# ORAL ARGUMENT – 01/16/02
# 01-0220
# WEST OAKS HOSP V. JONES

THOMPSON: The patient was suicidal. He was going to be suicidal. In fact, in the previous 24 hours the institution was concerned enough about him that they were considering transferring him to another facility. He was on the telephone close to a locked door, a public telephone. When a woman came through the locked door, the patient bolted from the door, the patient took off running away from the hospital followed in close pursuit by employees of the hospital. He got to an interstate highway about ½ mile from the hospital with the employees still in pursuit. He tried to flag down a passing car to hitch a ride, was unsuccessful, and as his pursuers closed in he jumped in front of an oncoming truck and was killed.

That is not the case that we are here today _____. Instead that is the case of Dallas Co. Mental Health & Mental Retardation v. Bosley. A case decided by this court only about 3-1/2 years ago. Six of the justices here were in the majority in that case. CJ Phillips, Justice Enoch, Justice Baker, Justice Owen, Justice Hankinson and Justice Hecht wrote the majority opinion on that, also joined by Justice Gonzales.

The majority opinion on that case as I read it, if I'm reading it correctly, it was determined that the patient's death was distant geographically, temporally and causally from the open doors of the hospital.

If you read Justice Hecht's opinion, it is rather clear that in order to come up with a cause of action because it was a tort claim's act they had to have some kind of property involved.

PHILLIPS: And nothing in Justice Hecht's opinion or the dissent opined on whether or not the hospital's conduct was negligent or not negligent.

THOMPSON: That is correct. That was not the issue in the case. But throughout the opinion and throughout the dissent is the discussion that what we're really talking about here is proximate cause. Because as we know in the tort claims act...

HANKINSON: Well I believe the opinion also referenced the fact that the proximate cause was tied to the negligent acts of the hospital as opposed to the condition of the door which was the property and it had to be an issue in order to invoke a waiver of the tort claims act. So in fact, the case distinguished between alleged medical negligence and the condition of the door.

THOMPSON: All I can say is that 6 of you were in the conference room, and I was not.

HANKINSON: I'm talking about what the face of the opinion says. The opinion says that the

real allegation, what was really at issue there was the conduct of the hospital in the way it handled and treated the patient as opposed to the condition of the door.

THOMPSON: And I agree with that. There's no doubt that's what the opinion says. And if this court wanted to make some kind of distinction and distinguish that case from this...

PHILLIPS: A door in a hospital is pretty easy to distinguish.

THOMPSON: You might think so, but I would disagree, as I read the opinion because, and even if you read Justice Abbott's dissent, he's still talking in terms of foreseeability and proximate cause. And so if the opinion is read as it appears to have been written, we were dealing with proximate cause at that time regardless of whether the conduct of the hospital or it was a condition of the hospital that was the event which led to a discussion of proximate cause.

O'NEILL: Are you saying it's not foreseeable that someone who is suicidal would kill themselves?

THOMPSON: Of course it's foreseeable. Absolutely.

O'NEILL: I don't understand your foreseeability argument.

THOMPSON: The foreseeability argument deals with at what point when you're dealing with this public policy of proximate cause, if you've got this rubber band that's proximate cause, at what point does that proximate cause break so that you no longer can say that the event that caused, in this case the death...

O'NEILL: And what if the death had occurred an hour after the escape from the hospital?

THOMPSON: If the Bosley opinion is correct, the Bosley opinion said it was only about ½ hour and that was as the Bosley opinion said, it was too attenuated from the patient's death to have caused it.

O'NEILL: So you say it's temporal. Let's say he went right out in the parking lot and committed suicide immediately. I mean how do we decide what's too far removed or...

THOMPSON: Let me clarify that by saying one of the factors involved is temporal. The other factors that the court has talked about is geographically and causally. So we've got three involved.

We've got a standard with regard to how far we are to search and that's within a mile of the hospital. It was within one mile when he died. You also have to remember that we are in a commercial area off the Southwest freeway in Houston where you can search forever and not find somebody once they're gone.

HANKINSON: But your client didn't search.

THOMPSON: That's correct.

HANKINSON: So, in fact, what you're saying is that and even though their policies required them to search when a patient such as this gentleman eloped from their facility, what you're saying is if they choose to commit an additional act now of negligence and don't search like they are supposed to, then in fact that's better than searching because they will get off the hook of their negligence because _____ find them?

