Louisiana Law Review

Volume 63 | Number 2
Winter 2003

Bujol v. Entergy and The Good Samaritan Doctrine: Workers' Compensation and Safety Regulations, Who Needs Them?

Matthew P. Bonham

Bujol v. Entergy and The Good Samaritan Doctrine: Workers' Compensation and Safety Regulations, Who Needs Them?

> *Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment.*[1]

When a life-changing injury occurs or a life is tragically lost in an employment context, one cannot help but feel sympathy for the injured worker or his survivors for the consequences of the fateful workplace accident. Many times, as a result of such devastation, the injured employee or his survivors expect to be compensated for their misfortunes in an amount that far exceeds that offered by the employer through traditional workers' compensation benefits. So in a sort of a tribute to the litigiousness of American society, a civil dispute arises over who is to blame and how justice is to be served. When this happens, it is essential that such disagreements be resolved in a forum insulated from the emotions which so easily distort an individual's sense of the proper judicial remedy. Thus, in the realm of litigation, it is the court's job to ensure that the law is properly applied to the facts of the case without undue influence by the compassionate tendencies of human nature.

The Louisiana First Circuit Court of Appeal's decision of *Bujol v. Entergy Services, Incorporated*[2] involved a workplace accident that claimed the life of one worker and permanently altered the lives of two others when a sudden flash fire occurred at an air separation facility near Plaquemine, Louisiana.[3] The injured workers and the survivors of the deceased were eligible candidates for receiving workers' compensation benefits under Louisiana's workers' compensation system, according to which "the employer surrenders the immunity against liability which he would otherwise enjoy in all cases in which he was without fault, and, in return, the employee loses his right to full damages for his injury and accepts instead a

---

1. From Justice Oliver Wendell Holmes, Jr.'s dissent in N. Sec. Co. v. United States, 193 U.S. 197, 400, 24 S.Ct. 436, 468 (1904).

2. 833 So. 2d 947 (La. App. 1st Cir. 2002). As this case note went to print, the Louisiana Supreme Court had just granted writs and the litigants were in the process of preparing for their oral arguments before the Court.

3. Details of the accident are discussed *infra*, Section I.

limited sum by way of compensation."[4] But in an attempt to recover damages above and beyond the benefits provided by the state's workers' compensation legislation, the *Bujol* plaintiffs instituted a third party negligence action against the parent corporation of the subsidiary facility at which the accident occurred. The plaintiffs claimed that the parent corporation had assumed a duty to provide for the safety of the employees at the subsidiary plant, and the alleged breach of that duty was the cause-in-fact of the injuries sustained by the plaintiffs.

The plaintiffs' theory of recovery centered on the Good Samaritan doctrine, which stems from the principle established in the Restatement (Second) of Torts § 324A (1965).[5] The doctrine has existed for centuries,[6] and has traditionally been used to impose liability upon an actor who has failed to exercise reasonable care when it undertook to perform a duty owed to a third party.[7] But only a few decades ago, the Good Samaritan doctrine began to evolve into a lucrative tool for plaintiffs seeking to impose liability on parent corporations for workplace accidents occurring at their subsidiary facilities. By using the Good Samaritan doctrine in the context of a corporate parent/subsidiary relationship, many plaintiffs have prospered in their attempts to "shift the blame from the party responsible for the harm to the entity with the healthiest balance sheet."[8] In addition to enjoying the benefits of evading the exclusive remedy provisions of most state's workers' compensation statutes, employees of subsidiary corporations have also successfully employed the Good Samaritan doctrine "in their individual efforts to establish the liability of a parent corporate shareholder as an alternative to piercing the corporate veil."[9] Overall, the Good

4. H. Alston Johnson III, Workers' Compensation Law and Practice § 361, *in* 14 Louisiana Civil Law Treatise (4th ed. 2002).

5. The Restatement, as defined by Black's Law Dictionary 1314 (7th ed. 1999), is "[o]ne of several influential treatises, published by the American Law Institute, describing the law in a given area and guiding its development." For a detailed discussion of the Good Samaritan doctrine *see* Section II, *infra.*

6. *See* Annette T. Crawley, Note, *Environmental Auditing and the "Good Samaritan" Doctrine: Implications for Parent Corporations*, 28 Ga. L. Rev. 223, 234 (1993) ("Recognition of the Good Samaritan doctrine as an exception to the traditional restriction of liability traces its origin to the seminal eighteenth century case of Coggs v. Bernard," 92 Eng. Rep. 107 (K.B. 1703), (citations omitted)).

7. Restatement (Second) of Torts §324A (1965). For full text of §324A *see* Section II, *infra.*

8. Crawley, *supra* note 6, at 264-65.

9. Andrew J. Natale, Comment, *Expansion of Parent Corporate Liability Through the Good Samaritan Doctrine - A Parent Corporation's Duty to Provide a Safe Workplace for Employees of its Subsidiary*, 57 U. Cin. L. Rev. 717, 729 (1988) (citations omitted). For a discussion of the consequences of using the Good Samaritan doctrine as an alternative to piercing the corporate veil *see* Section IV,

Samaritan doctrine has the potential to provide plaintiffs who are injured on the job with ample opportunity to win the "lawsuit lottery."[10]

Bujol v. Entergy is by no means a great case, but it is every bit a hard case. The First Circuit was faced with the difficult task of determining whether the plaintiffs had met their burden of demonstrating that the circumstances justified imposing liability on the parent corporation for the workplace accident that occurred at its subsidiary plant. If successful, the court knew that the plaintiffs stood to recover a tremendous compensatory award for the losses they suffered, but, if not, the victims of the devastating accident would be left with only the benefits that they were entitled to receive via worker's compensation. But regardless of whether *Bujol* is an illustration of a court's judgment being distorted by an "immediate overwhelming interest which appeals to the feelings," the court appears to have misapplied the law to the facts, resulting in a windfall for the plaintiffs and the possible introduction of some very "bad law" into our Louisiana jurisprudence.

The negative effects that the *Bujol* opinion stands to create are particularly troublesome. This note seeks to explain what went wrong in the *Bujol* decision, and what must be done to address the problems that *Bujol* will create. Part I introduces the facts that gave rise to the First Circuit's decision. Next, Part II analyzes the basic features of the Good Samaritan doctrine and some of the case law addressing the doctrine's application in the context of a plaintiff's claim for imposing tort liability. The majority of the analysis in Part II focuses on corporate parent/subsidiary relationships. Part III offers a critical analysis of the First Circuit's application of the Good Samaritan doctrine in *Bujol*. Following up in Part IV, the note takes a brief look at some of the negative implications that acceptance of the Good Samaritan doctrine in Louisiana jurisprudence will likely have on multi-tiered corporations and workers alike. Finally, Part V presents a possible proposal for preventing the damaging consequences that the doctrine's presence in Louisiana jurisprudence has the potential to create.

