PUBLICATION UPDATE

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Personal Injury: Actions, Defenses, Damages

Publication 530 Release 195 February 2023

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Chapter 101, Negligence

SandRidge Energy, Inc. v. Barfield, 642 S.W.3d 560, 563 (Tex. 2022). Because the property owner conclusively established that the business invitee, a power lineman who sustained an electrical shock, causing severe burns and resulting in the amputation of his left arm at the shoulder and his right arm below the elbow, was adequately warned of the dangerous condition under Tex. Civ. Prac. & Rem. Code Ann. § 95.003(2), the trial court properly granted summary judgment to the property owner. (*See* § 101.01[2][a].)

Mitchell v. Los Robles Reg'l Med. Ctr., 71 Cal. App. 5th 291, 291, 285 Cal. Rptr. 3d 916 (2021). In a case arising out of a patient's fall at a hospital, the complaint alleged a cause of action for professional medical negligence, rather than general negligence or premises liability, and, under Cal. Code Civ. Proc. § 340.5, because the complaint was filed more than one year after the patient's injury, the action was time barred. (*See* § 101.13[5].)

Cohen v. Autumn Vill., Inc., 339 So. 3d 429, 430 (Fla. Dist. Ct. App. 2022). The granting of an assisted living facility's motion to dismiss a resident's action after she sustained injuries in a fall was proper because the Assisted Living Facilities Act (ALFA) governed the negligence claim and the resident failed to comply with the ALFA's pre-suit requirements and its two-year statute of limitations. (*See* § 101.13[5].)

Thomas v. Allen, 650 S.W.3d 303 (2022), *review denied*, 2022 Ky. LEXIS 299 (Ky. Sept. 14, 2022). The owner of a commercial quadricycle business that provided downtown tours of a city on quadricycles that were steered and operated by one of the owner's employees was entitled to summary judgment when a passenger who was injured in an accident while riding on a quadricycle brought a personal injury action alleging negligence because the passenger signed a valid pre-injury waiver before the accident. (*See* § 101.13[5].)

CenterPoint Energy Res. Corp. v. Ramirez, 640 S.W.3d 205, 207 (Tex. 2022). In a case of first impression, a public utility was entitled to judgment as a matter of law because the limitation of liability in its filed and approved tariff was reasonable, enforceable, and binding under the filed-rate doctrine and the tariff plainly barred the utility's liability for ordinary negligence as alleged by the residential customer's houseguests. (*See* § 101.13[5].)

Chapter 103, Nuisance

Today's IV, Inc. v. Los Angeles

County Metro. Transp. Auth., 2022 Cal. App. LEXIS 840, at *1–2 (Cal. Ct. App. Oct. 5, 2022). A private nuisance claim failed because unreasonableness was inadequately pleaded absent allegations weighing the harm against the social utility of tunnel construction for a light rail transit line, and, because Cal. Pub. Util. Code § 30631 authorized the construction, statutory authorization under Cal. Civ. Code § 3482 barred the nuisance claim. (*See* § 1.03.01[2][d].)

Chase v. Wizmann, 71 Cal. App. 5th 244, 286 Cal. Rptr. 3d 183, 186 (2021). In a noise dispute between neighbors, the trial court properly granted a preliminary injunction requiring the defendants to relocate air conditioning and pool equipment to the opposite side of their property, even if the equipment did not violate the Los Angeles Municipal Code, because the plaintiffs' testimony comparing the noise to a jet engine or airport runway supported unreasonable interference or substantial damage to the plaintiffs. (*See* § 1.03.01[2][d].)

Garrison v. New Fashion Pork LLP, 977 N.W.2d 67, 72 (Iowa 2022). Summary judgment was properly awarded to the defendants on a nuisance claim because, while the property owner claimed that the defendants over-applied manure to their field and caused excess nitrate to be discharged, without expert testimony tying alleged misapplication of manure to nitrate levels in the owner's stream, he could not prove that the trespass caused damage. (*See* § 103.01[6].)

Commonwealth v. Monsanto Co., 269 A.3d 623, 630 (Pa. Commw. Ct. 2021). The plaintiffs stated a legally sufficient public nuisance claim against the defendants because the plaintiffs specifically alleged that the defendants knew or should have known that their polychlorinated biphenyls products would inevitably volatilize and leach, leak, and escape their intended applications, contaminating runoff during naturally occurring storm and rain events and enter groundwater, waterways, waterbodies, and other waters, sediment, soils, and plants, as well as fish and other wildlife. (*See* § 103.01[3].)

State *ex rel.* Hunter v. Johnson & Johnson, 2021 OK 54, 499 P.3d 719, 720. The district court erred in holding an opioid manufacturer liable under Oklahoma's public nuisance statute for its prescription opioid marketing campaign, because the statute was not extended to the manufacturing, marketing, and selling of products; extending public nuisance law to the manufacturing, marketing, and selling of products would allow consumers to convert almost every product liability action into a public nuisance claim. (*See* § 103.01[3].)

Chapter 104, Nursing Homes

Cohen v. Autumn Vill., Inc., 339 So. 3d 429, 430 (Fla. Dist. Ct. App. 2022). The granting of an assisted living facility's motion to dismiss a resident's action after she sustained injuries in a fall was proper because the Assisted Living Facilities Act

(ALFA) governed the negligence claim and the resident failed to comply with the ALFA's pre-suit requirements and its two-year statute of limitations. (*See* § 104.04[7][a].)

Andruss v. Divine Savior Healthcare Inc., 2022 WI 27, 401 Wis. 2d 368, 973 N.W.2d 435, 436 (2022). The plain text of Wis. Stat. § 655.002 demanded that community-based residential facilities (CBRFs) be treated differently than hospitals and nursing homes, so that, while the patient's adult child may be prohibited from bringing a wrongful death claim against the health care provider's hospital and nursing home, she was not barred from bringing the claim against the provider's CBRF. (*See* § 104.04[7][a].)

Arbor Mgmt. Servs., LLC v. Hendrix, 364 Ga. App. 758, 875 S.E.2d 392, 394 (2022). A wrongful death action was barred by the Georgia COVID-19 Pandemic Business Safety Act, and, therefore, the trial court erred by denying the manager of the senior-citizen residential facility's motion to dismiss, because the amended complaint did not allege gross negligence, as the facts alleged showed either an under-response or a temporary continuation of normal activity at a time of uncertainty during the first days of the pandemic. (*See* § 104.04[7][a].)

