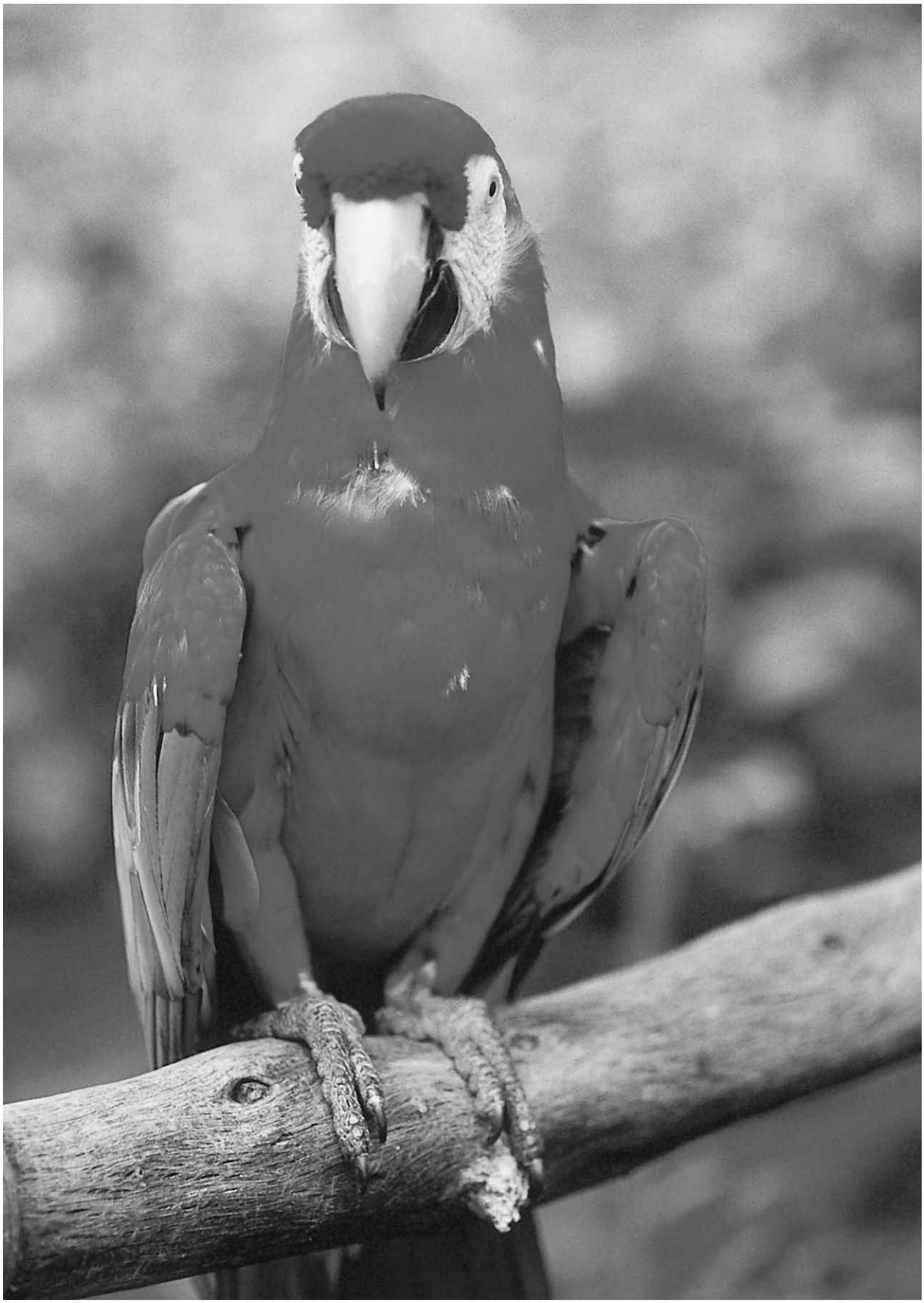

Caging the "Parret," But Scaring the Parents

Consequences and Remaining Problems in the Employee's Tort Action for Injuries in the Workplace in Light of the Legislature's Recent Abolishment of the Substantial Certainty Test

By Clark W. Crapster

Most civil litigators in Oklahoma have heard of the Legislature's recent abolishment of the "substantial certainty" test in the context of suits against employers for employee injuries in the workplace. Since the Oklahoma Supreme Court's landmark 2005 decision in *Parret v. Unicco Service Co.*, injured employees have been able to recover in tort not only against employers who acted with the desire to cause the harm but also employers with knowledge that the harm was substantially certain to occur.[1] Under the new Aug. 27, 2010, legislation however, employees may only recover when the employer desired the harm. In the wake of this major statutory change, there are important consequences in tort law for both employees and employers, today and in the future. This article will examine some of these effects.