I. BUJOL V. ENTERGY

In the early morning of April 6, 1994, the Air Liquide America Corporation (ALAC) air separation facility located near Plaquemine,

---

infra.

10. The term "lawsuit lottery" comes from the title of Jeffrey O'Connell's book, The Lawsuit Lottery: Only the Lawyers Win (1979), in which the author argues that "[t]he operation of the tort system is akin to a lottery." *Id.* at 8.

Louisiana, experienced a significant loss of voltage due to an electrical disturbance that occurred at the Exxon refinery in Baton Rouge. As a result of the loss of electricity, "[m]ajor equipment at the ALAC facility and the Exxon refinery automatically shut down."[11] Shortly thereafter, three workers, involved in the process of restarting the ALAC facility, were manually closing a large pressure control valve when a "huge fireball" erupted.[12] Two of the men suffered severe burns on over 90 percent of their bodies, and the third worker died five days after the explosion. [13]

The injured workers and the survivors of the deceased, in the second trial[14] arising from the flash fire, brought suit against the insurers of Air Liquide, S.A. (ALSA), the parent corporation of ALAC,[15] seeking compensatory and exemplary damages.[16] A multinational company headquartered in France, ALSA is involved in manufacturing, storing, handling, and transporting oxygen. The company employs 27,600 people worldwide and has corporate facilities operating in some 60 countries, most of which are located in France, North America, and South America.[17] In 1986, ALSA purchased Big Three Industries, adding to the ALSA list of subsidiaries 15 plants in Louisiana, Mississippi, and Texas. The purchase included the Plaquemine plant, renamed ALAC, where the accident occurred.

---

11. Perkins v. Entergy Corp., 756 So. 2d 388, 395 (La. App. 1st Cir. 1999).
12. *Id.* at 399.
13. *Id.* at 394.
14. The employees and the survivors of the deceased had previously brought suit against an electric utility company, among others, alleging that the electrical disturbance was the ultimate cause of the explosion that occurred at the Plaquemine plant. After a trial on the merits, the 18th Judicial District Court of Iberville Parish found that the utility companies involved were 40 percent at fault for the plaintiff's injuries and awarded the plaintiffs damages totaling $22,728,450.00. However, the First Circuit Court of Appeal, in *Perkins v. Entergy Corp.*, 756 So. 2d 388 (La.App. 1st Cir. 1999), reversed the judgment of the district court, finding that the trial court was manifestly erroneous in holding the electric utility companies liable for the plaintiff's damages. The Supreme Court granted certiorari and eventually affirmed the judgment of the Court of Appeal. Perkins v. Entergy Corp., 782 So. 2d 606 (2001).
15. ALSA is the "corporate ancestor" of ALAC; one of ALSA's personnel described the company's ownership structure as "cascading," whereby "ALSA owns Air Liquide International, S.A., which in turn owns American Air Liquide, Inc., which in turn owns AL American Holdings, which in turn owns ALAC." Bujol v. Entergy Services, Inc., 833 So. 2d 947, 956 (La. App. 1st Cir. 2002).
16. ALAC was the direct employer of the injured workers, therefore ALAC was immune from tort liability. However, the plaintiff's claim of tort liability against ALSA was not barred by the exclusive remedy provision of Louisiana's workers' compensation statute based on the court's determination that ALSA is not a stockholder of ALAC, rather it is ALAC's "great-great grandparent." *Id.* at 965 n.18.
17. *Id.* at 955.

At trial, the jury determined that ALSA had assumed a duty to provide safety services to the employees working at the ALAC plant under the Good Samaritan doctrine.[18] The plaintiffs' claim relied heavily upon a technical instruction document produced by ALSA that set the minimum requirements to be met throughout the Air Liquide Group concerning oxygen pipeline networks.[19] One of the mandatory requirements set forth in the technical instruction document, which was determined to be applicable to all ALSA subsidiaries, was the need for plants to have protective barrier walls constructed between the gate valve and the handwheel.[20] The barrier walls were designed to prevent the very types of injuries suffered by the plaintiffs, but no such walls had been installed at the ALAC plant. The jury concluded that ALSA had breached its duty to provide safety to its subsidiaries' employees by failing to ensure that the mandatory safety requirements, including the construction of barrier walls, were being enforced.[21] The jury found ALSA to be 80 percent at fault for the accident, and awarded the plaintiffs over $3,000,000 in compensatory damages and $120,000,000 in exemplary damages.[22] The trial court entered judgment in accordance with the jury verdict, and ALSA appealed.

The Good Samaritan doctrine has traditionally been used by plaintiffs to impose liability on various entities for the voluntary, yet negligent, care they sought to provide but somewhere in the process fell short. Within the past few decades, though, the doctrine has become a popular mechanism for plaintiffs' attorneys to impose liability in the corporate context. For some plaintiffs hoping to impose liability upon a parent corporation for injuries sustained by the plaintiff while working for one of the parent's subsidiaries, the Good Samaritan doctrine has proven to be a generous contributor to the plaintiff's cause. Nonetheless, there exist serious differences regarding the specific ways in which courts have allowed this doctrine to be used to impose liability in such situations. A review of some of the instances in which courts have been called upon to consider the Good Samaritan doctrine's application in the parent/subsidiary context can provide a better understanding of the complex issues that the doctrine's presence in such instances has the tendency to create.

---

18. *Id.* at 960. *See* Section III, *infra,* for discussion of the Good Samaritan doctrine.

19. *Id.* at 961.

20. *Id.* at 956.

21. *Id.*

22. The trial court applied Louisiana Civil Code article 2315.3, which was repealed in 1996, to award exemplary damages because the provision was still in effect at the time of the accident in 1994. *Id.* at 967, n.19.

II. THE GOOD SAMARITAN DOCTRINE: APPLICATION AND ANALYSIS

When an individual voluntarily takes it upon himself or herself to lend aid to a person in harm's way, there is the inherent notion that he or she should act in a reasonable manner so as not to place the victim in a worse position than if no action had been taken. Therefore, when an "actor fails to exercise reasonable care when it undertakes the performance of a duty owed to a third party,"[23] the Good Samaritan doctrine provides an avenue for injured victims to hold an actor liable for the negative consequences that may come about as a result of an inadequately performed duty. The Good Samaritan doctrine is the term commonly used to refer to the principle established in the Restatement (Second) of Torts § 324A (1965), which provides:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect[24] his undertaking, if
> (a) his failure to exercise reasonable care increases the risk of such harm, or
> (b) he has undertaken to perform a duty owed by the other to the third person, or
> (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.[25]

At its foundation, the Good Samaritan doctrine requires a showing, by the plaintiff, that "the defendant specifically has undertaken to perform the task that he or she is charged with having performed negligently."[26] Once established, the threshold

---

23. Andrew J. Natale, Comment, *Expansion of Parent Corporate Shareholder Liability Through the Good Samaritan Doctrine - A Parent Corporation's Duty to Provide a Safe Workplace for Employees of Its Subsidiary*, 57 U. Cin. L. Rev. 717, 729 (1988).