Clanton v. Oakbrook Healthcare Ctr., Ltd., 2022 IL App (1st) 210984, P1, 2022 Ill. App. LEXIS 330 (Ill. App. Ct. July 18, 2022). In an estate administrator's suit against a nursing facility for negligence, the court did not err in denying the facility's motion to compel arbitration because the contract between the resident and the facility terminated on the resident's death in 2019, and, hence, there was no longer any enforceable arbitration agreement when the action commenced. (*See* § 104.06[5].)

Mason v. St. Vincent's Home, Inc., 2022 IL App (4th) 210458, P1, 2022 Ill. App. LEXIS 43 (Ill. App. Ct. Jan. 28, 2022). An arbitration clause in a contract for services between the decedent and a nursing home was neither procedurally nor substantively unconscionable, and the plaintiff, the decedent's son who was administrator of the decedent's estate and who had signed the admission agreement under a power of attorney for health care for the decedent, had not shown an overall imbalance in the obligations and rights imposed by the agreement. (*See* § 104.06[5].)

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Chapter 106, Physicians and Surgeons

Connette v. Charlotte-Mecklenburg Hosp. Auth., 2022-NCSC-95, 876 S.E.2d 420, 421. The court, overruling prior case law establishing that nurses do not owe a duty of care in the diagnosis and treatment of patients while working under the supervision of a physician licensed to practice medicine in North Carolina, reversed the trial court's exclusion of the testimony of the plaintiffs' expert witness who was available to render testimony concerning the alleged breach of the applicable professional standard of

care by the defendant, a certified registered nurse anesthetist who participated in the preparation and administration of a course of anesthesia that resulted in profound injuries being suffered by the patient. (*See* § 106.02[2][a].)

Davies v. MultiCare Health Sys., 199 Wn. 2d 608, 510 P.3d 346, 348 (2022), *rev'g* 18 Wn. App. 2d 377, 491 P.3d 207 (2021). The trial court did not err by dismissing a patient's informed consent claim against an emergency room physician, his employer, and the hospital for failing to diagnose a vertebral artery dissection (VAD) that occurred at the time of the patient's car accident, because the physician had ruled out a VAD based on the patient's total clinical picture. (*See* § 106.03[4][a].)

Arra v. Kumar, 200 A.D.3d 949, 159 N.Y.S.3d 108, 111 (2d Dep't 2021). As a surgeon demonstrated that the alleged lack of informed consent to the removal of the decedent's gallbladder did not proximately cause her injuries, the trial court properly dismissed the surviving spouse's action for medical malpractice and lack of informed consent. (*See* § 106.03[6].)

Magallanes de Valle v. Doctors Med. Ctr., 80 Cal. App. 5th 914, 914, 295 Cal. Rptr. 3d 828 (2022). In a medical malpractice case, the surgeon was not, as a matter of law, the ostensible agent of the hospital where the surgery was performed because the undisputed evidence showed that the patient had a long-standing physician-patient relationship with the surgeon and knew or should have known that the surgeon was not employed by the hospital. (*See* § 106.05[7].)

Williams v. Dimensions Health Corp., 480 Md. 24, 279 A.3d 954, 956 (2022). A hospital was vicariously liable for a surgeon's negligence in treating a patient in the hospital's emergency facility, which had been specifically designated for treating patients with serious and life-threatening injuries on an emergency basis, as a hospital may be vicariously liable for the negligence of a health care provider who staffs the hospital's emergency room, regardless of the formal relationship between the provider and the hospital, under the doctrine of apparent agency. (*See* § 106.05[7].)

Bogue v. Gillis, 311 Neb. 445, 973 N.W.2d 338, 339 (2022). The district court did not err in concluding that the statute of limitations started to run on the date of the surgery, and summary judgment in favor of the doctor on the plaintiffs' negligence claim was proper. The continuous treatment doctrine applied only when there had been a misdiagnosis on which incorrect treatment was given. (*See* § 106.06[2].)

Chapter 108, Premises Security

A.R.R. v. Tau Kappa Epsilon Fraternity, 649 S.W.3d 1, 5 (Mo. Ct. App. 2022). In a premises liability action against a fraternity and landlord, the alleged rape victim's argument that sexual assault and rape was a "known" danger was unavailing since the landlord and the victim

would have had equivalent knowledge, and Missouri does not impose a general duty on landlords or national fraternities to supervise the social activities of tenants/fraternity members to protect social guests from potential crimes. (*See* § 108.03[1][a].)

Achay v. Huntington Beach Union High Sch. Dist., 80 Cal. App. 5th 528, 528, 295 Cal. Rptr. 3d 867 (2022), *review denied*, 2022 Cal. LEXIS 5859 (Cal. Sept. 28, 2022). In a case in which a student was stabbed on her high school campus while walking to the parking lot after track practice, there was a triable issue as to whether the school district used reasonable security measures to protect its students based on evidence that supervisors were on campus only until 4:00 p.m., even though the public was allowed on campus beginning at 2:30 p.m., and many students involved in sports were still on campus, at least until about 6:00 p.m. (*See* § 108.03[1][c].)

Pappas Rests., Inc. v. Welch, 362 Ga. App. 152, 867 S.E.2d 155, 158 (2021). The trial court erred by denying a restaurant owner summary judgment on an injured patron's negligence action because she failed to raise a question of fact as to whether the shooting in the parking lot was foreseeable, as the prior crimes would not put the owner on notice of the possibility of a shooting because that was not the type of injury one would expect to follow from the break-in of unoccupied cars in a busy, well-lit parking lot. (*See* § 108.03[3][c].)

Chapter 109, Prisons, Jails, and Reformatories

Williamson v. Ada County, 509 P.3d 1133, 1136 (Idaho 2022). Dismissal of an inmate's claim that the county was negligent in ordering him to descend from the top bunk for roll call was improper, as the record was insufficient to conclude that the decision was a discretionary one under Idaho Code Ann. § 6-904. (*See* § 109.04[1][a].)