THOMPSON: No, not at all. I concede that my client was negligent. We have never challenged that throughout the appellate process. So whether it was negligence in whatever reason...

HANKINSON: I understand that. But what you're saying is is that their later negligence is what breaks the causal connection, because had they searched they might have found him. We don't know. But since they chose not to even though he was within a mile of the hospital when he committed suicide, 6 hours passed, and he ended up committing suicide. So you say, great, if we don't search and more time passes, then the more we let ourselves off the hook.

THOMPSON: All we can do is speculate about whether or not a search under those circumstances would or would not have done any good.

HANKINSON: You concede that there is foreseeability here as an element of proximate cause if there is evidence of foreseeability?

THOMPSON: Of course, you have to concede...

HANKINSON: So we're dealing with cause and fact. That's all that's at issue here. Is that right?

THOMPSON: No, we're going a little further. We're dealing not with - in part we're dealing with cause and fact. That's correct.

HANKINSON: So we have two elements to _____ proximate cause: foreseeability and cause and fact. And if I understood your answer to J. O'Neill's question, you concede that there is evidence on foreseeability?

THOMPSON: The issue really is it's broader. And I use the word narrow and I said that wrong. It's broader than just the issue of foreseeability. Because of course if a patient escapes from an institution where there is a potential for suicide, of course it is foreseeable that that patient could...but the issue is how far do you foresee into the future before as a matter of policy do you go before you say that the events that were started in force have come to rest.

HANKINSON: Our traditional foreseeability analysis seems to me to be me met in this case. And as I understand your argument and the way you briefed it, you claim that because of these temporal, geographical, and some other consideration that the causal connection was broken and, in fact that the hospital's conduct is not the cause and fact of his death for those reasons.

THOMPSON: Yes, I agree with that. And I'm relying very strongly on the Bosley opinion in arriving at that conclusion.

HANKINSON: Well assume with us that we disagree with your analysis of Bosley. Then where does your cause and fact argument stand?

THOMPSON: I would go back to either Union Pump or Campbell v. Bell or the _____ Seigler case and analyze the line drawing that must be done in any proximate cause case.

HANKINSON: Tell me where the causal connection is broken between the hospital's negligence and the gentleman's commission of suicide?

THOMPSON: We'll start with the temporal causal connection. We'll start with 6 hours. But I'm not going to end there. I just want you to be aware of that, that if we go through go the 6 hours, the patient escaped around 3:30 p.m., he called his brother around 4:30, wouldn't say where he was, he called again later in the evening. And somewhere around 8:00 p.m. called again and said, I'm at the Howard Johnsons over on the Southwest Freeway. Within 15 or 20 minutes his brother was there. We don't know what he did between. It could have been that he was at a movie. It could have been he was in a restaurant. He could have been at the Howard Johnson's bar watching a baseball game. Any number of those things we could look at and say the causal relationship had been breached in addition to the time that was involved.

HANKINSON: I don't understand why the causal connection was breached. The man was mentally ill. He was diagnosed at the hospital as being mentally ill and in a period of suicidal _____ during that time period. The evidence apparently shows that that was the condition he was in during that entire 6 hour period. So if the hospital in many ways was negligent, such that he then was able to elope from the facility, why isn't the hospital's negligence the cause and fact of his death?

THOMPSON: The one thing we know for sure is that the events that had been triggered by the hospital's negligence 6 hours before had come to rest at least, if not before, by the time that he got to the Howard Johnsons.

HANKINSON: What about the negligence that occurred during that 6 hour time when they should have been searching for him and they weren't?

THOMPSON: There's also a time limit within which they were supposed to search in that same policy.

HANKINSON: How many hours was that?

THOMPSON: I think it's less than 1 hour, or something like that.

JEFFERSON: Did they notify authorities that he was missing?

THOMPSON: No. The evidence was that the authorities would do nothing. If somebody is missing unless they are missing for 24 hours they won't do anything.

JEFFERSON: Did they notify family members?

THOMPSON: They notified family members and notified the doctor. The doctor said just mark on the chart that he's absent against medical advice, and then they notified Carver Jones, his brother, who was the one that eventually found him at the hotel at 8:00.