24. Citing the Fifth Circuit opinion of Hill v. United States Fid. & Guar. Co., 428 F.2d 112, 115 n.5 (5th Cir.1970), *cert. denied*, 400 U.S. 1008, 91 S.Ct. 564, the Supreme Court of Wisconsin stated, "[t]he use of the word 'protect' in the introductory portion apparently was a typographical error published in the Restatement and should read 'perform.'" Miller v. Bristol-Myers Co., 485 N.W.2d 31 (Wis. 1992).

25. Restatement (Second) of Torts §324A (1965).

26. Patentas v. United States, 687 F.2d 707, 716 (3rd Cir. 1982) (plaintiff sought to recover damages from the United States for the Coast Guard's allegedly negligent inspection of a foreign vessel which exploded shortly after the inspection occurred; the court cited two aspects of the plaintiff's case which convinced it that

requirement presented in the introductory paragraph of section 324A is fulfilled, but the plaintiff must then prove that one of the three situations present in subsection (a), (b), or (c) is met before liability will be imposed.[27]

The results of various state and federal court opinions lend credence to the observation that "[c]ourts continually have struggled to apply the Good Samaritan doctrine in the context of corporate responsibility."[28] Not only is it often difficult for courts to make an absolute determination as to whether an entity has assumed a particular duty, but various policy considerations stand in the way of making their decisions clear-cut. However, it would be a fallacy to propose the idea that all decisions involving the Good Samaritan doctrine in the corporate realm fall into a massive grey area and are painstakingly difficult to decide. There are instances in which there is almost no doubt that a duty has been assumed and liability should be imposed without fear of creating an unjust result or ill-conceived policy statement. Unfortunately, there is no bright-line test for determining when the doctrine has been properly applied, and there may never be one, given the unique characteristics and circumstances that every case presents.

---

the proper approach for deciding whether liability should be imposed upon the government was to apply section 324A: (1)plaintiffs "clearly would benefit from the Coast Guard's performance of the activities [that were authorized by the Port and Water Ways Safety Act of 1972]," and (2) for purposes of analysis with respect to the Good Samaritan doctrine the plaintiffs were undoubtably third persons who were "foreseeable beneficiar[ies] of the inspection"; *held,* even though the Coast Guard's actions under the specific circumstances created a duty to the plaintiffs under section 324A, the plaintiff's injuries did not result in the Coast Guard's liability for the explosion because the plaintiffs failed to establish either the "increased risk" or detrimental reliance subsections of 324A). *But see* Evans v. Liberty Mut. Ins. Co., 398 F.2d 665, 666-67 (3d Cir. 1968) wherein the court held that for a plaintiff to establish liability under the Good Samaritan doctrine for a negligently performed inspection, plaintiff must successfully demonstrate that the defendant has undertaken to specifically inspect the harm-causing instrument or that the entire area in which the instrument was located was inspected.

27. *See, e.g.*, Tillman v. Travelers Indemn. Co., 506 F.2d 917, 920-21 (5th Cir. 1975). A worker brought suit against his employer's workers' compensation insurance carrier to recover additional damages as a result of the carrier's alleged negligence in providing safety services. The court stated that in order to impose liability under section 324A, the plaintiff must demonstrate that more than an undertaking and a failure to exercise reasonable care therewith occurred. "For liability to attach, it must be shown that either (a) the insurer's negligence increased the risk of harm to the employee; or (b) the insurer undertook to perform a duty owed by the employer to the employees; or (c) the harm is suffered because of reliance of the employer or the injured employee upon the undertaking."

28. Annette T. Crawley, Note, *Environmental Auditing and the "Good Samaritan" Doctrine: Implications for Parent Corporations*, 28 Ga. L. Rev. 223, 235 (1993) (citations omitted).

A. Section 324A's Main Text: The Threshold Requirement

Some courts have held that when there is no evidence that a parent corporation has specifically agreed or promised to provide the type of services referred to in 324A's main text, "the threshold element is lacking."[29] Thus, further analysis under the Good Samaritan doctrine is without warrant. In *Rick v. RLC Corp.*, a Michigan United States District court, Eastern District, was called upon to "determine the characteristics which must be present to give rise to a duty"[30] in a suit against a parent corporation. The suit was brought by an employee of the parent corporation's subsidiary who suffered a herniated disc and nerve root damage when his truck overturned as a result of the suspension system coming apart from the bottom of the truck's trailer.[31] The plaintiff claimed that the parent corporation "was negligent in providing management services in accident prevention and safety to [the plaintiff's employer]."[32] However, the court found these types of services to be inadequate proof that the parent corporation owed a duty to the plaintiff. Citing a Michigan Supreme Court case[33] in support of its decision, the court stated that simply presenting "[e]vidence that benefits were conferred upon [the subsidiary] or its employees is not sufficient to establish a duty if [the parent corporation's] conduct was consistent with an intention primarily to serve its own purposes."[34] Therefore, because the plaintiff did not prove that the parent corporation agreed or promised to provide services designed to call to the attention of the subsidiary or its employees possible safety hazards associated with its equipment, the plaintiff "failed to create a jury question on whether the scope and nature of the relationship gave rise to an undertaking creating a duty on the part of [the parent corporation]."[35]

In an opinion by the U. S. Court of Appeals, First Circuit, the court ruled that evidence which demonstrates that a parent corporation is concerned with safety matters at its subsidiary plant, and manifests this concern by providing assistance to the subsidiary

29. Rick v. RLC Corp., 535 F. Supp. 39, 47 (E.D. Mich. 1981).
30. *Id.* at 42.
31. *Id.* at 41.
32. *Id.* at 41. The management services provided by the parent corporation to its subsidiary "included negotiation package insurance for [the subsidiary], reviewing accident reports, and investigating selective accidents." *Id.* at 46.
33. Smith v. Allendale Mut. Ins. Co., 303 N.W.2d 702 (Mich. 1981) (discussing the use of the term "services" in the Restatement of Torts (Second) § 325A (1965), the court referred to the general definition of the word as it appears in Webster's New International Dictionary and emphasized the notion that service requires acting to help or benefit another).
34. Rick v. RLC Corp., 535 F. Supp. 39, 45 (E.D. Mich 1981).
35. *Id.* at 47.

when a request is made by the local management, is, by itself, insufficient for purposes of establishing that the parent had a duty to protect the subsidiary's employee according to the standard established in section 324A.[36] *Muniz v. National Can Corporation* involved an individual who brought suit against a parent corporation in an attempt to recover "damages for injuries he sustained allegedly as a result of continuous exposure to toxic lead fumes while he was employed" at one of the parent's subsidiary plants.[37] Although evidence was presented which established that the parent corporation "provided general safety guidelines . . .and . . . intended for these general guidelines to be implemented by local management," the court held that the parent corporation did not assume a responsibility for safety at its subsidiary's plant.[38] According to the *Muniz* court, "[n]either mere concern with nor minimal contact about safety matters creates a duty to ensure a safe working environment for the employees of a subsidiary corporation."[39] Thus, failure to present evidence demonstrating "some proof of a positive undertaking" performed by the parent corporation caused the plaintiff's case to fall short of establishing the type of duty referred to in the introductory paragraph of 324A.

