak coherently. Mays was locked in a cell. He was observed laying on a sleeping mat in the cell at a two hour security check. Up to this point, Mays received no medical attention or evaluation. Twenty minutes later a different officer saw him on the mat, checked on him, and determined he was unconscious. He tried to wake him and then began CPR until emergency medical personnel arrived. Mays died from acute hydrocodone, gabapentin, citalopram, and alprazolam intoxication. The district court dismissed for failure to allege sufficient facts and qualified immunity. The Fourth Circuit reversed. As a pretrial detainee, only the Fourteenth Amendment's Due Process Clause applied. However, the court looks to Eighth Amendment cases to establish what deliberate indifference to serious medical needs is during pretrial detention. Mays pleaded sufficient facts

for the objective prong of having a serious medical condition based upon his obvious inability to function and the know presence on two nights in a row of multiple prescription drugs combined with alcohol. Even a lay person would easily recognize the need for medical attention if he proved the facts alleged. The facts pleaded also sufficiently alleged the subjective prong—the officers subjectively knew the detainee's serious condition and the excessive risk of inaction. Fourth Circuit precedent as of the time of the arrest established a pretrial detainee could not be punished and that right includes a requirement that government officials not be deliberately indifferent to any serious medical needs of the detainee. Thus the Fourth Circuit reversed. "Mays's failure to tell the officers that he had consumed a lethal amount of drugs, assuming he could articulate as much, matters not when we consider the bag of prescription pills in Mays's truck along with his almost vegetative state and the 911 caller's request for medical attention. This plausibly goes beyond the typical officer's interaction with an intoxicated person."

View case here.