ENOCH: I'm a little bit confused. I understood your argument to not be that the hospital's negligence wasn't a cause and fact in the general sense. But that our court's jurisprudence has had a cutoff of cause and fact. That at some point in time even though it's a cause and fact generically it's not a legal cause and fact, because it's become attenuated, too remotely connected as cause and fact to be considered a legal cause and fact. That's what I understand your argument to be. If it's a traffic accident or we set up an accident and then somebody else has an accident and then somebody else has an accident, it's easy for me to conceive of the attenuation based on the passage of time. But let's suppose that I'm a daycare center and I have a three year old child who gets out of the center, and starts wandering down the street. And there's negligence in allowing the child to get out of the center. Where would we be to say, well if the child is not found within 3 hours, then the causations too attenuated when - sometimes children are found 2-3 days later. Sometimes children are found dead. And if they would have been found within the first three hours they could have been left alive, but now they are dead. It seems to me a rule in this case that follows this attenuation of the causation is really counter to the responsibility of someone who is in charge of an incompetent to otherwise escape. How could we craft a rule that would be reasonable in terms of someone who is in charge of an incompetent who escapes - it seems to me that the daycare center shouldn't escape liability just because the child's body is found four days later as opposed to three hours later.

THOMPSON: All I can reply to that, and I don't think there's any distinction to be made between a daycare center and a three year old child as compared with a hospital and a potentially suicidal patient. Let me quote to you from the one case that I did not cite from the Texas SC and that is Paul's Graft(?). The dissent in Pauls Graft says, "What we do mean by the word proximate is that because of convenience of public policy of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point." It's obviously an exercise in judicial line drawing that we have to make. And this court in the Bossley case had made the decision that in a sequence of events much more close in time and proximity found that those circumstances were too attenuated to be a proximate cause of this man's death. So the policy decision has been made. Our response

is that if that is the policy decision as set forth by 6 of you who made that decision in 1998, then our set of circumstances is far more attenuated, and in fact the events that were set in force by our hospital had come to rest certainly by the time that the brother got to the Howard Johnsons motel, had confirmed with the patient, Lee Jones, that he was ready to go to _____ Hospital to another facility...

PHILLIPS: You think that the Tort Claims Act if there's a piece of property anywhere involved, an electrocardiogram machine, or a door, or anything else, then we use the same concepts of foreseeability and proximate cause in those tort claims cases that we do in an ordinary negligence case?

THOMPSON: That's my clear reading of the Bossley case and that seems to be very clear from Justice Abbott's dissent.

HANKINSON: Was the hospital's admitted negligence a substantial factor in bringing about this gentleman's death at the Howard Johnson that day?

THOMPSON: No.

HANKINSON: Why not? If he hadn't gotten out of the hospital, he wouldn't have been at the Howard Johnson and couldn't have grabbed a security guard's gun.

THOMPSON: And that gets back to this same issue regarding line drawing as to whether it's a substantial factor or not. If it had been 3 days later would it have been a substantial factor or not? At some point it is no longer a substantial factor. And as this court has promulgated in the Bosley case, the conduct would not be a substantial factor under the circumstances in this case.

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RESPONDENT

LEWIS: We should have quite confidence in the justice of the people because there is no greater justice in the world. I borrow those words from Abraham Lincoln because I truly believe in them, and because they are absolutely applicable to this case where the jury held that they were a proximate cause...

OWEN: What if the hospital had pursued him and had located him in a Howard Johnsons and about the same time that the brother arrived, and the brother said, I'm going to take him to _____. Would that change the proximate cause analysis in this case?

LEWIS: Then they would have an argument for the jury for superseding intervening cause. And that is, if his custody was taken over by the brother and he was actually in his brother's custody and they had released with a doctor's order, and they would have to have a doctor's order under the _____.

OWEN: Let's assume the facts were exactly the same except they had been able to follow him and about the same time that the brother got to the Howard Johnsons they arrived and the brother says, no, I'm going to take him to _____. I've called _____.

LEWIS: No. He couldn't have been released into his brother's custody. It would have had to take a doctor's order to release him. The doctor's order would normally release him to the custody of another facility that's qualified to care for a patient who is suicidal. Because he was diagnosed as suicidal: having bipolar disorder, and was in a major depressive episode. Now they would have an argument about a superseding intervening cause that could go to the jury, however.

PHILLIPS: Once I voluntarily check myself into a hospital if they make that diagnosis I may be there forever.