In *Gaines v. Excel Industries, Incorporated,*[40] the district court for the Middle District of Tennessee held that the plaintiff's allegations were sufficient to withstand summary judgment based on the defendant parent corporation's conduct involving safety inspections and consultations with its subsidiary plant. The plaintiffs in *Gaines* brought suit against the parent corporation of their employer after they sustained injuries in two separate accidents involving stamp presses and the connected safety devices.[41] One of the parent corporation's employees had "reviewed safety programs and records,

36. Muniz v. Nat'l Can Corp., 737 F.2d 145 (1st Cir. 1984).

37. *Id.* at 147. The parent corporation involved in Muniz owned 80 percent of the voting stock of its subsidiary; and although the plaintiff's only remedy against his direct employer (the subsidiary) was for workers' compensation, under Puerto Rican law, he was permitted to bring the third-party claim against the parent corporation because of the parent corporation's status as a separate legal entity. *See also* Boggs v. Blue Diamond Coal Co., 590 F.2d 655 (6th Cir.), *cert. denied,* 444 U.S. 836, 100 S. Ct. 71 (1978) ("An injured employee, who is estopped from bringing a cause of action against a subsidiary-employer, may bring a third-party claim against the parent corporation, if the parent is a separate legal entity."). *Id.*

38. *Muniz,* 737 F.2d at 149.

39. *Id.* at 148.

40. 667 F. Supp. 569 (M.D. Tenn. 1987).

41. *Id.* at 570. The court acknowledged that under the Workers Compensation Laws of Tennessee the plaintiff's employer is immune from general tort liability. However, the court reserved for later proceedings the issue of whether the workers compensation exclusivity bar extended to parent corporations. *Id* at 576.

conducted safety audits, and participated in safety inspection tours"[42] at the subsidiary plant where the injury occurred. In its argument for summary judgment, the parent corporation argued that implementation of the company's safety program was to be administered solely by the local subsidiary. The parent corporation asserted "that it did not undertake to render services within the meaning of 324A's main text."[43] The court found this argument to be unpersuasive. So it proceeded with its analysis according to the various subsections of 324A, because once the threshold issue of whether the defendant has "undertak[en] . . . to render services to another . . ."[44] has been decided in the affirmative, it is then mandatory to examine the subsections before liability will be imposed.

B. Subsection (a): Increasing the Risk of Harm

Once a court has decided that a defendant's actions fall within the parameters of the opening text of section 324A, the analysis must not stop there. Rather, it must then proceed in such a way as to determine whether the plaintiff's claim successfully incorporates one of the three alternative subsections. In order to impose liability under subsection (a) of the Good Samaritan Doctrine, a plaintiff must establish that the defendant's "failure to exercise reasonable care increase[d] the risk"[45] of harm that caused the plaintiff's injuries. This "increased risk of harm" may come in the form of action or inaction on behalf of the parent corporation.[46] When there has been some change to the working environment[47] brought about by the parent corporation and the change is alleged to be the source of a plaintiff's injury, there is good reason to believe that such an instance falls within the confines of subsection (a). Thus, "[i]f the parent

---

42. *Id.* at 572.

43. Gaines v. Excel Indus., Inc., 667 F. Supp. 569, 572 n.3 (M.D. Tenn. 1987).

44. Restatement (Second) of Torts §324A (1965).

45. Restatement (Second) of Torts §324A(a) (1965).

46. The essence of subsection (a) is that it "requires some change in the conditions that increases the risk of harm to the plaintiff over the level of risk that existed before the defendant became involved." Canipe v. Nat'l Loss Control Serv. Corp., 736 F.2d 1055, 1062 (5th Cir. 1984) (applying §324A as rule of law in Tennessee), *cert. denied*, 469 U.S. 1191 (1985) (citing Stacy v. Aetna Cas. & Sur. Co., 484 F.2d 289, 293 n.4 (5th Cir. 1973; Blessing v. U.S., 447 F. Supp. 1160, 1197, n.53 (E.D. Pa. 1978), "A failure to detect a hazardous condition does not by itself implicate subsection (a).").

47. *See* Patentas v. U.S., 687 F.2d 707, 717 (3d Cir. 1982) (plaintiffs failed to demonstrate that there had been "some physical change to the environment of some other material alteration of circumstances"; *held* plaintiffs could not recover under section 324A(a)).

corporation engages in affirmative misconduct rather than omission or nonfeasance, a plaintiff may be able to convince a court that the parent *has* increased the risk of harm and thus should be liable for its voluntary undertaking under the Good Samaritan doctrine."[48]

The issue becomes a bit more complicated when there is almost complete inaction by the defendant. The question then becomes, under what circumstances may a court impose liability for basically doing nothing at all? For example, if a parent corporation was deemed to have undertaken to perform services for its subsidiaries, such as conducting workplace safety inspections, and "conditions [in the areas which were supposed to be inspected] were deteriorating [because the workplace area had not been inspected like it should have], . . . inaction could occur in the face of an increasing risk of harm."[49] But would such a situation justify imposing liability on a parent corporation? Most courts would probably answer in the affirmative because "[i]naction by a safety inspector might also lull the person primarily responsible for safety into a sense that minimum standards were being met, result in less diligent safety monitoring by the primary actor, and thereby cause an increase in the risk of harm."[50] However, this is not to say that all negligent inspections fall under the "increased risk of harm" rubric, and as a result, justify imposing liability on a defendant.[51]

C. Subsection (b): Undertaking to Perform a Duty Owed by Another

To impose liability under subsection (b), a plaintiff has to prove that the defendant's breach occurred under circumstances in which the defendant had "undertaken to perform a duty owed by the other to a third person . . . ."[52] For example, in parent/subsidiary relationships, the duty would initially be owed by the subsidiary, but instead, the parent corporation takes the subsidiary's place in performing a duty for a third person, which in the context of *Bujol* is the employee of the subsidiary. Subsection (b) tends to pose more

48. Annette T. Crawley, Note, *Environmental Auditing and the "Good Samaritan" Doctrine: Implications for Parent Corporations*, 28 Ga. L. Rev. 223, 238-39 (1993).