Cisneros v. Elder, 506 P.3d 828, 829, 2022 CO 13. When, after he was detained in a county facility for a federal immigration hold, an arrestee sued a county sheriff in his official capacity, alleging that his pretrial detainment constituted false imprisonment, the Colorado Governmental Immunity Act waived immunity for the sheriff because this provision applied to intentional torts resulting from the operation of a jail for claimants who were incarcerated but not convicted. (*See* § 109.04[2][a].)

Little v. Ohio Dep't of Rehab. & Corr., 2022-Ohio-3084, 2022 Ohio Misc. LEXIS 249, at *1 (Ohio Ct. Cl. July 29, 2022). In an inmate's action for negligence against the Ohio Department of Corrections, the department breached its duty of care to the inmate because assigning the inmate to an upper range cell and not correcting the assignment when the inmate informed the corrections officer of his multiple sclerosis created a dangerous condition. (*See* § 109.04[2][c].)

Tisdale v. Hedrick, 22-1 (La. App. 3 Cir. 06/08/22), 344 So. 3d 184. The trial court was not manifestly erroneous in allocating 90 percent of the fault to the Sheriff for his department's grossly negligent actions, as the failure of the Sheriff to perform his duty of overseeing the inmate was the proximate cause of the victim's injuries because he was by far in the best position to prevent the harm that occurred when the inmate, as a trustee, was able to walk away from his work detail, in street clothes, and attack the victim. (*See* §§ 109.10[2], 109.18.)

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Chapter 110, Products Liability

Maynard v. Snapchat, Inc., 313 Ga. 533, 870 S.E.2d 739, 743 (2022), *rev'g* 357 Ga. App. 496, 502, 851 S.E.2d 128 (2020). A manufacturer has a duty under Georgia decisional law to use reasonable care in selecting from alternative designs to reduce reasonably foreseeable risks of harm posed by its products and, when a particular risk of harm from a product was not reasonably foreseeable, a manufacturer owes no design duty to reduce that risk. (*See* § 110.04[7][a].)

Roemmich v. 3M Co., 21 Wn. App. 2d 939, 509 P.3d 306, 311 (2022). In an employee's negligence claim against a mask manufacturer after he was diagnosed with mesothelioma, a finding in favor of the manufacturer was improper because the proximate cause jury instruction misstated the law by combining the "but-for" and substantial factor causation tests when the evidence at trial established that the mask contributed at least partly to the employee's exposure and harm, regardless of the other exposures, and applying the "but-for" causation test would absolve the manufacturer of responsibility despite that evidence. (*See* § 110.04[17][c].)

LaScala v. QVC, 201 A.D.3d 798, 162 N.Y.S.3d 383, 386 (2d Dep't 2022). The trial court should have denied the defendants' motion for summary judgment on the strict products liability for design defect claim because the defendants' expert opined in mere conclusory fashion that the hoverboard was not defectively designed, without providing any explanation of the hoverboard's design, or any discussion of industry standards or costs, nor did the expert state whether the defendants had received complaints about any of the other hoverboards they had sold. (*See* § 110.06[3].)

Grieco v. Daiho Sangyo, Inc., 344 So. 3d 11, 2022 Fla. App. LEXIS 4094, at *1 (Fla. Dist. Ct. App. June 15, 2022). As the appellees were not strictly liable when a third party's injury resulted from a consumer's unintended and illegal use of a product, summary judgment in favor of appellees on a claim of strict liability for design defect was proper. (*See* § 110.06[3].)

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Chapter 111, Professional Liability

Halter v. Dagostino, 2022-Ohio-1069, P1, 2022 Ohio App. LEXIS 957 (Ohio Ct. App. Mar. 31, 2022).

The municipal court did not err by rendering a judgment in favor of a dentist because the patient failed to present evidence necessary to establish a dental malpractice claim, as the patient presented no expert testimony at trial to establish the requisite standard of care or how the treatment rendered by the dentist fell below the standard of care. (*See* § 111.08[3].)

Chvetsova v. Family Smile Dental, 202 A.D.3d 657, 163 N.Y.S.3d 98, 100 (2d Dep't 2022). The trial court improperly granted a dentist's motion to dismiss a medical malpractice and lack of informed consent action because the patient raised a question of fact as to whether her subsequent visits to the dentist constituted a continuation of the course of treatment for the same condition that allegedly arose as a result of malpractice. (*See* § 111.08[7].)

Pediatrics Cool Care v. Thompson, 649 S.W.3d 152, 154 (Tex. 2022). In a case in which a teen committed suicide after seeking treatment for depression from her pediatric healthcare providers, the expert testimony at trial established the medical providers' negligence, but did not establish that, but for the negligence, the teen would not have committed suicide, and, thus, the court reversed the verdict for the teen's family. (*See* § 111.11[3], [10].)

Doe v. Langer, 206 A.D.3d 1325, 171 N.Y.S.3d 594, 596 (3d Dep't 2022). In an action against a rehabilitation center and its program director, licensed master social workers, licensed clinical social workers, and licensed mental health counselors, in which the plaintiff was kidnapped at knifepoint, raped, and sexually assaulted by an outpatient client, the defendants failed to prove a lack of duty to take reasonable steps to prevent the client from harming members of the general public. (*See* § 111.11[11].)

Chapter 112, Public Officers and Employees

Baznik v. FCA US, LLC, 2021-NCCOA-583, 280 N.C. App. 139, 140, 867 S.E.2d 334, 335. The defendants were not entitled to public official immunity through their employment with the North Carolina Department of Transportation (NCDOT) as they were only public employees and not public officials, and, though N.C. Gen. Stat. §§ 136-18, 143B-345, and 143B-346 granted statutory responsibility to NCDOT, those statutes did not in turn delegate such statutory authority to employees of NCDOT. (*See* § 112.01[1].)

Cisneros v. Elder, 506 P.3d 828, 829, 2022 CO 13. When, after he was detained in a county facility for a federal immigration hold, an arrestee sued a county sheriff in his official capacity, alleging that his pretrial detainment constituted false imprisonment, the Colorado Governmental Immunity Act waived immunity for the sheriff because this provision applied to intentional torts resulting from the operation of a jail for claimants who were incarcerated but not convicted. (*See* § 112.05[1].)