LEWIS: At least for a 24-hour period of time. There are certain limitations on it in the health code. As for a 24-hour period of time at least, they are going to hold him, and then they will check in again to find out whether or not he's out of his major depressive episode or whatever it was that was causing him to be suicidal. But it does take a doctor's order to release him from the psychiatric ICU.

JEFFERSON: Is it statutory, the 24 hour order that you're talking about?

LEWIS: That's the standard by which WestOaks is going by. I believe it is contained in the Health Code, and I would have to check for sure. I believe it's in Ch. 574 or 572 of the health code.

O'NEILL: Was an intervening or superseding cause question asked of the jury?

LEWIS: No. It was not.

O'NEILL: So we would have to find that as a matter of law?

LEWIS: Yes, you would. And there is no evidence of superseding intervening cause. If there had been some challenge to the jury charge they could raise it here. But they had not raised any superceding intervening cause...

OWEN: But in Union Pump we didn't say it was superseding cause. We said that the negligence of the person that had started the fire had come to rest. And that after the woman had put out - that she had been persistent in putting out the fire, the fire was out, she had turned to walk away and go home. And we said that the negligence had basically come to rest. And why isn't that's what happened here? The brother has taken charge. He's talked to the patient. The patient has voluntarily agreed to go to another hospital. Why isn't the negligence of the hospital come to rest at that point?

LEWIS: First of all, the brother had never taken charge. And that is a matter for the

jury as to what was done in that respect and no superseding cause was requested. No instruction to the jury.

OWEN: I'm not talking about superseding cause. We distinguished the concept in Leer v. Sigler(?) and in Union Pump. We said there is a difference between superseding cause and proximate cause. And we said in Union Pump, the conceded negligence had come to rest at that point and was no longer the active cause of the injury.

LEWIS: Well here WestOaks violated its duties which were specifically designed to prevent the very injury which actually occurred. In Union Pump v. Albritton, this court ruled that it was too far attenuated. You have to compare the actual injury that occurs with the injury the defendant has a duty to guard against. In that case, the pump caused a fire. The pump did not cause a slip and fall.

OWEN: So if he had gotten hit by a car on the Southwest Freeway would the hospital be liable?

LEWIS: Yes.

OWEN: Not suicidally. Not to kill himself. The evidence was he was not trying to kill himself. He was trying to cross the Southwest Freeway and was hit by a car. Would that be negligence on the hospital?

LEWIS: Well that's a matter for the jury. And negligence actually is not an issue here. It certainly is foreseeable that he could get hit by the car crossing the freeway when he's in a major depressive episode, and he elopes from the hospital. That is a matter for the jury to determine.

OWEN: Why wasn't it foreseeable in Union Pump as she turned to walk away from the fire she slipped on a wet substance on the pipe rack that was caused by putting out the fire?

LEWIS: It was foreseeable. I believe this court made the determination that it was too far removed. It was a couple of steps removed from the danger against which the defendant was to guard. The pump manufacturer caused a fire, that is the pump caused the fire. What we normally consider in a fire is somebody being injured by the fire. Somebody being injured at least on the property where the fire occurred. But here it is away from the property or when she's walking away from putting out the fire and she slips on some pipe that had some firefighting foam or water on it. That is attenuated. That is merely creating the condition by which injury could occur. In the suicide context what after omission short of murder does more than create a condition by which the injury could occur? My answer to that is exactly what West Oaks did: it violated its duties which were specifically designed to prevent the very injury which actually occurred. It violated numerous responsibilities many of which could have prevented his death. And Dr. Slavey's(?) testimony was that he would still be alive today had they complied with their responsibilities, but since they did not he died and he died from the exact danger that was foreseen by the hospital. Precisely the danger.

HECHT: What is the evidence on whether he could have been found after he got loose?

LEWIS: We don't know, and that's something that - considering the evidence most favorable to Jones, which this court is obligated to do, we would have to say that if they had immediately searched for him within the period of time which is one hour that they are required to with two people in a van, it should be assumed that they would not...

HECHT: I just asked what the evidence was.

PHILLIPS: What's the evidence about the _____ of that search?

LEWIS: They have been found in the past. I don't know that that was evidence in this case. The only evidence is that they did not attempt to search at all. The lady that let him go, Nurse Williams, merely went out into the parking lot and then came right back and didn't search for him at all. They did not comply with their policy that required they search for him within a 1-mile radius in a van.