49. Gaines v. Excel Indus., Inc., 667 F. Supp. 569, 572 (M.D. Tenn. 1987).

50. *Id.*

51. *See* Santillo v. Chambersburg Eng'g Co., 603 F. Supp. 211, 214 (E.D. Pa. 1985) ("It is well-settled that under § 324A negligent inspection does not meet the requirements of § 324A(a).") (citing Canipe v. Nat'l Loss Control Serv. Corp., 736 F.2d 1055, 1062 (5th Cir. 1984), *cert. denied*, 469 U.S. 1191, 105 S.Ct. 965 (1985); *Patentas*, 687 F.2d at 717; Davis v. Liberty Mut. Ins. Co., 525 F.2d 1204, 1207 (5th Cir. 1976)).

52. *See* Restatement (Second) of Torts § 324A(b) (1965).

problems with respect to judicial interpretation than the other subsections because courts continue to disagree about its suggested meaning. Some courts understand subsection (b) to mean that a defendant must do more than merely supplement its subsidiaries' safety services to be held liable. For instance, the court, in *Heinrich v. Goodyear Tire and Rubber Company,* held that "[l]iability under section 324A(b) arises in the workplace setting only if the actor's undertaking was intended to be in lieu of, rather than as a supplement to, the employer's own duty of care to the employees."[53] Conversely, there are courts that have taken a less restrictive approach to interpreting subsection (b). These courts have held that "[s]ubsection (b) comes into play as long as the party who owes the plaintiff a duty of care has delegated to the defendant any particular part of that duty."[54]

D. Subsection (c): Reliance

A defendant is subject to liability under subsection (c) if the plaintiff relied upon the defendant's assumption of a duty to the third person's detriment.[55] For some courts, "the subsidiary or the employee must have relied on the parent corporation's undertaking and [. . .] because of that reliance, they lessened, omitted, neglected, or otherwise altered their own safety practices and such alteration was a cause of the employee's injuries."[56] For a concrete illustration,[57] suppose the owner of an office building employs a company to inspect the building's elevators. A worker from the company is sent to the building, renders a negligent inspection, and as a result, issues

53. 532 F. Supp. 1348, 1355 (D.Md. 1982) (citing Davis v. Liberty Mut. Ins. Co., 525 F.2d at 1207-08; Stacey v. Aetna Cas.& Sur. Co., 484 F.2d 289, 294 (5th Cir. 1973); Blessing v. U.S., 447 F. Supp. 1160, 1193-95 (E.D. Pa. 1978).

54. Canipe v. Nat'l Loss Serv. Corp., 736 F.2d 1055, 1062-63 (5th Cir. 1984), *cert. denied*, 469 U.S. 1191, 105 S. Ct. 965 (1985) (citing Davis v. Liberty Mut. Ins. Co., 525 F.2d at 1207-08) (footnote omitted).

55. *See* Restatement (Second) of Torts § 324A(c) (1965).

56. Miller v. Bristol-Myers Co., 485 N.W. 2d 31, 40 (Wis. 1992). *See also* Davis v. Liberty Mut. Ins. Co., 525 F.2d 1204 (5th Cir.1976); Heinrich v. Goodyear Tire & Rubber Co., 532 F.Supp. 1348 (D. Md. 1982).

57. The following example comes from illustration 4 of the comments to Restatement (Second) of Torts §324A (1965), current through July 2002. The illustration is modeled after Van Winkle v. American Steam-Boiler Ins. Co., 19 A. 472 (N.J. 1890). As further examples in accordance with subsection (c), reliance, the comments to the Restatement (Second) of Torts § 324A (1965) also cite the following cases: Gimino v. Sears, Roebuck & Co., 14 N.W.2d 536 (Mich. 1944); Sheridan v. Aetna Cas. & Sur. Co., 100 P.2d 1024 (Wash. 1940); Westinghouse Elec. Elevator Co. v. Hatcher, 133 F.2d 109 (5th Cir. 1943); Bollin v. Elevator Const. & Repair Co., 63 A.2d 19 (Pa. 1949); Jones v. Otis Elevator Co., 56 S.E.2d 684 (N.C. 1949).

a report stating that the elevator is in sufficient working condition. Shortly thereafter, the elevator's safety mechanism fails to function properly, which causes the elevator to come crashing down, injuring one of the building owner's workmen. During the course of an investigation subsequent to the accident, it is determined that a proper inspection would have disclosed the injury-causing defect in the elevator. Thus, according to the principle established in subsection (c), the elevator inspector's employer is subject to liability to the injured workman, because the owner of the office building relied upon the company to successfully complete the task that the inspector undertook to perform, and that reliance resulted in the harm suffered. In such a case, the Good Samaritan doctrine, under subsection (c), would be properly invoked as authority for imposing liability on the company that was charged with the duty of inspecting the elevator.

III. THE FIRST CIRCUIT'S APPLICATION OF THE GOOD SAMARITAN DOCTRINE

Prior to the First Circuit's *Bujol* decision, there had been no "Louisiana cases analyzing the Good Samaritan doctrine in the context of a corporate parent/subsidiary relationship."[58] Thus, the lack of Louisiana jurisprudence forced the First Circuit to look beyond the state's boundaries for guidance. In its search for direction, the court cited only two cases that had addressed the pertinent issues presented in *Bujol*.[59] However, only one of the cases, the Wisconsin Supreme Court decision in *Miller v. Bristol-Myers Company*,[60] demonstrated "striking similarities"[61] to the instant case. *Miller* involved an employee who brought suit against the parent corporation of her employer for injuries she received when the flammable chemical she was pouring into a disposal container ignited.[62] The plaintiff alleged "that through its actions, [the parent corporation had assumed a duty of care to the employees of its subsidiary] and that such actions had a direct effect in causing the

58. Bujol v. Entergy Services, Inc., 833 So. 2d 947, 960 (La. App. 1st Cir. 2002).

59. The first case, Johnson v. Abbe Eng'g Co., 749 F.2d 1131 (5th Cir. 1984) was cited only to note that "[s]ection 324A is commonly called the 'Good Samaritan doctrine.'" *Id* at 1132.

60. 485 N.W.2d 31 (Wis. 1992).

61. *Bujol*, 833 So. 2d at 960.

