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POSITIVE EFFECTS OF VICARIOUS LIABILITY

In the case of *Diaz vs. Carcamo* (June 23, 2011), the California Supreme Court confirmed that an employee's poor driving record cannot be introduced into evidence to prove a negligent entrustment claim once the employer has already admitted vicarious liability.

Jose Carcamo ("Carcamo") was an employee of Sugar Transport of the Northwest, LLC's ("Sugar Transport"). Carcamo was driving a company truck in the middle of three lanes on the U.S. Highway 101 near Camarillo, California when Karen Tagliaferri attempted to pass his truck on its left side. When Tagliaferri attempted to move in front of Carcamo's truck and back into the center lane without signaling, her vehicle hit Carcamo's truck. Tagliaferri's vehicle then flew over the center divider and struck another vehicle driven by Plaintiff, Dawn Diaz.

Diaz sued both Tagliaferri and Carcamo for negligent driving. Diaz also sued Sugar Transport for both Carcamo's negligent driving and for its own negligence in hiring and retaining Carcamo. At trial, Sugar Transport offered to admit its vicarious liability if it was determined that Carcamo was negligent, in order to block any claims for negligent entrustment. However, the trial court admitted evidence of Carcamo's driving history and employment history, including information that Carcamo had been involved in two prior driving accidents, was in this country illegally, and had been given negative evaluations by at least one prior employer.

Congratulations!

Congratulations to Tom P. Gmelich, Kathryn Canale, and Mark I. Melo on the dismissal of the *Veronski vs. Leal* case. In that case, a truck driver who was not employed by the store had illegally parked his truck in a no stopping area of the street in front of an auto parts store operated by our client.

The driver of another vehicle drove right into the back of the truck, and remained in a coma for 4 months after the incident, incurring about \$3 million in medical bills before he died. The decedent driver's son, a Canadian resident, sued the store operator for wrongful death for "allowing" the truck driver to park illegally in front of the store. Kathryn and Mark filed a motion for undertaking because the decedent's son was a non-resident party. This required him to post a bond to cover our litigation costs. When plaintiff failed to do so,

The jury found Carcamo and Tagliaferri negligent, and found Sugar Transport negligent in hiring and retaining Carcamo as a driver, and awarded Plaintiff \$17.5 million in economic damages and \$5 million in non-economic damages. However, the jury allocated 45 percent fault to Tagliaferri, 35 percent to Sugar transport, and 20 percent to Carcamo.

Sugar Transport appealed, arguing that the trial court erred in admitting evidence of Carcamo's driving and employment history, given the admission of vicarious liability. The Fourth District Court of Appeal affirmed the lower court's ruling.

However, the Supreme Court ordered a retrial. The Supreme Court found that Sugar Transport's offer of admission of vicarious liability for the employee's negligent driving removed the issue of the employer's liability for damages caused by the employee's negligent driving. The fact that the offer to admit liability was not made until trial is irrelevant, because the issue of the employer's liability for the employee's negligent driving was no longer material to the case.

Allowing a plaintiff to pursue a claim of negligent entrustment or retention in a case where the employer has already admitted vicarious liability "would subject the employer to a share of fault in addition to the share of fault assigned to the employee, for which the employer has already accepted liability." The Supreme Court believed that it was reasonably probable that the jury would have returned a verdict and allocation of fault more favorable to both Carcamo and Sugar Transport if the evidence of Carcamo's personal history had been excluded at trial.

The Supreme Court's opinion demonstrates that, where a plaintiff is pursuing alternative theories of liability against an employer defendant, it is worthwhile to consider an admission of vicarious liability if there is evidence regarding the employee's personal history and employment records that would be damaging at trial. Such an admission early in the case can protect against potentially greater damages later on.

the Court dismissed the case.



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