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THE BASSETT BULLETIN™

PUTTING THE CART BEFORE THE HORSE: THE ISSUE OF STANDING.

THE FACTS

On April 30, 2004, members of the Alice High School band went on a field trip to San Antonio, Texas. The Alice Independent School District contracted with Garcia Holiday Tours to transport the students on one of its buses. The bus driver was Raul Garcia, an employee of Garcia Holiday Tours. Unknown to Garcia, he was infected with active tuberculosis. After the trip, Garcia was diagnosed with active tuberculosis and all of the passengers were subsequently tested and several tested positive for latent tuberculosis.

The passengers who tested positive brought suit against Garcia and Garcia Holiday Tours, asserting they were negligently exposed to the tuberculosis while on the trip and contracted it as a result of being in the closed environment of the bus.

There were two lawsuits that stemmed from this incident: one group of passengers filed a lawsuit entitled *Oscar Perez, II, et al. v. Raul Garcia, et al.*, in the 79th District Court of Jim Wells County, Texas, and another single passenger filed his own lawsuit entitled *John A. Vela, Jr. v. Raul Garcia and Garcia Holiday Tours, L.C.*, in the 79th District Court of Jim Wells County, Texas.

Upon being sued by the passengers, Garcia Holiday Tours made a written demand on its business automobile insurance carrier, Lancer. Lancer denied it had a duty to defend this case and the *Perez* lawsuit went to trial. The jury found in favor of the *Perez* Plaintiffs and they were awarded a judgment for \$5.25 million in total damages against Garcia and Garcia Holiday Tours. The *Vela* case is still currently pending and has not been tried to a jury.

THE APPEAL

After judgment was rendered, Garcia and Garcia Holiday Tours proceeded to seek recovery against Lancer. Garcia and Garcia Holiday Tours filed a declaratory judgment suit asserting that Lancer had a duty to defend and had a duty to indemnify them for the full amount of the \$5.25 million judgment rendered in the *Perez* lawsuit. The *Perez* Plaintiffs and Vela intervened in the declaratory judgment coverage action. What is interesting about Vela intervening in the declaratory judgment action is that Vela is not a named insured under the Lancer policy nor does Vela have a judgment to collect because his case has not gone to verdict.

In the declaratory judgment action, Vela filed a Traditional Motion for Summary Judgment seeking to establish that Lancer had a duty to defend and to indemnify Garcia and Garcia Holiday Tours in Vela's *pending* lawsuit. The trial court granted Vela's motion and held that Lancer did indeed have a duty to defend and to indemnify Garcia and Garcia Holiday Tours in the pending *Vela* suit.

On appeal, Lancer asserted that Vela had no standing to pursue his claim in intervention in this coverage action between Lancer and its insured Garcia Holiday Tours; therefore, the trial court erred in granting Vela's motion for summary judgment.

When Vela intervened in the declaratory judgment coverage action between Lancer and Garcia/Garcia Holiday Tours, he asserted that his factual allegations were identical to those in the *Perez* suit and requested a declaratory judgment that his claim was covered under the Lancer policy. Lancer moved for summary judgment, asserting that Vela lacked standing to pursue his claim in intervention because he was not a party to the *Perez* lawsuit, and thus there was no real justiciable controversy between Vela and Lancer in the coverage action.

Vela argued that Lancer was judicially estopped from challenging his standing. However, the Court of Appeals disagreed with Vela. As a necessary component of subject matter jurisdiction, standing cannot be conferred by estoppel, consent or waiver. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443-45 (Tex. 1993). Further, the Supreme Court held that standing requires that a real controversy exist between the parties which will be actually determined by the judicial declaration sought.

Here, unlike Garcia Holiday Tours, Vela was not the insured under the Lancer policy, and, unlike the *Perez* Plaintiffs, Vela's claims had never been adjudicated and he did not hold a judgment against Lancer's insured. Moreover, Garcia Holiday Tours never moved for a summary judgment declaring that Lancer owed it a duty to defend or indemnify in the *Vela* lawsuit.

The Court of Appeals held that Vela had no justiciable interest in this coverage action, and thus no standing. However, this case is currently before the Supreme Court and oral arguments were scheduled to be heard on January 4, 2011, on the various issues of this appeal.

HOW DOES THIS CASE AFFECT YOU?

Based on the Court of Appeals' ruling, here are some thoughts to consider on the issue of standing.

1. It is our position that the Court of Appeals is essentially telling Vela that you can't put the cart in front of the horse. Vela attempted to circumvent the issue that the *Perez* Plaintiffs faced by determining Lancer's duty to indemnify before the liability portion of Vela's case had been established. The Court of Appeals held that a party cannot do that and that the party has to have an actual dispute and not a theoretical dispute or claim in order to have standing. Standing is the ability of a party to demonstrate to the court that there is a connection to, and harm from, the law or action challenged to support that party's participation in the case.
2. Standing cannot be waived and agreed to by the parties. A party must have actual standing in order for the court to hear the dispute.
3. In order to have standing, you have to have three things:
 - **Injury:** The injury must be actual or imminent, distinct and palpable, not abstract. This injury could be economic as well as non-economic.

- **Causation:** The party needs to be able to show that the conduct or action of the other party is the causal connection between the injury and the conduct complained of. The injury needs to be traceable to the challenged action of the defendant and not the result of the independent action of some third party who is not before the court
- **Redressability:** It must be likely, as opposed to speculative, that a favorable court decision will redress the injury.



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