62. 485 N.W.2d 31, 33-4 (Wis. 1992). The *Miller* court also addressed the issue of whether the defendant parent corporation was immune from liability for workplace injuries under Wisconsin's state Worker's Compensation Act. The court held that the parent corporation was not immune from tort liability. *Id.* at 33.

injuries [she] sustained."[63] The parent corporation played a significant role in the process of insuring that its subsidiary's employees had a safe material preparation room, which was the location of the accident. For example, personnel from the parent corporation conducted "unannounced occupational health and safety audits,"[64] offered recommendations for a safe workplace, and had even consulted an independent safety consultant regarding conditions at the plant where the accident occurred.[65] Given these facts, the Supreme Court of Wisconsin held that the parent corporation had rendered the type of services to its subsidiary that satisfy the introductory portion of section 324A.[66] However, recognizing that "[l]iability for the actor arises if the actor failed to exercise reasonable care in the undertaking *and* the requirements of subsection (a), (b), or (c) are met,"[67] the court remanded the case to the circuit court for a determination of whether the parent corporation's actions met the requirements of one of 324A's subsections.[68]

The Louisiana First Circuit began its analysis of ALSA's liability by noting that negligence cases in Louisiana are typically addressed by applying the traditional duty/risk analysis.[69] The court then endorsed the plaintiff's theory of recovery using the Good Samaritan doctrine stating that "[t]he concept of an assumed duty is very firmly rooted in Louisiana jurisprudence."[70] Focus then shifted to the

---

63. *Id.* at 34.
64. *Id.* at 34.
65. *Id.* at 35.
66. *Id.* at 40.
67. *Id.* at 39.
68. *Id.* at 41.
69. Bujol v. Entergy Services, Inc., 833 So. 2d 947, 958 (La. App. 1st Cir. 2002). In its discussion of the duty/risk analysis the court stated:

> The determination of liability under the duty/risk analysis usually requires proof of five separate elements: (1) proof that the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (2) proof that the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) proof that the defendant had a duty to conform his conduct to a specific standard (the duty element); (4) proof that the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) proof of actual damages (the damages element) (citation omitted).

70. *Id.* at 960. Although the topic is beyond the scope of this casenote, it is nevertheless worth mentioning that the Restatement is a common law-based doctrine that developed from the principle "that decisions of courts, being sources of law, should be studied as data with the aim of deriving principles of law from them and finally arranging them into a coherent system." John Henry Merryman, The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America 66 (2d ed. 1999). Thus, the notion of adopting a common law-created theory of recovery in a Civil Law jurisdiction such as Louisiana, just as the First Circuit did in *Bujol*, is interesting to say the least.

technical instruction document issued by ALSA, which set forth the various safety policies that were supposed to be in effect at the time of the plaintiff's accident. After examining some of the explicit language of the technical instruction document, the court concluded that the standards set forth were "requirements" that "must be followed."[71] And among these "requirements" was the stipulation that the use of barrier walls was mandatory workplace procedure applicable to all ALSA subsidiaries. In addition, the court relied heavily upon an aspect of the record which indicated that "ALSA had known for years prior to the fire at the Plaquemine plant that barrier walls would have protected the workers [involved in the accident], thus making the plaintiffs' injuries foreseeable."[72] As a result, the court affirmed the jury's conclusion that ALSA voluntarily assumed a duty for the safety of the employees at the Plaquemine plant and held that the duty requirement of the introductory portion of section 324A was satisfied.[73]

The most interesting aspect of the court's decision is the lack of attention the court gives to the subsections of 324A. In an attempt to explain the proper procedure for applying 324A, the court quoted entire portions of the *Miller* decision, but very little was offered by the court to illustrate how ALSA's actions satisfied one of the three subsections. Prior to presenting its analysis, the court simply stated: "Having found support in the record for the jury's conclusion that ALSA assumed a duty for safety at ALAC's Plaquemine plant, the remainder of the inquiry required by section 324A of the Restatement (Second) of Torts is clearly satisfied by the evidence."[74] And thereafter, the only evidence which received a significant amount of commentary by the court was the testimony of three ALSA employees.[75] But from that testimony, not a single statement was presented that manifested the notion that it was the primary responsibility of ALSA, and not local management, to ensure that work was being conducted in a safe environment at the Plaquemine plant. However, the court quickly resolved this matter by adopting the *Miller* court's argument, stating that

> "[i]t would be inequitable to provide immunity to a parent corporation that had assumed a duty of care to its subsidiary's employees and whose unreasonable performance of its undertaking was a cause of the injuries, simply because its

71. *Bujol*, 833 So. 2d at 963.
72. *Id.* at 964.
73. *Id.*
74. *Id.*
75. The court reviewed the testimonies of the safety director of AL World Group, the director of the technical department at ALSA, and the head of ALSA's engineering and construction activities. *Id.* at 963-4.

activities were supplemental to, rather than in lieu of, the subsidiary's practices."[76]

Although the court mentioned, through a direct quote pulled from the decision in *Miller*, that liability arises only when the actor fails to exercise reasonable care *and* meets one of the requirements presented in the subsections,[77] it failed to explicitly state how ALSA's actions fulfilled one of the three subsections. Without reference to subsection (a), the court simply declared "that ALSA's failure to exercise reasonable care increased the risk to third persons (in this case the ALAC employees)."[78] Unfortunately, the court did not provide any further discussion explaining what ALSA did to increase the risk of harm to the ALAC employees. The court could have provided its readers with a better understanding of how it arrived at its ultimate conclusion by presenting a semi-analogous case. Instead, many questions were left unanswered. For instance, was there a change in the conditions at the Plaquemine plant that increased the risk of harm to the plaintiffs over the level of risk that existed before ALSA allegedly became involved?[79] Or did ALSA's inaction "occur in the face of an increasing risk of harm?"[80] Does this case signal that when the First Circuit applies the Good Samaritan doctrine to cases in similar situations plaintiffs will not be required to prove with specificity how a defendant has either increased the risk of harm, assumed the duty of another owed to a third person, or caused harm to a third person because another individual relied upon the defendant's undertaking to the third person's detriment?[81] As the *Bujol* opinion stands, it appears that the First Circuit would answer this question in the affirmative.