With the abolishment of the substantial certainty test, the Legislature has created both positive and negative effects, some of which will take place almost immediately, while others may occur more gradually. Having lost an available common law method of proving intent, employees will be more inclined to focus on proving liability of third parties. Some have even stretched to assert claims against parent corporations, while asserting that they should be denied the protection of the workers' compensation statute. A few employees have attempted to show that the parent corporation was negligent in its management of the subsidiary's workplace safety. With respect to these types of allegations, logic, principles of fairness and important public policy considerations should require that the workers' compensation statute essentially protect the parent corporation, unless the employee demonstrates that the parent committed a tort that was either intentional or wholly separate from the subsidiary's nondelegable duty of managing safety.

BACKGROUND: THE EXCLUSIVE REMEDY OF WORKERS' COMPENSATION AWARD AND THE *PARRET* DECISION

When an employee is injured during the course and scope of his employment, the Workers' Compensation Court provides the remedy for those injuries, pursuant to Okla. Stat. tit. 85, § 11. Section 11 governs the employer's liability "for the disability or death of an employee resulting from an accidental injury sustained by the employee arising out of and in the course of employment, without regard to fault."[2] Section 12 of the act assures that the liability is "exclusive and in place of all other liability of the employer."[3] As indicated by the Oklahoma Supreme Court in its 2001 decision in *Davis v. CMS Continental Nat. Gas Inc.*, the only exception to this rule is in those very rare occasions when an employee has been injured as a result of an intentional tort by the employer.[4]

In the 2005 *Parret* decision, the Supreme Court of Oklahoma specifically condoned the long established, common law substantial certainty test as a means of proving the requisite intent for an intentional tort in this context. Under *Parret*, the employee-plaintiff, to state a cause of action against his employer, must offer specific allegations of fact that could plausibly give rise to a finding that the employer either: 1) desired to cause the injury; or 2) knew to a substantial certainty that the injury-causing accident would occur. In the new version of Okla. Stat. tit. 85, § 12, the Legislature stepped in and expressly removed the second part of the *Parret* test.

THE *PARRET* RULE — 2005-2010 . . . PLUS A COUPLE MORE?

For now, the *Parret* rule is not totally obsolete. Although the new legislation refining the *Parret* decision went into effect on Aug. 27, 2010, the new legislation alters substantive rights of employees, as opposed to mere procedural or evidentiary rules. Thus, the new law will likely have no retroactive application.[5] If the injury occurred prior to Aug. 27, 2010, then the courts will probably apply the *Parret* decision and the other pre-Aug. 27 substantial certainty cases. Indeed, attorneys for plaintiffs might be more inclined to find and pursue *Parret* suits now that this era is nearing an end.

In part, what the precise remaining life span of *Parret* will be depends upon what statute of limitation applies to a *Parret* claim against an employer. If an employee is injured on July 1, 2010, for example, is the deadline for bringing the *Parret* claim July 1, 2012? Hedge your bets on that one. Plaintiffs' attorneys representing an injured employee would be wise to bring their *Parret* suit against the employer within one year after the injury. The two-year statute of limitations of Okla. Stat. tit. 12 § 95(3) arguably will not apply. It provides a two-year period with respect to actions "for injury to the rights of another, not arising on contract, and not hereinafter enumerated." Section 95(4) then provides a one-year limitation period for several enumerated intentional torts, including battery. Regardless of whether the plaintiff is attempting to prove substantial certainty or specific intent, his *Parret* action will be an intentional tort action, arguably falling under the category of civil battery.

The True Parret Substantial Certainty Test— Misunderstood and Abused

Given the lingering *Parret* claims and the prospect of more cropping up in the next few years, a brief examination of the *Parret*-type lawsuit prior to Aug. 27, 2010, will be helpful. It will also show that the problem, sought to be remedied by the Legislature, did not exist in the law, but in its application.

