



CASE NOTES

The Case of Harwood v. Ardagh Group: What Happens When Employers Try to Keep Employees Safe

On June 1, 2022, the Oklahoma Supreme Court decided the case of *Harwood v. Ardagh Group*, leaving employers in fear of implementing measures to keep their employees safe in environments they do not own or control. Take a look at the details.

FACTS

An employee, Mr. Harwood, was leaving work and crossing the street at a crosswalk to go to the employer-provided parking lot when he was struck by a car. The crosswalk extended across a four-lane highway adjacent to an intersection and had overhead stop lights which could be activated by employees from either side of the street. A power outage had caused the lights to be inoperable on the day of the accident, and the city had placed a four-way metal stop sign in the center of the intersection. Mr. Harwood's accident occurred around 11:00 p.m.

The employer did not own, operate or control the crosswalk. However, employees had been instructed to use the crosswalk and would be reprimanded if they did not use it. The employer's property was fenced except for the area immediately adjacent to the crosswalk, and employees were the only people who used the crosswalk since no other homes or businesses were in the area. In the past, employees of the business had placed strobe lights around the temporary stop sign. However, the lights were not there at the time of the accident. After Mr. Harwood's accident, they were put up again.

Mr. Harwood sued his employer because it did not provide employees with a safer crosswalk for access to the parking lot.

HOW THE COURT RULED

Five of the Oklahoma Supreme Court justices (Kauger, Edmondson, Darby, Combs, and Gurich) said the employer could be liable because it may have assumed a duty to provide a safer crosswalk by previously taking steps to make the crosswalk safer (such as reprimanding employees, putting railings on their property and hanging strobe lights on the stop sign). Four of the justices (Kane, Winchester, Rowe, and Kuehn) dissented and argued the opinion expands liability for private businesses.

As a result, businesses now have an unprecedented duty to provide safe passage on public streets even if they have no ownership or control of the streets.

As Justice Kuehn noted, this decision "will not make such situations any safer. [It is] likely to do the opposite, by discouraging employers (or anyone else) from assuming the role of the Good Samaritan."

THE TAKEAWAY

With this ruling, the Court has greatly expanded exposure to liability for businesses who take any measure to safeguard employees, and perhaps customers, because the Court finds doing so is an assumption of a duty. This ruling provides a disincentive for businesses even to attempt safety measures.