Silva v. Langford, 79 Cal. App. 5th 710, 710, 294 Cal. Rptr. 3d 714

(2022). In a case in which plaintiffs sued a California Highway Patrol (CHP) sergeant for negligence and wrongful death after the sergeant's patrol car struck and killed the plaintiffs' son while the sergeant was responding to an emergency call concerning an altercation on the freeway, the trial court properly sustained the CHP sergeant's demurrer based on the plaintiffs' concession at oral argument that the CHP sergeant was entitled to immunity as an emergency responder under Cal. Veh. Code § 17004. (*See* § 112.05[1].)

Gualtieri v. Pownall, 2022 Fla. App. LEXIS 2356, at *1 (Fla. Dist. Ct. App. Mar. 30, 2022). An order denying a sheriff's motion to dismiss a negligence action brought by an arrestee was improper because the decision to remove seatbelts from the transport vehicle was a discretionary function for which the sheriff was protected by sovereign immunity. (*See* § 112.05[3].)

Chapter 113, Public Utilities

Barber v. Southern Cal. Edison Co., 80 Cal. App. 5th 227, 295 Cal. Rptr. 3d 327, 328 (2022). When summary judgment based on lack of causation was proper on a negligence claim alleging stray voltage from a substation had shocked homeowners because the electric company presented uncontested expert evidence that the level of voltage necessary to cause a perceptible shock was not present and no expert testified stray voltage had caused the shocks, the res ipsa loquitur doctrine did not aid the homeowners because evidence in the record indicated that shocks could have non-negligent sources outside of the company's control, such as static electricity or faulty wiring, and the company's evidence conclusively negated causation. (*See* § 113.01[8], [10.]

Walter Family Grain Growers, Inc. v. Foremost Pump & Well Servs., LLC, 21 Wn. App. 2d 451, 506 P.3d 705, 707 (2022). Dismissal of a farm's negligence action against a power company was improper because industry standards and regulations alone did not set a utility's duty of care in a tort, and the farm's evidence is sufficient to raise a material issue of fact on whether the power company breached its duty of care. (*See* § 113.01[11].)

CenterPoint Energy Res. Corp. v. Ramirez, 640 S.W.3d 205, 207 (Tex. 2022). In a case of first impression, a public utility was entitled to judgment as a matter of law because the limitation of liability in its filed and approved tariff was reasonable, enforceable, and binding under the filed-rate doctrine and the tariff plainly barred the utility's liability for ordinary negligence as alleged by the residential customer's houseguests. (*See* § 113.25.)

Chapter 114, Punitive Damages

Swift Transp. Co. v. Carman, 515 P.3d 685, 688 (Ariz. 2022). In a negligence suit, the court erred in granting the plaintiffs' "motion on prima facie case for punitive damages" because, while a truck driver might have been negligent in failing to reduce his speed to avoid hydro-

planing and losing control of vehicle, his conduct did not amount to the "something more" that precedents required to demonstrate an evil mind. (*See* § 114.02[2].)

McNeal v. Whittaker, Clark & Daniels, Inc., 80 Cal. App. 5th 853, 853, 2022 Cal. App. LEXIS 587 (Cal. Ct. App. July 5, 2022). A jury's award of punitive damages against a distributor of asbestos-containing talc had to be reversed because evidence that the distributor's testing was inadequate to detect trace amounts of asbestos was insufficient to establish by clear and convincing evidence, under Cal. Civ. Code § 3294, subd. (a), that any officer, director, or managing agent acted with malice, oppression, or fraud. (*See* § 114.02[2].)

Louisville SW Hotel, LLC v. Lindsey, 636 S.W.3d 508, 511 (Ky. 2021). In a wrongful death suit against a motel after a child drowned in its pool, the trial court did not err in instructing the jury on punitive damages because the estate introduced evidence that the motel failed to comply with health department regulations and its own occupancy policy and that that this indifference created a condition in which, due to a combination of cloudy water, crowdedness, and the absence of a lifeguard, the decedent's struggles in the pool went unnoticed. (*See* § 114.02[4].)

McQueen v. Green, 2022 IL 126666, P1, 2022 Ill. LEXIS 364 (Ill. Apr. 21, 2022). A $1 million punitive damages award was not excessive, because the employer's failure to reject the uneven load was so grossly negligent that it amounted to a wanton disregard for the rights of others on the highway. (*See* § 114.02[4].)

Chapter 115, Railroads

Jesski v. Dakota, Minn. & E. R.R. Corp., 43 F.4th 861, 863 (8th Cir. 2022). In an action arising out of a collision between a locomotive and automobile at a railroad crossing, the plaintiffs' excessive speed claim was preempted by the Federal Railroad Safety Act, as the locomotive was undisputedly traveling under the limit set by the Federal Railroad Administration, and, on the claim that the locomotive crew negligently failed to keep a proper lookout, the plaintiffs failed to present sufficient evidence of causation as they failed to show that the crew could have recognized the imminent danger of the automobile in time to avoid the collision even had they kept a proper lookout. (*See* § 115.05[4][b], [c].)

Chapter 117, Religious Organizations and Institutions

Auguste v. Hyacinthe, 2022 Fla. App. LEXIS 6020, at *11–12 (Fla. Dist. Ct. App. Sept. 7, 2022). The trial court did not err in dismissing the plaintiff's cause of action for conversion based on the ecclesiastical abstention doctrine because that claim would necessarily require the trial court to determine who controlled the church, but the trial court erred in dismissing the three other counts of the complaint based on the ecclesiastical abstention doctrine, because resolution of those counts, at least at the stage of the pleadings

below, required only the application of neutral principles of law. (*See* § 117.02.)

VOLUME 25

Chapter 119, Rescuers and the Duty to Act

Samolyk v. Berthe, 251 N.J. 73, 276 A.3d 108, 109 (2022). A rescuer's actions in jumping into a canal were based solely on her perception of danger to a dog's life and did not give rise to a cognizable claim, as sound public policy could not sanction expanding the rescue doctrine to imbue property with the same status and dignity uniquely conferred on a human life. (*See* § 119.02[4].)