The "substantial certainty" test was, in theory, supposed to be a very high standard for employees to meet.[6] Applying long-established tort law, it requires that the employer knew the injury was virtually certain to occur, or was nearly inevitable.[7] One renowned scholar in tort law, Dan B. Dobbs, refers to the rule as "the certainty test" and points out that the test is often distorted and improperly applied in the workers' injury context.[8] The substantial certainty test is not satisfied by a showing of negligence, recklessness or gross negligence. In order to satisfy the "substantial certainty" standard, "more than knowledge and appreciation of the risk is necessary."[9] This traditional substantial certainty test has been properly applied to civil battery cases for centuries without much trouble or confusion.[10]

The Employee V. Employer Context

But in the context of workplace accidents, the test perplexes judges, who must either find a fact issue on substantial certainty or throw out the employee's whole case against the employer. Courts have had to wrestle with how far into mere probabilities "substantial certainty" may properly extend. In doing so, Oklahoma courts have looked to several types of employ-

er conduct as being factors indicative of knowledge of a substantial certainty of injury: 1) directing the employee to subject himself to what the employer knows to be a high risk of injury, 2) ignoring employee requests for elimination of the danger, or 3) concealing facts from employees who are unaware of the danger.[11] In essence, rather than treating the substantial certainty test as being the near equivalent of the specific intent test, requiring virtual certainty of injury, Oklahoma courts have erroneously seemed to view it as including a range of probabilities depending on the perceived reprehensibility of the employer's conduct. In contradiction to the common law recognized by the *Parret* decision, some courts have arguably allowed cases to proceed to jury so long as there was a good chance of injury and the employer's conduct was significantly reprehensible. This, of course, is an erroneous application of the true substantial certainty test, and the cases have consequently seemed inconsistent with each other, creating difficult problems for litigators.

For example, it was logically held that where an employer knowingly directed the employee to work in violation of a doctor's note, it was, as a matter of law, not substantially certain that the employee would suffer a stroke-related injury.[12] Yet in a commonly misinterpreted decision, *Craft v. Graebel-Oklahoma Movers Inc.*, it was seemingly held that, where the employer knowingly directed employees to ride in vans that were in general disrepair with missing seat belts, the facts were sufficient to raise an intentional tort theory, although the court explicitly declined to hold whether such facts were sufficient to create a fact issue for trial. The trial court in *Craft* did not consider an intentional tort theory, thus the Supreme Court remanded for an initial determination on that issue.[13] In light of *Craft*, and despite the court's refusal to actually address whether a fact issue on substantial certainty existed, employees may incorrectly argue that there need not be complete substantial certainty of an outside intervening cause, so long as it is likely to occur at some time and the employer's conduct is substantially certain to cause injury if the potential event does occur. The argument goes: *If* one assumes that a car wreck is almost certain to occur during the relevant time period, then perhaps one could conclude that failure to wear a seat belt is nearly certain to cause an injury, *if* the car wreck is severe enough. Some employees may even argue erroneously that the apparent logic in *Craft* could extend to the employee's own knowing violation of safety rules, which would essentially force employers to assume that workers will not follow their own safety rules. Such positions show that the logic is flawed.

The recent *Price v. Howard* decision by the Oklahoma Supreme Court added clarity to the mix. It is clear, under *Price*, that a showing of recklessness or substantial likelihood of injury is insufficient, as a matter of law, to create a fact issue on substantial certainty of injury.[14] The court also noted that "violation of government safety regulations, even if willful and knowing, does not rise to the level of an intentional tort."[15] Additionally, the *Price* decision crafted an important assumption — that individuals will not engage in self destructive behavior. This reasoning arguably would apply to a workplace scenario where an employee knowingly exposes himself to a serious danger. The *Price* decision further implied that an outside event contributing to the injury, at least an event such as a rainstorm, should be considered in the substantial certainty analysis. However, while the Supreme Court's clarification in *Price* was an important and helpful step towards reeling in the broad *Parret* suit allegations against employers, it did not come soon enough for Oklahoma.