HECHT: A mile radius is a pretty large area. And I just wondered if there was any evidence one way or the other at trial on whether you could find somebody in that distance. That's 2,000 acres in any amount of time.

LEWIS: You may recall that he was actually out in the lobby. If they immediately gave search they may well have gotten him before he got out of the parking lot. And if they hadn't left him, abandoned him in the lobby in the first place, which was against their policy that they were never supposed to leave him alone for even 1 second according to Nurse Blomstrom as well as ass't supervisor Miller, never leave him alone for 1 second, because he may dart out. If they hadn't violated that policy, we wouldn't even be talking about what could have been done with regard to the search. But who knows. If they search for him immediately, sure they could find him. Certainly that's a reasonable inference that the jury could draw.

And this court cannot reverse this case unless reasonable minds cannot differ as to the conclusion that the evidence lacks probative force.

ENOCH: Short of having to demonstrate intervening cause, would a child care facility if they are negligent in allowing the 3 year old child to leave and the child disappears, short of proving an intervening cause would there be automatic liability for any injury that happened to the child?

LEWIS: Not automatic liability. It would be a matter for the jury depending on the circumstances of the particular case. The day care facility is a perfect analogy. If a 4 year old child escapes a day care facility through violation of many of their policies, and he wanders around for 6 hours until he's finally hit by a car or falls into a swimming pool and dies, West Oak would have you believe that the day care facility has absolutely no responsibility for his death because it's too

attenuated.

OWEN: What if my child eloped for a day care facility and I found her. I went and searched for her and I found her. And I found her in the lobby of the hotel, and I turned my back to go call the day care center to say, I found her. And when my back is turned she walks out of the lobby into the street and gets hit by a car and killed. Is the day care's negligence still the proximate cause of her death?

LEWIS: Possibly giving the other circumstances in the case. But that is a matter for the jury to consider. You would have control of your own child. And there aren't any statutes governing the release of your child to you. Anytime you come to a day care center and say, I would like my child out. Your child can be released. However, if Carver Jones had come to the facility and said, I want my brother out. They would say, no...

OWEN: I didn't go to the day care center. They released my child without my consent. They breached their obligation. There's no question they were negligent. Now I find my child and I turn my back on my child and but for their negligence neither of us would have been in that hotel lobby.

LEWIS: Then they would have evidence of a superseding cause. Evidence that you turned your back on your child. You had taken control of your child. You had released them from their obligation by calling them. And then you turned your back on your child, that would be evidence...

OWEN: I hadn't called them yet. I was on my way to call them.

LEWIS: Then that is one factor that a jury may considering in determining whether there is a superseding cause. But that is not an issue which is brought before this court. There is no allegation of a superseding cause here.

ENOCH: That goes back to my question. Short of establishing a superseding cause under these circumstances the center would be liable for any injuries that occurred to the person that was in their care whenever it happened?

LEWIS: Normally it would be. But if we're talking about three years later and the child is found living with his sister who had taken custody of him and he falls in his sister's swimming pool, then that is a matter that may be so far removed that the court could take it out of the hands of the jury. I would assert to this court that it still should be a matter for jury consideration because we should have confidence in their prudence and judgment. In that case, the jury would think, well the sister had this child for three years, that child was in the sister's control not the daycare center's control even if they didn't search for him it doesn't matter, the sister had him. And that is again another matter for the jury to consider. And the jury would be prudent enough in that case not to hold the facility liable for that death because it would be too far attenuated.

RODRIGUEZ: The reference you made earlier to inability to release except for a doctor's order, you're saying that's statutory?

LEWIS: I believe it's contained in the health & safety code. But it was conceded in the record that he could not be released. It's not an issue at all that was raised by West Oaks. They conceded he could not be allowed out of the psychiatric ICU without a doctor's order.

RODRIGUEZ: Would there be a difference if someone checks in for a drug treatment, say cocaine abuse, and then goes AMA, leaves the facility, then subsequently engages in cocaine abuse once more and overdoses?

LEWIS: Would there be a difference in which respect?

RODRIGUEZ: In liability towards the psychiatric facility.