Stoots v. Marion Life Saving Crew, Inc., 300 Va. 354, 867 S.E.2d 40, 42 (2021). The circuit court did not err in finding that volunteer paramedics were immune from liability under Virginia's Good Samaritan Law for failing to take steps to resuscitate a patient, because, while they made a mistake in misreading the patient's advance medical directive, that mistake without more did not rise to the level of bad faith. (*See* §§ 119.04, 119.12.)

Williams v. City of Tybee Island, 362 Ga. App. 775, 870 S.E.2d 100, 101 (2022). The trial court did not err by granting the City's motion for summary judgment on the ground that the plaintiff's son assumed the risk by going into the ocean at the beach because the son's decision to risk traversing a known hazard to follow his conscience and attempt to save another person did not amount to coercion; the plaintiffs' argument that the rescue doctrine resulted in liability for the City lacked merit, as neither the city nor the lifeguard caused any of the teens to be in the water. (*See* § 119.05[2].)

Estate of McCartney v. Pierce County, 22 Wn. App. 2d 665, 513 P.3d 119, 124 (2022). The dismissal of an estate's complaint for wrongful death was proper following the death of the sheriff's deputy in the line of duty; the professional rescuer doctrine applied because the deputy's action was not a spontaneous reaction, but was a professional law enforcement officer deliberately responding to a crime and doing his duty. (*See* § 119.07[1].)

Chapter 120, Right of Privacy

Waterbury v. New York City Ballet, Inc., 205 A.D.3d 154, 168 N.Y.S.3d 417, 420 (1st Dep't 2022). A city ballet school student sufficiently stated a violation of N.Y.C. Administrative Code § 10-180 (unlawful exposure of an intimate image) because she alleged that a principal dancer, with whom she had an intimate relationship, secretly and without her consent took and shared with other employees photographs and videos of her naked and often engaged in intimate activity and that the principal dancer intended to cause her harm, particularly as she alleged that the principal dancer knew that she did not want him to take or share intimate images of her, but that he did it anyway. (*See* § 120.02[1].)

Chapter 121, Seamen

In re White, 2022 U.S. Dist. LEXIS 87056, at *25 (W.D.NY. May 13, 2022). In a suit under the Limitation of Liability Act, in which the plaintiffs were injured when a vessel dismasted, one plaintiff could not recover for claims of maintenance and cure and the warranty of seaworthiness because she could not establish that she was a seaman as she was not an employee of the vessel but employed as a land-based worker for an unrelated entity who engaged in sailboat racing recreationally, and the evidence did not show that her connection to the vessel was substantial in duration and nature. (*See* § 121.01.)

Jarvis v. Hines Furlong Line, Inc., 2022 U.S. App. LEXIS 15609, at *1 (6th Cir. June 6, 2022). In a personal injury suit under the Jones Act, the vessel was not "in navigation" and thus the employee was not a seaman under 46 U.S.C.S. § 30104, because extensive repairs were being made on the hull and the crew was not on board; the fact that the vessel was placed in water on occasions during its repair did not establish that it was used, or capable of being used, for maritime transportation. (*See* § 121.04[2].)

Mullinex v. John Crane Inc., 2022 U.S. Dist. LEXIS 104413, at *1 (E.D. Va. June 10, 2022). In a wrongful death case based on the decedent's asbestos exposure aboard Navy ships, the plaintiff failed to state a viable survival claim for the decedent's pain and suffering and medical expenses because policy considerations did not compel recognition of survival damages for pre-death pain and suffering or medical expenses in maritime wrongful death actions. (*See* § 121.13.)

Jones v. Morrison Energy Group, LLC, 2022 U.S. Dist. LEXIS 25698, at *1 (E.D. La. Feb. 14, 2022). In a personal injury action arising from injuries sustained when the plaintiff was employed by the defendant as a Jones Act seaman, the plaintiff was not entitled to punitive damages because such were not recoverable for a Jones Act claim or for unseaworthiness claims under general maritime law. (*See* § 121.13.)

Chapter 122, Sexual Harassment and Discrimination

Forsythe v. Wayfair Inc., 27 F.4th 67, 70 (1st Cir. 2022). In a Title VII action involving inappropriate sexual touching by a co-worker, the grant of summary judgment to the employer on the sexual harassment claim was affirmed because nothing in this record suggested that the employer communicated to the employee, even implicitly, that she was not free to volunteer that external corroboration existed or that it would have been futile for her to have done so, but the grant of summary judgment to the employer on the retaliation claim was reversed because the record provided a supportable basis for concluding that, even though the employee had never made an offer to resign, she was treated as if she had and thereby terminated from her employment against her wishes. (*See* § 122.02[2][c].)

Klotz v. Game On Sports Bar & Grill, 2022-Ohio-2847, P1, 2022 Ohio App. LEXIS 2695 (Ohio Ct. App. Aug. 17, 2022). No genuine issue of material fact existed as to whether an employer failed to take immediate and appropriate corrective action in response to a former employee's claim of sexual harassment because the evidence demonstrated the employer took the employee's allegation seriously by issuing a warning to the coworker within hours of the employee's complaint and taking steps to ensure that the employee never had to be alone with the coworker again. (*See* § 122.03[4][k].)

Chapter 123, Sexually Transmitted Diseases

Doe v. Roe, 362 Ga. App. 23, 864 S.E.2d 206, 210 (2021). The trial court correctly granted summary judgment to the defendant on the plaintiff's claims for negligence and gross negligence based on the alleged transmittal of genital herpes because the plaintiff failed to come forward with any expert evidence regarding causation when the doctor's affidavit contained no expert opinion on causation. (*See* § 123.04[2][a].)

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Chapter 124, Ship Passengers

Fuentes v. Classica Cruise Operator Ltd., 32 F.4th 1311, 1315 (11th Cir. 2022). In a negligence action under maritime law, in which cruise ship passengers assaulted another passenger during disembarkation, summary judgment for the cruise line was proper because the assaulted passenger had not presented sufficient evidence to create an issue of fact as to whether the cruise line had actual notice that the other passengers would attack him during disembarkation. (*See* § 124.01[4].)

Ehart v. Lahaina Divers Inc., 2022 U.S. Dist. LEXIS 84040, at *1 (D. Haw. May 10, 2022). In an action arising out of a fatal dive boat accident, the court struck the boat owner and captain's affirmative defense of waiver and release because the waiver signed by the plaintiff and the decedent was void under 46 U.S.C.S. § 30509, which prohibited waivers with respect to vessels transporting passengers between ports in the United States. (*See* § 124.08[3].)