THE LEGISLATURE'S BROAD APPROACH AND THE RESULTING CONSEQUENCES

Due to abuse of the *Parret*-type lawsuit, the Legislature reacted by taking the only corrective action available to it, completely abolishing the substantial certainty test in workplace accident cases. Employees may argue that, because a result was substantially certain to occur, the court can infer the requisite mental state for an intentional tort. But this is essentially the same reasoning that underlies the substantial certainty test, and with its elimination on the books, the courts should be hesitant to entertain such arguments. Generally, it will not be plausible for the employee to allege that the employer intended the harm.

Thus, in most cases there simply will be no common law cause of action against the employer at all. This certainly comes very close to obtaining the appropriate result, since most workplace injuries are not the result of intentional conduct, or its equivalent, by the employer. But this should have been the result under the old *Parret* decision and its progeny. Now, in

the rare instance where an employer knows an injury is nearly inevitable as a result of his conduct, and does nothing to prevent it, the employee will have no common law recovery for the employer's egregious conduct, because the employer did not specifically intend for the harm to occur. This may not be a consequence that Oklahoma desires.

Consider, for instance, one of the classic illustrations, provided by the Restatement, of the type of scenario the substantial certainty test was intended for: Company X runs an aluminum smelter plant and emits harmful chemicals from its roof. Company X knows that the particles, carried through the air, *will* fall upon the neighboring property, causing various harms. Company X does not desire this and regrets it. Nevertheless, due to the knowledge of the virtual certainty of harm, the Restatement (Third) would hold the company liable for intentional battery under the substantial certainty test.[16] However, in Oklahoma, if Company X employed additional workers for jobs on the neighboring property, who are harmed by the chemicals, the company might escape liability outside workers' compensation, citing the new Okla Stat tit. 85, § 12's abolishment of the substantial certainty test. Luckily, such conduct by employers is rare, but should it occur, the employee has lost a valid common law intentional battery claim due to the new statutory change.

A SHIFT OF FOCUS: THIRD PARTIES AND PARENT CORPORATIONS

Another and perhaps farther reaching result is that some employees in Oklahoma may shift their attention almost entirely to other potentially liable parties, to whom the workers' compensation exclusivity rule may not apply. If an employee can show that some other third party, such as a distributor, manufacturer, property owner or parent corporation is responsible for the harm, then the employee's attorney will now focus almost all of her efforts on building the employee's negligence or product liability claim against such parties. With the employer out of the picture, litigation against these types of individuals and entities will likely increase and become even more hotly disputed.

The law governing liability of distributors and manufacturers is fairly well established and claims against these entities will likely continue without substantial change. Even with respect to the unique situation where an employee of an independent contractor sues the premises owner, the law provides that, so long as the property owner hiring the contractor "does not himself undertake to interfere with or direct that work," he "is not obligated to protect the employees of the contractor from hazards which are incidental to or part of the very work which the independent contractor has been hired to perform."[17]

> "Additionally, the *Price* decision crafted an important assumption — that individuals will not engage in self destructive behavior."

But the present state of Oklahoma law governing a parent or affiliate corporation's liability for safety hazards at a subsidiary's workplace is a potential area for abuse, especially in light of the recent elimination of the *Parret* rule. Plaintiffs have already begun to test and exploit these waters. Rather than trying to frame the negligence claim against the employer as an intentional tort claim, employees may frame a negligence claim such that it implicates an alleged breach of duty on the part of a parent corporation, which, inevitably, plaintiffs will argue does not fall within the protection of the workers' compensation statute. The successor to the *Parret* claim will perhaps be similar to what was asserted in *Love v. Flour Mills of America*, 647 F.2d 1058, 1062 -63 (10th Cir. 1981).

Love v. Flour Mills of America

The facts of *Love* involved an explosion at a grain elevator in Durant, wherein the plaintiff, Love, suffered severe injuries. Love sued the parent corporation, Chickasha Cotton Oil Co., for negligence, asserting that Chickasha owned the elevator along with Flour Mills and that the injuries were the result of the negligence of both Chickasha and Flour Mills in the maintenance of the Durant facility. Love argued that Chickasha knew or should have known of the dangers at the plant due to Chickasha's experience in the industry and ownership of other similar plants.

