

No. 20450 - Marthella Andrick and Joseph R. Andrick, Plaintiffs Below, Appellants, v. The Town of Buckhannon, A West Virginia Statutory Municipal Corporation; Sam Baxa, DBA Baxa Motel, Betty Phillips, DBA The Cornerstone Restaurant; Linda Lemasters, DBA the Cornerstone Restaurant, Defendants Below. Betty Phillips, DBA The Cornerstone Restaurant; and Linda LeMasters, DBA The Cornerstone Restaurant, Appellees

Workman, Justice, dissenting:

The majority's opinion is troubling in that syllabus point 3 seems in rather direct conflict with syllabus point 1 in last year's case of Durm v. Heck's, Inc., 184 W. Va. 562, 401 S.E.2d 908 (1991).

The majority indicates that, at least absent an express lease provision, any business which invites customers to park on an off-premises parking lot is liable for injury occurring to invitees as a result of defect or dangerous conditions. This has rather broad liability implications for many small businesses, especially in a case like the instant one where the parking lot owner clearly acknowledged that he retained the responsibility to repair and maintain the lot. Furthermore, it is a sharp departure from a fairly long line of cases where we have taken a different view.

As we pointed out in Durm, in cases dealing with premises liability we have generally adhered to the principle that liability results either from control of the subject area or from a specific wrongful act. One wonders if this result might have been dictated by the existence of insurance coverage, as opposed to a coherent step in the development of the law in this area.

The majority opinion now leaves the law in this arena somewhat murky.