Chapter 125, Shore Workers

Becnel v. Lamorak Ins. Co., 2022 U.S. Dist. LEXIS 107310, at *1 (E.D. La. June 16, 2022). The Longshore and Harbor Workers' Compensation Act (LHWCA) preempted state-law claims because the plaintiffs, the employee and others, could have brought their claims under the LHWCA as the employee's status fell within the coverage of the LHWCA because he performed an essential step of the shipbuilding process, and his alleged asbestos exposure occurred on a covered situs, and permitting the state law tort claims would have obstructed the purposes of the LHWCA; the plaintiffs' offsite asbestos exposure claim arose out of and in the course of the employee's employment at the employer and was therefore covered by the LHWCA. (*See* § 125.01[1], [9].)

Morales v. Anco Insulations Inc., 2022 U.S. Dist. LEXIS 80633, at *1 (E.D. La. May 4, 2022). The defendants, a former employer, executives, and liability insurers, were entitled to summary judgment on the plaintiffs' tort claims arising out of the deceased employee's asbestos exposure because the plaintiffs could have brought their claims under the Longshore and Harbor Workers' Compensation Act (LHWCA) as the employee's status fell within the coverage of the LHWCA and his injuries occurred on a covered situs, and, because permitting the plaintiffs' state tort claims against the defendants would obstruct the purposes of the LHWCA, the claims were preempted and had to be dismissed. (*See* § 125.01[1].)

Chapter 129, Snow, Ice, and Sleet

Gore v. Pilot Travel Ctrs., LLC, 2021 IL App (3d) 210077, P1, 2021 Ill. App. LEXIS 666 (Ill. App. Ct. Dec. 9, 2021). In a slip-and-fall case, alleging a property owner was liable for the plaintiff's injuries because it failed to remove all traces of ice from its sidewalks, the plaintiff failed to present any evidence the owner's voluntary ice removal efforts created an unnatural accumulation of ice on the sidewalk where he fell. (*See* § 129.03[1].)

Ermel v. SMA Enters., 30 Neb. App. 754, 973 N.W.2d 364, 367 (2022). In a case in which the plaintiff was injured after slipping on an accumulation of ice, while the court agreed that the risk of ice in general, on an indisputably wintery day, was an open and obvious risk to the plaintiff, there was a reasonable inference that the accumulation of ice under the downspouts in this case created a risk of harm that was different in character from the risk of ice in general. (*See* § 129.03[1].)

Fitzsimons v. North Shore Univ. Hosp., 205 A.D.3d 684, 165 N.Y.S.3d 753, 753 (2d Dep't 2022). When the plaintiff allegedly slipped and fell on ice while walking to his car on the fourth-floor roof of the defendant's visitor parking garage, the defendant made a prima facie showing of its entitlement to judgment as a matter of law by submitting an affidavit of a meteorologist with attached certified climatological data, which demonstrated that at the time of the plaintiff's accident, less than two hours had passed since the end of the storm. (*See* § 129.03[3].)

Chapter 130, Sports Injury

Mayes v. La Sierra Univ., 73 Cal. App. 5th 686, 288 Cal. Rptr. 3d 693, 697 (2022). In a case in which the plaintiff was struck in the face by a foul ball while attending an intercollegiate baseball game, the defendant university did not meet its burden of showing that the primary assumption of risk doctrine barred the plaintiff's negligence claim. (*See* § 130.11[1][a], [2][a].)

Clark v. University of Oregon, 319 Or App. 712, 512 P.3d 457, 458 (2022). In a negligence case in which the plaintiff suffered a knee injury while a basketball coach put him through a basketball drill during a visit to the university's basketball

program, the court erred in granting summary judgment for the defendants because the conduct by the defendants that the plaintiff alleged unreasonably created a foreseeable risk of harm to him went beyond ordinary participation in a sports activity, and it was squarely within the province of the jury to assess the reasonableness of defendants' conduct and the foreseeability of the risk of harm to plaintiff. (*See* § 130.12[1][b].)

Lungen v. Harbors Haverstraw Homeowners Ass'n, Inc., 206 A.D.3d 714, 170 N.Y.S.3d 159, 160 (2d Dep't 2022). In a personal injury action alleging that the plaintiff was injured while playing basketball when he slipped on condensation that had accumulated on the floor of an indoor gymnasium, the defendants were properly granted summary judgment because the plaintiff assumed the risk of injury inherent in playing basketball on an indoor court that he knew to become slippery due to humid conditions in the gymnasium. (*See* § 130.12[2][b].)

Brown v. El Dorado Union High School Dist., 76 Cal. App. 5th 1003, 292 Cal. Rptr. 3d 72, 78 (2022). In a suit against a high school district after the plaintiff suffered a traumatic brain injury during a football game, summary judgment in favor of the district was proper due to the parents' express assumption of the risks associated with their son's participation in the football program. (*See* §§ 130.17[3][b], 130.31[2].)

Bodden v. Holiday Mountain Fun Park Inc., 200 A.D.3d 1432, 160 N.Y.S.3d 433, 434 (3d Dep't 2021). Dismissal of a skier's suit against a ski facility was error based on a record showing disputed issues of fact on the doctrine of primary assumption of risk as the skier had expressed reservations to the instructor about whether she was ready to progress off the bunny hill and whether the instructor encouraged her in a manner that was overzealous under the circumstances. (*See* § 130.24[2].)

Chapter 130A, Spouses

Ripple v. CBS Corp., 337 So. 3d 45, 47 (Fla. Dist. Ct. App. 2022), *review granted*, 2022 Fla. LEXIS 1214 (Fla. Aug. 9, 2022). As a matter of first impression, the court agreed with the decedent's estate that, if a spouse who had married the decedent after the decedent's injury is barred from recovering damages under the Florida Wrongful Death Act, Fla. Stat. § 768.21(2), which requires that the spouse be married to the decedent at the time of the injury, then the decedent's surviving adult children may recover damages under the Florida Wrongful Death Act § 768.21(3), since there is no "surviving spouse" for purposes of the statute. (*See* § 130A.02[2][c].)