IV. EFFECTS OF APPLYING THE GOOD SAMARITAN DOCTRINE IN THE CORPORATE CONTEXT

A. Workers' Compensation Laws: What Exclusive Remedy?

The negative consequences that may result from courts applying the Good Samaritan Doctrine in the corporate parent/subsidiary context are numerous. Legally, a corporation and its various structural manifestations enjoy the status of separate juridical entities for

76. *Id.* at 965 (quoting directly from Miller v. Bristol-Myers Co., 485 N.W. 2d 31, 39 (Wis. 1992).
77. *See* Restatement (Second) of Torts § 324A (1965).
78. *Bujol*, 833 So. 2d at 965..
79. *See* Canipe v. Nat'l Loss Control Serv. Corp., 736 F.2d 1055 (5th Cir. 1984).
80. *See* Gaines v. Excel Indus., Inc., 667 F. Supp. 569 (M.D. Tenn. 1987).
81. *See* Restatement (Second) of Torts § 324A (1965).

purposes of limiting liability and many other benefits.[82] Therefore, when a court refuses "to give legal effect to the normally separate legal personality of a corporation" the corporate veil is pierced and notions of limited liability are swept under the rug for purposes of adjudication.[83] However, some courts are rather reluctant to engage in the practice of veil piercing. As Professor Glenn G. Morris[84] has noted, in Louisiana, "it is declared to be a strong public policy of [the state] to favor the recognition of the corporation's separate existence, so that veil-piercing is an extraordinary remedy, to be granted only rarely."[85] However, by using the Good Samaritan doctrine to recover damages from a parent corporation, the injured employee successfully evades the challenge of forcing courts to consider whether to pierce the corporate veil of a subsidiary, because such claims are deemed to be "third party negligence actions brought directly against the . . . parent corporation based on [its] independent acts of negligence."[86] Thus, the situation does not present itself in the context of a traditional veil piercing case. As a result, when a parent corporation attempts to defensively pierce the corporate veil of its subsidiary to claim the benefits of the exclusive remedy provisions of a state's workers' compensation statute, it is placed in a position that most often does not lead to favorable results for the parent corporation. This precarious position comes as a result of the fact that many courts take "[t]he traditional and majority view . . . that a corporation may not disregard its own separate entity for any reason."[87] Such

---

82. Glenn G. Morris, *Piercing the Corporate Veil in Louisiana*, 52 La. L. Rev. 271, 274-75 (1991).

> The most commonly-recited reason for the recognition of the separate identity of the corporation is the policy of providing limited liability to corporate shareholders, officers and agents. Yet there are many other, equally important objectives, . . . for example, the corporate personality theory helps to simplify the ownership, management, and transfer of property, the conduct of litigation, and the making and execution of collective, usually majoritarian, decisions. *Id.*

83. Id at 271.

84. Glenn G. Morris, Vice Chancellor and Class of 1950 Professor of Law, Paul M. Hebert Law Center, Louisiana State University.

85. Morris, *supra* note 82, at 282.

86. Andrew J. Natale, Comment, *Expansion of Parent Corporation Shareholder Liability Through the Good Samaritan Doctrine - A Parent Corporation's Duty to Provide a Safe Workplace for Employees of Its Subsidiary*, 57 U. Cin. L. Rev. 717, 734 n.110 (1988) ("The good samaritan doctrine represents one of several possible negligence theories that an injured employee could use to recover against a parent corporate shareholder. The most important aspect of any negligence claim brought against the parent is that the injured employee does not have to pierce the corporate veil of the subsidiary."(footnote omitted)).

87. Michael J. Gaertner, *Reverse Piercing the Corporate Veil: Should Corporation Owners Have it Both Ways?*, 30 Wm. & Mary L. Rev. 667, 681 (1989).

circumstances illustrate how injured workers employed by the subsidiary of a large parent corporation may view the Good Samaritan doctrine as the key to receiving a substantially greater return with respect to compensatory damages as compared to taking the traditional route of accepting only workers' compensation benefits for their workplace injuries.[88]

When an employee is successful in bringing a suit against a parent corporation under the Good Samaritan doctrine, one of the basic principles of workers' compensation law is completely undermined. As an illustration of the common theme reiterated in the overwhelming majority of state workers' compensation statutes, consider the principle underlying Louisiana's Workers' Compensation Act. The Louisiana workers' compensation system embodies "a compromise in which the employer surrenders the immunity against liability which he would otherwise enjoy in all cases in which he was without fault, and, in return, the employee loses his right to full damages for his injury . . . ."[89] Parent corporations most often will argue to be included in the list of parties that are immune from tort liability for workplace injuries; however, "courts have consistently denied parent corporations the immunity granted through exclusive remedy provisions . . . ."[90] Thus, the exclusive remedy provisions of a state's workers' compensation laws are no more than mere words on paper for parent corporations being sued by one of their subsidiaries' employees under the Good Samaritan doctrine. And under such circumstances, "the [G]ood [S]amaritan doctrine appears to represent little more than a 'back alley' through which employees can attempt to circumvent the worker's compensation system in hopes of trapping another deep pocket in a third party negligence action."[91]

B. Liability for Attempting to Ensure a Safe Workplace = Disincentive

There is a simple solution for parent corporations wishing to avoid liability for injuries that occur at their subsidiary's facilities, and that is to have absolutely no interaction with their subsidiaries

88. *See, e.g.*, Natale, *supra* note 86, at 736. ("By permitting injured employees to use the good samaritan doctrine, the courts have essentially unlocked the back door not only to the corporate law, but also to the state workers' compensation systems.").

89. H. Alston Johnson III, Workers' Compensation Law and Practice § 361, *in* 14 Louisiana Civil Law Treatise (4th ed. 2002).

90. N. Stevenson Jennette III, *Providing Safety Services to Subsidiaries: A Liability Trap for Parent Corporations*, 1990 Det. C. L. Rev. 713, 714 (1990).

91. Natale, *supra* note 86, at 735 (footnote omitted).

regarding workplace safety. For instance, parent corporations should not disseminate any safety-related literature to their subsidiaries, such as the technical instruction document discussed in *Bujol*. And subsidiaries should operate their businesses with the understanding that all safety matters, no matter how big or how small, are to be addressed solely by local management. These tactics will likely prevent parent corporation liability. However, this is not the kind of conduct courts want to promote. But like it or not, if the Good Samaritan doctrine continues to be viewed as such a lucrative possibility for recovering damages above and beyond workers' compensation, then corporations may start to seriously consider taking such an isolated approach. Because sharing "with the subsidiary any superior knowledge, technical expertise, or resources it may possess" with regard to workplace safety may be too costly.[92] For example, in *Bujol,* ALSA would not have been liable for millions of dollars had it simply chosen not to make an attempt to inform its subsidiaries about the dangers of operating air separation facilities without barrier walls. And furthermore, had this accident occurred before ALSA purchased the Plaquemine plant in 1986, the plaintiffs would have had almost no chance of recovering damages outside of the exclusive benefits of workers' compensation, even though the same conditions existed before ALSA became involved. There would have been no one to blame for the absent barrier walls except the direct employer, ALAC, which would undoubtably be immune from tort liability. ALSA could have easily protected itself from massive tort liability by simply scrapping the idea of providing valuable safety information to its subsidiary plants.

V. POSSIBLE SOLUTION TO THE GOOD SAMARITAN DILEMMA

For employers throughout the state of Louisiana, the exclusive remedy provision of the Workers' Compensation Act[93] is an invaluable resource for preventing injured workers from taking tremendous swipes from their employer's finances. But for many employees injured on the job, the provision is viewed as little more

92. Annette T. Crawley, Note, *Environmental Auditing and the "Good Samaritan" Doctrine: Implications for Parent Corporations*, 28 Ga. L. Rev. 223, 266 (1993) (footnote omitted).