The Tenth Circuit agreed with Love that Chickasha could not claim to be "the employer" and thereby obtain immunity under the workers' compensation statute, noting that it is generally not proper for a parent corporation to "pierce its own corporate veil" to seek the statutory protection.[18] But does this mean that the parent may be liable under a negligence theory for alleged safety hazards? Oklahoma state courts have not specifically addressed the question, but the Tenth Circuit in *Love*, accurately recognized that a parent corporation generally has no duty to "'to furnish a place for [an employee of the subsidiary entity] to work safe or otherwise.'"[19] The near universal rule is that a parent corporation is not liable for an injury at a subsidiary workplace solely by virtue of the corporate relationship. It is only liable for its own independent torts.[20]

The "Independent Tort" Problem

When is there independent negligence committed by the parent such that the injured employee may bring suit? Again, Oklahoma has been silent, but according to the Tenth Circuit's decision in *Love*, the law should not allow an employee to sue the parent corporation for alleged negligence in managing safety matters at the subsidiary workplace, for that would "have the anomalous effect of treating shareholders as employers and then refusing to grant them employer immunity under the Workers' Compensation Act."[21] Parent corporations should only be held liable for torts truly independent from management of the subsidiary's workplace, as when an agent of the parent negligently strikes an employee of the subsidiary in a work-related vehicle collision.[22] In *Love*, therefore, the Tenth Circuit held that since the allegations against the parent merely involved management of safety at the subsidiary work site, Love failed to state a claim for relief against Chickasha, the parent corporation.

Yet there are some cases in other jurisdictions that strangely permit the "anomalous effect" of holding a parent liable for negligence in managing safety at the subsidiary workplace, while at the same time denying the parent the protection of the workers' compensation act. Amongst these cases, the majority require that the employee at least show an affirmative assumption of duty by the parent corporation. This rule is based on the "Good Samaritan Doctrine," embodied in § 324(A) of the Restatement (Second) of Torts.

The "Assumption of Duty" Cases

In the assumption of duty line of cases, unless the parent undertook a specific service negligently thereby causing the harm, the plaintiff must usually argue that the parent assumed the subsidiary's nondelegable duty to maintain a safe workplace. In addressing this question, the courts have looked to three factors: 1) the scope of the parent's involvement with the subsidiary's maintaining safety; 2) the extent of the parent's authority with respect to safety matters; and 3) the intent of the parent with respect to controlling safety.[23] Generally, proof of mere knowledge of safety hazards, budgetary control and failure to take action has been insufficient to show an assumption of the duty to maintain a safe workplace.[24] In addition, evidence that the parent corporation merely monitored safety at the subsidiary's site, provided safety advice or literature, or rendered limited specific safety services, such as inspections, is generally insufficient to show an assumption of the duty to maintain a safe workplace.[25] It follows that the mere sharing of directors or officers and intermittent control over various subsidiary matters when needed would not be sufficient for there to be an assumption of the subsidiary's whole duty to maintain safety at its workplace.[26] A very small number of cases have erroneously held a parent potentially liable for a subsidiary's workplace hazards under a "direct-participant" theory of liability, but such reasoning confuses torts based upon a duty owed by the parent corporation to the public at large and torts based upon allegations that the parent corporation assumed the subsidiary's separate and nondelegable duty to maintain a safe workplace.[27]

Why the Assumption of Duty Cases Are Wrong for Oklahoma: Public Policy Requires Extending the Workers' Compensation Immunity Provision to Parent Corporations That Assume the Subsidiary's Duty to Maintain a Safe Workplace.

Absent a negligent rendition of a specific service by the parent corporation that thereby causes harm, the assumption of duty cases clearly tend to hold the parent corporation liable only upon a demonstration of a complete overtaking of the subsidiary's duty to maintain a safe workplace. A major problem exists, however, with respect to such a theory of liability, as the Tenth Circuit in *Love* has alluded to. Why is the parent corporation denied the immunity, which would otherwise be granted to the subsidiary-employer under the workers' compen-

sation statute, when the parent has essentially stepped in the shoes of the subsidiary with respect to the duty to maintain safety?

The reasoning of the courts which distinguish the parent and the subsidiary in this respect has been their status as separate entities along with the concept that a parent corporation cannot pierce its own corporate veil to benefit the subsidiary's statutory immunity.[28] But when the *plaintiff* alleges that the parent completely assumed the duty of the subsidiary to maintain a safe workplace by control or otherwise, then, in essence, the plaintiff is attempting to pierce the corporate veil to that extent, not the parent corporation. The body of law pertaining to the subsidiary's duty, which is assumed by the parent, should logically apply.

