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Abstracts of Recent Cases

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**Federal Courts—Diversity of Citizenship—
Corporation's Principal Place of Business**

Appellants, citizens of Pennsylvania, brought an action in federal district court alleging jurisdiction under diversity of citizenship. 28 U.S.C.A. § 1332(c) (Supp. 1960). Appellants alleged *D* corporation had its principal place of business in New York and thus had citizenship diverse to that of appellants. The district court held that *D*'s principal place of business was in Pennsylvania and dismissed for want of jurisdiction. *Held*, affirmed. While professedly rejecting the test that the principal place of business should be where the "nerve center" of the corporation is, the court declared the determinative factor to be the place where control over conduct of the business originates. Since the Operation Policy Committee, which conducts the corporate business and makes policy decisions, has its headquarters in Pennsylvania, as do the vice presidents in charge of the seven branches of the corporation, *D* corporation is, under the statute, a citizen of Pennsylvania. *Kelly v. United States Steel Corp.*, 284 F.2d 850 (3d Cir. 1960).

The instant case is the first construction of "principal place of business" by a circuit court of appeals. Earlier, in *Scot Typewriter Co. v. Underwood Corp.*, 170 F. Supp. 862 (S.D. N.Y. 1959), the district court found a corporation's principal place of business to be its "nerve center"—the one place from which its officers direct and control all corporate activities. This decision was followed in two subsequent cases decided by the same court. *Wear-Ever Aluminum, Inc. v. Sipos*, 184 F. Supp. 364 (S.D. N.Y. 1960); *Hughes v. United Eng'rs. & Constructors, Inc.*, 178 F. Supp. 895 (S.D.N.Y. 1959). See Comment, 62 W. VA. L. REV. 405 (1960).

Although in the instant case the term "nerve center" was found to be a "pleasant and alluring figure of speech" even though not helpful, a comparison of the *Scot Typewriter* and *Kelly* cases, *supra*, would seem to indicate that the same test was in fact applied by the court of appeals in the instant case. In each instance a major factor in determining the principal place of business was the place from which the control over corporate affairs emanated.

Torts—Care Required of Driver Attempting to Pass Another Vehicle

P, a guest in a car driven by *D*, brought this action to recover for injuries sustained by *P* when *D*, in attempting to pass another car, ran off the highway and into a ravine. *D* contended that he was confronted with a sudden emergency when the car he was attempting to pass suddenly swerved in front of him. *Held*, in reversing the judgment for *P*, the giving of an instruction requiring the driver of an overtaking car to exercise a high degree of care is reversible error. *Overton v. Fields*, 117 S.E.2d 598 (W. Va. 1960).

In holding that the driver of an overtaking car is only required to exercise ordinary care in the attendant circumstances, the court expressly overruled point 1 of the syllabus in *Haffner v. Cross*, 116 W. Va. 562, 182 S.E. 573 (1935), which required the exercise of a high degree of care in such situations. A Virginia statute requires the driver of an overtaking car to be certain that he can pass in safety. VA. CODE ANN. tit. 46.1, § 212(a) (1958). The Virginia court, in interpreting an earlier identical statute, stated that this provision "makes statutory the normal requirement that ordinary and reasonable care should be exercised" when attempting to pass another vehicle. *Simmons v. Craig*, 199 Va. 338, 99 S.E.2d 641 (1957). The decision in the instant case not only puts West Virginia in accord with the Virginia view, but also with the general rule requiring the driver of an automobile attempting to pass another car moving in the same direction to use ordinary care in so doing. 5A AM. JUR. *Automobiles & Highway Traffic* § 352 (1956); 60 C.J.S. *Motor Vehicles* § 326 (1949).

Torts—Doctrine of Last Clear Chance

P instituted this action for the wrongful death of her husband, who was struck by *D*'s car while crossing a four lane highway. *D*, who had an unobstructed view for several hundred feet, and who had entered the inside westbound lane in a no passing zone, struck the decedent when he was three-fourths of the way across the westbound lanes. At the conclusion of *P*'s evidence the trial court directed a verdict for *D*. *Held*, reversed. Whether decedent negligently placed himself in a position of danger, and whether *D* was negligent in crossing a double white line, were questions for the jury. And

even if decedent was negligent, recovery would not be barred, if *D* by the exercise of reasonable care could have avoided striking him. *Stamper v. Bannister*, 118 S.E.2d 313 (W. Va. 1961).

The court, while speaking in terms of the last clear chance doctrine and citing cases which have applied the doctrine, does not explicitly mention or discuss the doctrine, although it may very well be applicable to the fact situation presented by the instant case.

The doctrine may be invoked where (1) the plaintiff has negligently placed himself in an imminently dangerous position, and (2) he is either oblivious of the impending danger or unable to escape therefrom, and (3) there was a sufficient interval of time in which the defendant through the exercise of due care could have avoided the situation, either after discovering it, or by the exercise of due care could have discovered it. Donley, *Observations on Last Clear Chance in West Virginia*, 37 W. VA. L. Q. 362 (1931). See generally, RESTATEMENT, TORTS §§ 479, 480 (1934). In his extensive article examining the doctrine and its application by the West Virginia court, Professor Donley considers the applicability of the doctrine to varying situations. While the doctrine is applicable to fact situations containing the three elements listed above, other situations presenting slightly different circumstances do not properly invoke the doctrine.

The court in the instant case stated that recovery would not be barred if the defendant could have avoided the accident through the use of reasonable care. This is an incorrect statement of the doctrine in that it fails to take into account the second element set forth above. For if the defendant did not actually discover the decedent's perilous position, and if the decedent was aware of his perilous situation and was able to escape therefrom, recovery would be barred. *Barr v. Curry*, 137 W. Va. 364, 71 S.E.2d 313 (1952). It has been urged that the doctrine is inapplicable in other situations also. See Donley, *supra* at 374, 384.

Unquestionably, the court could have discussed the doctrine in a more enlightening manner. In 1942, in a corollary to his earlier article, Judge Donley concluded that the failure of the court to adopt a precise statement of the doctrine had resulted in considerable misinterpretation of the doctrine by the trial courts. Don-

ley, *Last Clear Chance—Some Further Observations*, 49 W. VA. L. Q. 51, 58 (1942). Although some nineteen years have passed, this conclusion still seems particularly apropos.

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