93. The exclusive remedy provision of La. R.S. 23:1032(A) (1998) provides:

> [T]he rights and remedies herein granted to an employee or his dependent on account of an injury, or compensable sickness or disease for which he is entitled to compensation under this Chapter, shall be exclusive of all other rights and remedies . . . available to such employee, his personal representatives, dependents, or relations, as against his employer, or any principal or any officer, director, stockholder, partner, or employee of such employer or principal, for said injury, or compensable sickness or disease.

than a burdensome obstacle standing in the way of allowing them to receive adequate compensation, which has, in turn, resulted in a continuous "assault on the exclusive remedy provision by plaintiffs' attorneys."[94]

In the past, the Louisiana Legislature has responded to this "assault" by amending portions of the Workers' Compensation Act with hopes of resolving some of the problems associated with statutory interpretation. Prior to LSA-R.S. 23:1032's amendment in 1976, courts struggled to determine who was to be deemed an "employer" for purposes of tort immunity under Section 1032. Plaintiffs began alleging "that certain other employees of the same employer (particularly executive officers charged with supervisory and safety responsibilities) were negligent and hence liable in tort" for their injuries. Courts eventually allowed these "executive officer" suits to become a feasible method by which injured workers could side-step the exclusive remedy provision of Section 1032.[95] So "[t]o prevent this circumvention of the basic compensation design, the 1976 legislature made compensation the exclusive remedy of the employee against 'his employer, or any principal or any officer, director, stockholder, partner, or employee.'"[96]

Once again, the exclusive remedy provision is under assault. If the Good Samaritan doctrine continues to provide employees of subsidiary corporations with a way to recover damages in suits against parent corporations for workplace injuries, then the exclusive remedy provision's intended effects may be substantially weakened "[b]ecause such lawsuits defeat the purpose of workers compensation statutes (to reduce lawsuits and ensure that workers are promptly compensated for their injury)."[97] Therefore, it is once again time for the Louisiana Legislature to evolve and keep pace with the growing sophistication of the corporate world and its various operating structures, not to mention the never-ending creativity of plaintiffs' attorneys. Such a feat could be accomplished by a rather simple amendment to the present workers' compensation statute. For example,

---

94. Treece & Zuckerman, A Parent Corporation's Liability for the Tort's of its Subsidiary in the Context of the Exclusive Remedy Provision of the Workers' Compensation Laws, 54 In. Couns. J. 609 (1983). The authors emphasize how "the highly valued immunity protection afforded to an employer by carrying the workers' compensation benefits insurance in compliance with the state statute is gradually being eroded" by injured workers bringing third-party negligence actions against the parent of a subsidiary corporation.

95. H. Alston Johnson III, Workers' Compensation Law and Practice § 361, *in* 14 Louisiana Civil Law Treatise (4th ed. 2002).

96. Kathleen A. Manning, et al, *The Work of the Louisiana Legislature for the 1976 Regular Session*, 37 La. L. Rev. 89, 183 (1976) (citing La. R.S. 23:1032 (1988), *as amended by* 1976 La. Acts 147, No. 147, § 1.

97. Jennette, *supra* note 90, at 714.

inserting "or affiliate" in the exclusive remedy provision of LSA-R.S. 23:1032(A) would encompass *all* business entities which are members of the same corporate family within the protective confines of the statute. Thus, with the proposed addition, LSA-R.S. 23:1032(A) would provide:

> [T]he rights and remedies herein granted to an employee or his dependent on account of an injury, or compensable sickness or disease for which he is entitled to compensation under this Chapter, shall be exclusive of all other rights, remedies . . . available to such employee, his personal representatives, dependents, or relations, as against his employer, or any principal *or affiliate*, or any officer, director, stockholder, partner, or employee of such employer or principal, for said injury, or compensable sickness or disease.[98]

By adding a few words to the list of entities which are declared immune from suit by an injured employee, the legislature could successfully bolster the effects of the exclusive remedy provision of Louisiana's workers' compensation statute. In addition to providing protection to parent corporations, similarly situated sister subsidiary members of a common corporate structure would also be shielded from suit by an injured worker attempting to impose liability under a single business enterprise theory. Considering how the legislature took action in 1976 "to eliminate the increasing number of employee actions in tort against [executive officers and the like],"[99] nothing should stop it from seriously considering taking similar steps once again. Thus, it is respectfully urged that the legislature make the necessary changes to provide for parent corporations before suits against them become widely known as the golden loophole of the exclusive remedy provision.[100]

VI. CONCLUSION

When a tragic workplace accident occurs, the injured workers and the families involved should not view such instances as something akin

---

98. La. R.S. 1032(A) (1998) (with emphasis added on proposed addition).

99. Michael Mossy Christovich, *Workmen's Compensation – Retroactivity of Amendment to Louisiana Workmen's Compensation Statute*, 52 Tul. L. Rev. 907, 910 (1978); *see also* H. Alston Johnson III, Workers' Compensation Law and Practice § 361, *in* 14 Louisiana Civil Law Treatise (4th ed. 2002) (referring to the 1976 amendment to the Louisiana Workers' Compensation Laws in that "the primary purpose of the 1976 amendment to La. R.S. 23:1032 was to extend specifically to executive officers of the employer the immunity previously enjoyed by the employer under the section.").

100. *See* Natale, *supra* note 86, at 737 ("Perhaps the best way to protect the parent from unlimited liability to a subsidiary's injured employees is to amend the current workers' compensation statutes by adding a provision that extends immunity to the parent corporation.").

to a lottery, where the chances of being compensated for their losses is not certain. Legislators nationwide realized this some time ago and that is why states throughout the country have enacted workers' compensation schemes, which guarantee "no questions asked" compensation to the injured employee in return for the employer being granted immunity from suit. But the Good Samaritan doctrine threatens this very valuable system of compensation and immunity by defeating the ultimate purpose behind workers' compensation statutes. In addition, if parent corporations continue to be held liable for attempting to provide a safe atmosphere in which the employees of their subsidiaries work, the negative implications that may result (i.e., providing absolutely no help in the area of increasing workplace safety) will undoubtably be out of synch with desirable public policy. Therefore, it is time for a change. As various business associations throughout the world continually change the way in which they operate, many of them as a result of their ever-increasing size, the state's workers' compensation statute must evolve to accommodate this change and insure that the purpose and effect of workers' compensation statutes are not completely eroded.

Matthew P. Bonham[*]

* Thank you to professor Frank L. Maraist for bringing this case to the author's attention, and to Professor Glenn G. Morris, Shawn Carter, Whitney Elzen, and Alexandra White for their valuable comments and suggestions provided during the production of this casenote.