LEWIS: Under those circumstances if he is admitted and he is contained by a doctor's order in the psychiatric facility, and they allow him to depart when it is against their policies and procedures to do so, and against the standard of care to do so, and he gets out and snorts cocaine and kills himself, then you would have a matter for a jury determination. And this court should not rule as a matter of law that the facility is not responsible.

RODRIGUEZ: What measures did the hospital take once they realized that he was gone?

LEWIS: Virtually none.

RODRIGUEZ: What were they?

LEWIS: The only things that they did were at a certain point they called his brother, and it's my understanding they called his doctor at some point. That's it. They went out into the parking lot. What they did not do was they didn't guard against him getting out of the psychiatric ICU. They didn't monitor him. They didn't keep records every 15 minutes as they are supposed to do when he's in the psychiatric ICU. They abandoned him against their own policies when he got out of that unit, when he is never supposed to be left for a moment. They did not escort him back to the unit as their policies require. And then they did not search for him once he departed the facility.

PHILLIPS: What should they have done other than the monitoring every 15 minutes to keep him from leaving the grounds?

LEWIS: First of all, monitoring every 15 minutes isn't enough. Under their policies they never let him out of their observation, not even when he goes to the bathroom, not even when he's in the shower, because he's in such a suicidal state. So what they should have done is never allowed him out of that locked psychiatric ICU. He never should have left without a doctor's order and they certainly should have known that he had left rather than just turning up in the lobby.

OWEN: What if this had been a day later or two days later? He had stayed at the Howard Johnsons for 2 days and then he called his brother, and this suicide.

LEWIS: That would be a matter for jury determination. The passage of time is one factor that a jury may consider in determining whether proximate cause exist. This court has held many times...

PHILLIPS: If he committed suicide two years later would we have a jury trial?

LEWIS: Again, that would - yes you would have a jury trial I believe. But I doubt that a jury would ever find in favor of the plaintiff. And we should trust the jury to do that. There may be circumstances, and during a 2 period of time it would be hard pressed to not have some supervening/intervening cause. This court has held that the question of proximate cause is a particularly apt question for jury determination because it is so fact specific. And that's the reason why the jury in its prudence should be allowed to make that determination as to whether it is too far attenuated.

The passage of time alone cannot be the determinative factor. And that's what they would have you believe. Since they are without their argument that the distance could stop proximate cause or cause and fact because their own policy requires them to search within that 1 mile radius where the suicide occurred, they are left only with the passage of time which they say is the dispositive factor.

OWEN: Let's suppose they had searched, and they were unable to find him, and then he did what he did. Would that change...

LEWIS: No, I don't believe that would change it at all because then they would still be responsible for allowing him to elope from the facility and get out of the psychiatric ICU without a doctor's order.

OWEN: So once he gets out they are liable indefinitely for his suicide once he escapes?

LEWIS: Not necessarily liable indefinitely. It's a matter for the jury to consider, that is the passage of time.

OWEN: Even though family members intervened and decide to take him to a different facility?

LEWIS: If he was taken to a different facility, then I believe they could have asserted a supervening/intervening cause as a matter of law.

OWEN: They find him days later. Family members find him days later. They decide to take him to a different facility and he does what he did here: he struggles with the guard, gets a gun, his brother struggles with him to try to take away the gun and he nevertheless is successful in

killing himself.

LEWIS: Then I believe the second facility may be on the hook, but I believe the first facility may be able to get out on summary judgment because there was a supervening/intervening cause as a matter of law. Again it would be a fact specific determination that may go to the jury, but there may be no question of material fact with respect to the determination of supervening/intervening cause in that case, which is not an issue here. We are dealing solely with the 6 hour passage of time when he was still in the same major depressive episode he was in when he left the facility. And remember, he was just checked in that same day, early that morning. So we're not talking about a long passage of time. At a minimum he should have been held long enough so a doctor could have checked him out to see whether or not he was getting help with his medication and becoming balanced in order to care for himself.

It's a case where West Oaks has actually conceded that it violated the duties which were specifically designed to prevent the very injury which occurred - suicide. And it concedes in its briefing that it did in fact create the condition by which that very suicide could occur. It's preposterous that they claim that their actions and omissions were not a substantial factor in the cause of his death. That is not the case of Albritton. It's a direct link. The very risk they were to guard against was the suicide of this suicidal patient. They failed to exercise any of their responsibilities in order to guard against that suicide, and of course, predictably the suicide occurred.

