

IN THE SUPREME COURT OF MISSOURI

Amie Wieland,)	
)	
Plaintiff-Respondent,)	
)	
vs.)	SC 96210
)	
Owner-Operator Services, Inc.,)	
)	
)	
Defendant-Appellant.)	
)	

Amicus Curiae Missouri Chamber of Commerce and Industry’s Suggestions In Support of Appellant’s Application for Transfer

The Opinion from the Missouri Court of Appeals for the Western District in *Wieland v. Owner Operator Services, Inc.*, No. WD 79414 (Dec. 13, 2016) raises issues of pressing importance and interest that merit transfer. The Opinion sweeps aside a century-old rule that businesses have no tort duty to protect their patrons against unforeseeable criminal acts of uninvited third parties. *Wieland* thus creates costly uncertainty that will hurt Missouri’s economy, its businesses, and its employees.

This Court should grant Appellant’s request for transfer, bring clarity to the obligations of Missouri’s businesses, and reaffirm the narrow circumstances in which companies can be held liable criminal conduct of others.

I. Interest of Amicus Curiae.

The Missouri Chamber of Commerce & Industry (the “Chamber”) is the largest business association in Missouri. Representing more than 40,000 employers, the Chamber advocates for policies and laws that will enable Missouri businesses to thrive, promote economic growth, and improve the lives of all Missourians. By heaping liability for the criminal acts of third parties on these companies, the new rule announced in *Wieland* frustrates these goals.

The Chamber has a strong interest avoiding the negative economic effects of this Opinion. The vast majority the Chamber’s members operate brick and mortar businesses that will be hurt by increased costs in security, surveillance, and insurance that will follow from decision.

II. The Opinion eviscerates the century-old “no duty rule.”

It has been the law in Missouri for over one hundred years that businesses do not have a tort duty to protect invitees from the criminal acts of third persons. Slip Op at 6. There are two exceptions to this “no duty rule.” A duty will arise if the business: 1) has notice that someone likely to commit a crime is on the premise, or 2) has constructive notice based on prior incidents of criminal activity on the grounds (or some other special circumstance) that such individuals may enter the premises and pose a danger. *L.A.C. v. Ward Parkway Shopping Center*, 75 S.W.3d 247, 257 (Mo. banc 2002); *Faheen v. City Parking Corp.*, 734 S.W.2d 270, 272-73 (Mo. Ct. App. 1987).

The Opinion tears this paradigm asunder. The *Wieland* plaintiff sued her employer OOSI for negligence after she was shot by her former boyfriend in the OOSI parking lot. Because she relied on specific evidence that OOSI was aware that she felt threatened by her ex-boyfriend, the plaintiff's verdict director submitted her claim based on the first exception to the "no duty rule" noted above (the specific harm exception). Slip Op at 7. Although there was no evidence that OOSI had notice the assailant was on the property, the Court of Appeals affirmed the plaintiff's verdict. It held that OOSI had a duty to take some preventative action before the day of the shooting that might have enabled it to detect the assailant. Slip Op at 10.

Wieland is grounded on a misreading of *L.A.C.* Contrary to the Opinion, this Court neither abrogated the "no duty rule" in *L.A.C.* nor did it somehow loosen the strict exceptions to that rule. And *L.A.C.* did not adopt a "general tort approach" to analyzing whether a business has a duty to protect invitees against criminal conduct. Rather, the passages from *L.A.C.* cited by the Opinion were plucked from this Court's largely *dicta* discussion about how courts apply the second exception to the rule, which the plaintiff in *Wieland* elected to forgo.

Still, the Opinion declares *L.A.C.* adopted a new policy for holding businesses liable for the criminal acts of others. Its reading of *L.A.C.* effectively eliminates the "no duty rule." In its place, the Opinion simply leaves the "traditional tort approach" for determining whether a business has a duty to protect against crimes others commit on their property. Slip Op at 9-10.

Barring transfer, then, *Wieland* and *L.A.C.* will be widely cited to show that Missouri businesses are duty bound to take costly preventative measures to detect and prevent crimes by third parties on their property. The upshot is that businesses like OOSI will have a duty not only to ensure that their fixtures and structures are safe for invitees, but also to ensure that their invitees will not be harmed by the criminal acts of uninvited third parties. This of course has never been the law in Missouri, a point this Court can and should affirm on transfer.

III. The Opinion will harm Missouri Business.

Should it stand, this Opinion will hit Missouri businesses – especially its small businesses – hard. Consider the obligations it imposes. Any time a barista hears that one of her regulars has been threatened offsite, the coffee shop will need to take extraordinary measures to monitor and safeguard that customer from counter to car door every time she visits. A small town grocer – no stranger to the lives of his customers – will now be forced to monitor every part of his store and parking lot whenever he learns there is risk of physical strife among individuals in his community.

The Opinion’s newly mandated vigilance will carry significant costs. Missouri businesses will need to expend vast sums to increase security, including the installation of expensive surveillance equipment. Costs for insurance premiums for businesses will also undoubtedly rise, particularly those serving a high volume of patrons.

These added expenses will be felt in every corner of State. Businesses will increase prices, which will harm Missouri consumers. It will be harder for small

companies to hire and retain employees. And the costs of the Opinion’s sweeping duty will make it more difficult for Missouri to attract new employers to the state and to keep those already here, especially in highly competitive border regions.

* * *

The Opinion creates a duty for Missouri businesses to safeguard against the criminal conduct of others that neither this Court nor the General Assembly has ever seen fit to impose. Given the costs associated with this new doctrine, this Court should transfer the case to clarify the law and the scope of Missouri’s common-sense “no duty rule.”

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Respectfully submitted,

By: /s/ Anthony Bonuchi

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2017, a true and correct copy of the above and foregoing was electronically filed the Clerk and service was completed via the Court's electronic filing system on:

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