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Private Law: Partnership

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PARTNERSHIP

*Milton M. Harrison**

Under Louisiana Revised Statutes 23:1032, an injured employee has an exclusive remedy from his employer for workmen's compensation benefits but he is entitled by sections 1101 through 1103 to recover in tort from third persons who caused his injury. These provisions have been interpreted to permit recovery of damages in tort from executive officers of a corporation, despite the right to workmen's compensation benefits, on the theory that the corporation is an entity separate and distinct from its officers, directors, and shareholders.¹ It has also been recognized that a partnership is an entity separate and distinct from its partners.² However, from 1972 to 1976, the Second,³ Third,⁴ and Fourth⁵ Circuit Courts of Appeal in five cases refused to apply the entity theory to partnerships and held that the exclusive remedy of an injured employee of a partnership was for workmen's compensation benefits from the partnership and there was no cause of action in tort against a partner who caused the injury. The supreme court in *Cooley v. Slocum*⁶ reversed the court of appeal and expressly overruled the four other cases on this point. The supreme court recognized the partnership and partners as separate entities, reversed the summary judgments of the trial and intermediate court, and remanded the case for trial to determine whether the partner negligently caused the injury.⁷

The decision in *Cooley* is to be applauded because it clearly maintains the entity theory of partnerships and treats the executive officers of corporations and partnerships the same. The effect of *Cooley*, however, was short-lived because Louisiana Act 147 of 1976 amended sections 1032

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1. Comment, *Workmen's Compensation—Executive Officer Liability*, 33 LA. L. REV. 325 (1973).

2. *State v. Morales*, 256 La. 940, 240 So. 2d 714 (1970); *Trappey v. Lumbermen's Mut. Cas. Co.*, 229 La. 632, 86 So. 2d 515 (1956). See also Note, 34 LA. L. REV. 654 (1974).

3. *Cockerham v. Consolidated Underwriters*, 262 So. 2d 119 (La. App. 2d Cir. 1972).

4. *Leger v. Townsend*, 257 So. 2d 761 (La. App. 3d Cir.), cert. denied, 261 La. 464, 259 So. 2d 914 (1972); *Cooley v. Slocum*, 313 So. 2d 606 (La. App. 3d Cir. 1975).

5. *Obiol v. Industrial Outdoor Displays*, 288 So. 2d 425 (La. App. 4th Cir. 1974); *Bersuder v. New Orleans Pub. Serv., Inc.*, 273 So. 2d 46 (La. App. 4th Cir. 1973).

6. 326 So. 2d 491 (1976).

7. *Id.* at 492.

and 1101 of Title 23 of the Revised Statutes to preclude any recovery in tort from any officer, director, stockholder, partner, or employee of the employer by an injured employee entitled to workmen's compensation benefits from his employer. While limiting the availability of action in tort, the statute treats all separate entities the same, which is consistent with the theory of *Cooley*.