See's Candies, Inc. v. Superior Court, 73 Cal. App. 5th 66, 288 Cal. Rptr. 3d 66, 69 (2021), *review denied*, 2022 Cal. LEXIS 1976 (Cal. Apr. 13, 2022). Regardless of whether an employee who allegedly contracted COVID-19 at work because of the employers' failure to

implement adequate safety measures sustained a workplace injury for purposes of the California Workers' Compensation Act, the derivative injury doctrine did not apply to extend workers' compensation exclusivity to a wrongful death claim alleging that the employee's spouse had died of the disease after catching it from the employee because such a claim did not seek damages for losses arising from a disabling or lethal injury to the employee. (*See* § 130A.02[2][g].)

Chapter 131, States and State Agencies

McKinley v. Gualtieri, 338 So. 3d 429, 431 (Fla. Dist. Ct. App. 2022). In a suit against a sheriff in his official capacity, alleging that a deputy sheriff was negligent in handling a K-9 dog that bit the plaintiff at a baseball stadium, the suit was not barred by sovereign immunity, because, although the decision to patrol the baseball venue with K-9s might have been discretionary, the act of patrolling the venue with K-9s was operational. (*See* § 131.01[2].)

Ladra v. State, 177 N.E.3d 412, 413 (Ind. 2021). In a tort suit brought by a plaintiff who was injured when her car hydroplaned after striking a flooded area in the highway, the trial court erred in granting summary judgment in favor of the Department of Transportation (DOT) on the issue of immunity under Ind. Code § 34-13-3-3(3) because the evidence showed DOT had long known of the defect causing the highway to flood and failed to remedy the defect. (*See* § 131.03[2][f].)

E.C. v. Inglima-Donaldson, 470 N.J. Super. 41, 268 A.3d 1029, 1031 (App. Div. 2021). By disabling Tort Claims Act immunities in sexual misconduct cases, the Legislature undoubtedly intended to make the plaintiff's pursuit of a remedy realistic rather than illusory, and, by its very language, N.J. Stat. Ann. § 59:9-2(d) did not purport to free a public entity from liability but instead limited the damages that may be awarded once a public entity was held liable by precluding damages for pain and suffering unless certain circumstances were met. (*See* § 131.05.)

Chapter 132, Storms

Fitzsimons v. North Shore Univ. Hosp., 205 A.D.3d 684, 165 N.Y.S.3d 753, 753 (2d Dep't 2022). When the plaintiff allegedly slipped and fell on ice while walking to his car on the fourth-floor roof of the defendant's visitor parking garage, the defendant made a prima facie showing of its entitlement to judgment as a matter of law by submitting an affidavit of a meteorologist with attached certified climatological data, which demonstrated that at the time of the plaintiff's accident, less than two hours had passed since the end of the storm. (*See* § 132.01[1].)

Ocasio v. Verdura Constr., LLC, 215 Conn. App. 139, 141, 2022 Conn. App. LEXIS 274 (Conn. Ct. App. Sept. 13, 2022). The trial court erred by instructing on the ongoing storm doctrine because it was inapplicable as the plaintiff was not claiming that his fall was due to snow and ice that the defendant had failed

to remove or treat; the theory of the plaintiff's case was that his fall was due to the defective railing and not due to the presence of snow and ice on the porch. (*See* § 132.01[1].)

Chapter 136, Taxicabs

Jane Doe No. 1 v. Uber Techs., Inc., 79 Cal. App. 5th 410, 410, 294 Cal. Rptr. 3d 664 (2022), *review denied*, 2022 Cal. LEXIS 5038 (Cal. Aug. 24, 2022). In a case in which three Jane Does were abducted and then sexually assaulted by assailants who lured the Jane Does into their vehicles by posing as authorized drivers of the defendants' ridesharing app, the defendants were not in a special relationship with the Jane Does that would give rise to a duty to protect the Jane Does against third party assaults or to warn them about the same, and there was no duty to protect based on a common carrier-passenger relationship or contract-based special relationship. (*See* § 136.01[2][b].)

Hart v. Phung, 364 Ga. App. 399, 876 S.E.2d 1, 2 (2022). The trial court erred by granting summary judgment in favor of the defendants because genuine issues of material fact exist with regard to whether the Uber driver should have seen the plaintiff pedestrian and could have avoided hitting her through the exercise of ordinary care. (*See* § 136.03[2].)

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Chapter 138, Toxic Torts

Certain Underwriters at Lloyd's London v. ConAgra Grocery Prods. Co., LLC, 77 Cal. App. 5th 729, 292 Cal. Rptr. 3d 712, 716 (2022), *review denied*, 2022 Cal. LEXIS 4175 (Cal. July 20, 2022). A successor to a lead paint manufacturer was not entitled to indemnity from its insurers for a lead paint abatement payment ordered in an underlying representative public nuisance action because the implied exclusion of an insured's willful acts applied in a successor liability situation and the successor knew that the predecessor may have committed some wrongdoing and thereby agreed to assume any liability therefore. (*See* § 138.11[2].)

Roemmich v. 3M Co., 21 Wn. App. 2d 939, 509 P.3d 306, 311 (2022). A finding in favor of the manufacturer in the employee's negligence claim after he was diagnosed with mesothelioma was improper because the proximate cause jury instruction misstated the law and the superseding cause instruction was not supported by substantial evidence, and those erroneous instructions prejudiced the outcome of the trial. (*See* §§ 138.21[4], [5], 138.22[2].)

Nemeth v. Brenntag N. Am., 38 N.Y.3d 336, 173 N.Y.S.3d 511, 194 N.E.3d 266, 268 (2022). The trial court erred in denying a manufacturer's motion for judgment notwithstanding the verdict after a jury awarded a decedent's husband damages because the testimony of the husband's expert failed to demonstrate the decedent's level of exposure to asbestos in a manner that established causation. (*See* § 138.21[6][a].)