The *Love* court clearly recognized this logic. While a sole shareholder, or parent corporation, "should not be able to claim immunity for an independent tort that has nothing to do with the management of [the subsidiary]," allowing the employee to bring suit based on mere allegations that the parent mismanaged safety at the subsidiary workplace "places upon shareholders an independent duty, which in reality is the nondelegable duty of the employer."[29] As the Tenth Circuit stated: "Such a holding would have the anomalous effect of treating shareholders as employers and then refusing to grant them employer immunity under the Workers' Compensation Act."[30] The Tenth Circuit, briefly discussed the Sixth Circuit case of *Boggs v. Blue Diamond Coal Co.*, 590 F.2d 655 (6th Cir. 1979), which some may argue was an assumption of duty case where the parent corporation controlled subsidiary safety.[31] But the Tenth Circuit merely used *Boggs* for its "corporate distinctness" analysis.[32] If the Tenth Circuit desired to follow an "assumption of duty" rule, it clearly could have done so. Instead, it held that, since Love merely alleged negligent management of safety at the subsidiary, he stated no cause of action, as that would have "the anomalous effect" of treating the parent as the employer but without affording the statutory immunity.[33]

Public policy considerations should also be considered in this regard. It is beneficial for our society and the safety of employees to encourage parent corporations to take over or manage safety matters when needed. Not only is it illogical and unfair to hold parent corporations liable for managing the subsidiary's workplace safety, when the subsidiary receives immunity, but it undermines public policy by encouraging parents to take a hands off approach and leave all safety matters to the subsidiary. The law will frighten the parent corporations into passive observance, the sure way to avoid unfair liability. Some may argue that allowing parent corporations to manage safety at the subsidiary without risk of a negligence suit will encourage poor management. This argument, however, overlooks the corporate reality that if the parent is so related to the subsidiary that it desires to control its safety, the legislatively created workers' compensation remedy is as much of a negligence deterrent for the parent as it has been for the subsidiary. It also overlooks the fact that allowing negligence suits against a parent corporation for assuming the subsidiary's duty to maintain a safe workplace allows a loop hole around the workers' compensation exclusivity rule, even though the Legislature has recently gone to extreme lengths to protect it from such loop holes. To the extent the parent corporation assumes the duty of safety, it is the employer to that extent, and the better rule is to hold the parent liable only for those torts that are intentional or wholly independent from management of safety at the subsidiary workplace.

CONCLUSION

Many legal questions will continue to arise in the context of an employee's common law tort action for injuries occurring in the workplace. As plaintiffs' attorneys search for successor theories to the substantial certainty test, courts and the Legislature must consider when and to what extent third parties, such as parent corporations, should be liable for essentially taking on the employer's duty to maintain safety. To protect the exclusivity requirement of the workers' compensation statute and promote cooperation between parent corporations and employers regarding safety matters, the parent should only be liable for tortious conduct that is either intentional or wholly independent from management of safety matters at the subsidiary workplace.

Beyond this, other legal questions may arise pertaining to, for example, application of the election of remedies doctrine and contribution amongst the defendants. In addressing all such questions, litigators and courts should bear in mind the legislative purpose behind the workers' compensation statute — providing a sure and fast form of exclusive recovery for injured employees — in addition to public policy con-

siderations such as the need for cooperative participation by related entities in employee safety at the workplace. And certainly, in handling those remaining substantial certainty cases, courts and litigators should be careful to properly apply the common law test and not allow cases to proceed through trial when there was, as a matter of law, merely a potential for injury, as opposed to near certainty. Both the Supreme Court of Oklahoma and the Legislature have clearly indicated that they did not intend for recovery without a virtual certainty of injury. The courts and litigants should abide by that intent and long-established common law rule as the last remaining years of *Parret* suits wind down.