And any bright line test that's proposed by counsel assumes that a jury cannot be reasonable and just. That a jury cannot determine for themselves whether or not the facts are too attenuated for cause to exist. And the specific facts of the case are a key. Here this court I believe with what has been conceded could rule as an absolute matter of law, of course there was proximate cause even if it didn't have a jury determination which they have conceded. But here we not only have a jury determination, but a unanimous CA's determination that there was proximate cause. Unless this court determines that CJ Schneider, Justice Wilson, Justice Smith, Judge Austin and all of those jurors did not have reasonable minds, it cannot reverse. And if this court holds for West Oaks, then psychiatric facilities can never be responsible for the suicide of their patients, which is contrary to all of Texas law and law across the nation.

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REBUTTAL

HANKINSON: Mr. Thompson, this is a medical negligence case correct?

THOMPSON: That's correct.

HANKINSON: Are you aware of any medical negligence cases in which the passage of time where geographical distance has in fact broken the causal connection?

THOMPSON: Other than Bossley, no.

HANKINSON: So if your analysis works in this case, then why wouldn't we be also applying it in other medical negligence cases? So for example, if my doctor mistreats me or fails to diagnose that I have cancer and I die 6 months later in another state, why isn't the causal connection broken because so much time has passed between the time that he or she mistreated me or failed to diagnose?

THOMPSON: Under that specific set of circumstances, the negligence and proximate cause all occurred on that same date in that the doctor breached the standard of care and there was the immediate proximate cause the continuation of the cancer which led to the death.

HANKINSON: Well in this particular instance, we have the medical negligence occurring on one day, the proximate cause occurring on that day, because we have the patient diagnosed as being suicidal and the doctor saying, this patient needs to be in the critical care unit in terms of being taken care of. The patient obviously remained suicidal throughout that day and then committed suicide. The same scenario to me it sounds like.

THOMPSON: I would disagree...

HANKINSON: Why is that any different than my cancer analogy that I was mistreated?

THOMPSON: Your cancer analogy or lets assume that something - you were operated on in the hospital, and they left a sponge in for example and it was not discovered for 3 months later...

HANKINSON: And then I died. Time has passed since the medical negligence. Time has passed. I don't die until some period of time later on.

THOMPSON: And the question is, why is that different from this?

HANKINSON: Yes. The legal concept that you're asking us to apply it seems to me would have to apply in that circumstance.

THOMPSON: The difference is is that there was no injury that took place in the suicide case at the time. In your case, the injury was there and had been created by the doctor who made the misdiagnosis.

HANKINSON: I had a medical condition. I had cancer. He had a medical condition. He was mentally ill. It existed at that point in time, and both of us were mistreated. He was mistreated in the fact that he didn't get the care that his doctor prescribed and he ended up dying as a result of his mental illness. I ended up having cancer. I didn't get treated and I died from cancer.

THOMPSON: The difference would be that the events in your case continued while the events that were set in force in the Jones case or in the Bossley case had at some point come at rest or become so attenuated.

HANKINSON: Obviously it didn't stop. It did continue because his mental illness continued throughout that day, the condition that he was treated for that he ended up committing suicide.

THOMPSON: I will go back to and ask you some of the questions that were asked to the respondent. And that is suppose your cancer had gone on for - suppose Lee Jones had gone two years and had no further treatment and then committed suicide. At what point do we engage in this and say, okay it's gone, the conduct of the hospital has gone too far. And is it 30 minutes as in Bosley or...

O'NEILL: I guess the question is a little bit more. At what point does it become a matter of law really?

THOMPSON: That's really what it is.

O'NEILL: And you would say 6 hours while still under this condition that he checked himself in for as a matter of law as too attenuated.

THOMPSON: That's how I interpret Bosley, Union Pump, Lear Siegler(?) and Campbell v. Bell, as well as obviously the dissent in _____. We have to at some point engage in this judicial line drawing in order to make that kind of decision.

Justice Hankinson I will quote to you from the dissent of Justice Abbott who was against you as a majority in the Bossley opinion where he commented, he chastised the majority for overlooking as he says the elements of cause and fact and foreseeability. He says, however, it is not as if the suicide occurred later in the day. It sounds to me if the suicide had occurred later in the day, he would have agreed with the majority in the Bosley opinion.