Chapter 139, Trees

Fry v. City of Cincinnati, 2022-Ohio-1248, P1, 2022 Ohio App. LEXIS 1169 (Ohio Ct. App. Apr. 15, 2022). In a case alleging that the plaintiff was injured as a result of the city's negligent failure to maintain trees on its property, the complaint failed to state a claim upon which relief could be granted against the city, because, taking the allegations as true, the plaintiff failed to allege that her injury occurred within or on the grounds of a building used in connection with a governmental function, sufficient to establish the second requirement of the physical-defect exception to the city's general grant of immunity. (*See* § 139.03[3].)

Chapter 140, Trespass

Garrison v. New Fashion Pork LLP, 977 N.W.2d 67, 72 (Iowa 2022). Without expert testimony tying the defendants' alleged misapplication or over-application of manure to the nitrate levels in the plaintiff's stream, the plaintiff could not, as a matter of law, meet his burden of proving that any trespass or drainage violation proximately caused any damage to the plaintiff. (*See* § 140.01[1].)

Chapter 141, Trucks, Tractors, Trailers, and Road Rollers

McQueen v. Green, 2022 IL 126666, P1, 2022 Ill. LEXIS 364 (Ill. Apr. 21, 2022). In an injured motorist's tort suit against the driver of a tractor trailer and his employer, an employer that acknowledged vicarious liability for an employee's conduct could still be held independently liable for its own negligence, separate and apart from the employee's conduct, and the $1 million punitive damages award was not excessive, because the employer's failure to reject the uneven load was so grossly negligent that it amounted to a wanton disregard for the rights of others on the highway. (*See* §§ 141.01[7], 141.03.)

Darling Ingredients Inc. v. Moore, 337 So. 3d 214, 215 (Miss. 2022). Because, in the ordinary course of things, tire failure may have been attributable to a number of causes, some involving negligence by the vehicle's driver or owner, and some not, the doctrine of res ipsa loquitur was not applicable to the facts alleged by an injured driver; therefore, the corporation and its employee, who was driving the truck and trailer rig that suffered a failed tire, were entitled to summary judgment because no genuine issue of material fact existed as the injured driver produced no evidence of negligence. (*See* § 141.01[9].)

Chapter 144, Volunteers

Stoots v. Marion Life Saving Crew, Inc., 300 Va. 354, 867 S.E.2d 40, 42 (2021). The circuit court did not err in finding that volunteer paramedics were immune from liability under Virginia's Good Samaritan Law for failing to take steps to resuscitate a patient, because, while they made a mistake in misreading the patient's advance medical directive, that mistake without more did not rise to the level of bad faith. (*See*

§ 144.04[2].)

Chapter 145, Waters

Murray v. AET Inc., 2022 U.S. Dist. LEXIS 154166, at *1 (S.D.N.Y. Aug. 26, 2022). In an action by an estate against a vessel and its owner for its decedent's death after falling from a ladder on the side of a vessel while the vessel was at a distance of approximately seven nautical miles from the shore of New York, the Death on the High Seas Act (DOSHA) applied to the suit because, based on the plain language of the statute, it began to apply at three nautical miles, and DOSHA preempted the application of general maritime law and state law causes of action for wrongful death and survival. (*See* § 145.01[6].)

Williams v. City of Tybee Island, 362 Ga. App. 775, 870 S.E.2d 100, 101 (2022). In a wrongful death action by parents after their 17-year-old son drowned trying to rescue a friend in distress when both teens were caught in a strong current in the waters off Tybee Island, the trial court did not err by granting the City's motion for summary judgment on the ground that the plaintiff's son assumed the risk by going into the ocean at the beach because the son's decision to risk traversing a known hazard to follow his conscience and attempt to save another person did not amount to coercion. (*See* § 145.03[2].)

Ehart v. Lahaina Divers Inc., 2022 U.S. Dist. LEXIS 84040, at *1 (D. Haw. May 10, 2022). In an action arising out of a fatal dive boat accident, the court struck the boat owner and captain's affirmative defense of waiver and release because the waiver signed by the plaintiff and the decedent was void under 46 U.S.C.S. § 30509, which prohibited waivers with respect to vessels transporting passengers between ports in the United States. (*See* § 145.03[3].)

Chapter 147, Workers' Compensation

Munoz v. Bulley & Andrews, LLC, 2022 IL 127067, 456 Ill. Dec. 769, 193 N.E.3d 1177, 1179. The exclusive remedy provisions of the Workers' Compensation Act do not extend to a general contractor who is not the employee's immediate employer, and the Act includes no category granting non-employers and legally distinct entities the ability to acquire immunity and insulate against liability for negligence by paying workers' compensation insurance premiums or benefits on behalf of an injured worker's direct employer. (*See* § 147.02[1].)

Dutcher v. Nebraska Dep't of Corr. Servs., 312 Neb. 405, 979 N.W.2d 245, 248 (2022). Summary judgment was properly awarded to the employer in an employee's suit under the Nebraska Fair Employment Practice Act for wrongful termination because the employee's claimed discrimination was a claim "arising from" a knee injury that was caused by an accident arising out of and in the course of her employment, and, therefore, the Nebraska Workers' Compensation Act provided the sole remedy. (*See* § 147.07[1].)

See's Candies, Inc. v. Superior Court, 73 Cal. App. 5th 66, 288 Cal. Rptr. 3d 66, 69 (2021), *review denied*, 2022 Cal. LEXIS 1976 (Cal. Apr. 13, 2022). Regardless of whether an employee who allegedly contracted COVID-19 at work because of the employers' failure to implement adequate safety measures sustained a workplace injury for purposes of the California Workers' Compensation Act, the derivative injury doctrine did not apply to extend workers' compensation exclusivity to a wrongful death claim alleging that the employee's spouse had died of the disease after catching it from the employee because such a claim did not seek damages for losses arising from a disabling or lethal injury to the employee. (*See* § 147.07[1.])

Bestgen v. Haile, 643 S.W.3d 647, 649 (Mo. Ct. App. 2022), *transfer denied*, 2022 Mo. LEXIS 156 (Mo. May 17, 2022). Given that the appellant admitted that the co-employee did not intend to injure him when a trench they were working on collapsed, there appeared to be no genuine issue of material fact that the co-employee's affirmative, negligent act was not employed purposefully and dangerously to cause or increase the risk of injury to the appellant, and, therefore, the co-employee was entitled to immunity under the Workers' Compensation Act. (*See* § 147.08[1][b].)

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