1. *Parret v. Unicco Service Company*, 127 P.3d 572 (Okla. 2005).
2. Okla Stat. tit. 85, § 11.
3. Okla Stat. tit 85, § 12.
4. 2001 OK 33, 23 P.3d 288, 294-96 (Okla. 2001).
5. *See, e.g., Fernandez-Vargas v. Gonzales*, 126 S. Ct. 2422, 165 L. Ed. 323 (U.S. 2006); *Gray v. Gray*, 459 P.2d 181, 186 (Okla. 1969).
6. *See Price v. Howard*, 2010 OK 26, 2010 WL 925175, *1, 3-4 (Okla. 2010).
7. *See, e.g.*, Restatement (Third) of Torts, § 1 (2005) (Reporters' Note, comment a) (discussing "virtually certain"); *Reagan v. Olinkraft, Inc.*, 408 So.2d 937, 940 (La. Ct. App. 1982) (discussing "nearly inevitable" as synonymous in meaning with "substantially certain").
8. *See* Dan B. Dobbs, The Law of Torts, § 24 (2000).
9. *Parret*, 127 P.3d 572, 574-79, *citing Beauchamp v. Dow Chemical Co.*, 398 N.W.2d 882, 893 (Mich. 1986).
10. *See, e.g., Garratt v. Dailey*, 279 P.2d 1091 (Wash. 1955).
11. *See Parret v. Unicco Service Co.*, 2006 WL 752877 (W.D. Okla. 2006); *Craft v. Graebel-Oklahoma Movers, Inc.*, 2007 OK 79, 178 P.3d 170, 177 (Okla. 2007); *see also Almegard v. San Juan Pilot Training, Inc.*, 133 F.3d 932 (10th Cir. N.M. 1998).
12. *Hill v. United Parcel Serv. of America, Inc.*, 2009 WL 1974461 (W. D. Okla. 2009).
13. 2007 OK 79, 178 P.3d 170, 177 (Okla. 2007).
14. *Price v. Howard*, 2010 OK 26, 2010 WL 925175, *1, 3-4 (Okla. 2010).
15. *Id*. at *4.
16. Restatement (Third) of Torts, § 1 (2005) (illustration 3).
17. *Marshall v. Hale-Halsell Co.*, 932 P.2d 1117, 1119 (Okla. 1997).
18. *Love*, 647 F.2d 1058, 1062 -63.
19. *Id*. at 1062 -63 (quoting Neal v. Oliver, 438 S.W.2d 313, 339 (Ark. 1969).
20. *Id*.
21. *Id*. at 1063.
22. *See id*. at 1062. (discussing actionable independent torts).
23. Annette T. Crawley, Environmental Auditing And The "Good Samaritan" Doctrine: Implications For Parent Corporations, 28 Ga. L. Rev. 223, 242-43 (1993).
24. S*ee Waste Mgmt., Inc. v. Sup. Crt.*, 119 Cal. App. 4th 105, 109-14 (Cal. Ct. App. 4th Div. 2004); *Born v. Simonds International, Corp.,* 2009 WL 5905396, * 1-7 (Sup. Ct. Mass. 2009).
25. *See Muniz v. Nat'l Can Corp.,* 737 F.2d 145, 148-51 (1st Cir. 1984); *Heinrich v. Goodyear Tire & Rubber Co.*, 532 F. Supp. 1348 (D. MD 1956); *Bujol v. Entergy Servs., Inc.*, 922 So.2d 1113, 1128-33 (La. 2004) ; *Davis v. Liberty Mutual Ins. Co.*, 525 F.2d 1204, 1208 (5th Cir. 1976); *Rick v. RLC Corp.,* 535 F. Supp. 39 (E.D. Mich. 1981); *Proctor & Gamble Co. v. Staples*, 551 So.2d 949, 951-55 (Ala. 1989).
26. *See Born*, 2009 WL 5905396, * 1-7; *Muniz*, 737 F.2d at 148-51; *Love v. Flour Mills of America*, 647 F.2d at 1062 -63.
27. *E.g., Forsythe v. Clark USA, Inc.*, 864 N.E.2d 227, 232-40 (Ill. 2007).
28. *See, e.g., First Nat'l Bank of Camden v. Tracor, Inc.*, 851 F.2d 212, 214 (8th Cir. 1988).
29. *Love*, 647 F.2d at 1063.
30. *Id*.
31. *Id*. at 1061-62.
32. *Id*. at 1062-63.
33. *Id*. at 1062-64.

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