

FLEET LOSS CONTROL MANAGEMENT

COMMERCIAL AUTO CLAIMS BASED ON NEGLIGENT HIRING / NEGLIGENT ENTRUSTMENT

LEGAL THEORY

The employer or business owner (the insured) can be held liable under a theory of negligence if they knowingly entrust the use of a vehicle (used on company business) to a person who is intoxicated, incompetent, reckless, irresponsible, or otherwise unqualified or incapable of safely operating the vehicle, and an accident occurs as a result.

The liability thus imposed is based on the insured's negligent act in making the vehicle available to such a person. It must be established that the insured knew, or by the exercise of reasonable care should have known, of the incompetence of the driver and that the insured consented to the use of the vehicle by such a person.

The insured thus has a legal duty to investigate the driving records and qualifications of all potential drivers (...by the exercise of reasonable care...) and take action to prevent incompetent drivers from operating vehicles in the course of company business.

A cause of action against the employer exists where the employer remains in voluntary ignorance of facts concerning the danger in a particular act or instrumentality; such ignorance is the equivalent of negligence. It is not essential that the employer should have foreseen the precise injury that resulted from the act or omission of the employee.

THE CASES (EXAMPLES OF APPELLATE COURT RULINGS IN SEVERAL STATES)

Negligent Hiring – Gross Negligent Entrustment – Negligent Training; Punitive Damages

Accident in which truck driver collided with an automobile. Evidence that employer did not check truck driver's driving record, that employer did not check truck driver's employment record, and that employer did not test truck driver's driving skills or train him to drive its truck and permitted driver to continue driving after this accident and after learning of five speeding tickets in the prior one and one-half years.

\$245,288.88 actual damages, \$250,000 punitive damages against the truck driver's employer.

Negligent Hiring – Negligent Entrustment (Ordinary Negligence)

Accident in which truck struck another vehicle twice and kept pushing that vehicle down the road the second time. The truck driver indicated that he was in a hurry to deliver his load, and that he was rewarded for fast driving and quick deliveries. Evidence that the employer had knowledge that the driver had received tickets for two traffic violations while driving company vehicles, that the employer failed to follow federal rules and regulations requiring it to check into driver's driving record, and that such a check would have shown that the driver had several other traffic violations on his record, including DUI.

Unspecified actual damages; punitive damages waived on appeal.

Negligent Hiring and Entrustment (Ordinary Negligence)

Automobile collision at controlled intersection; defendant's driver struck two automobiles in a funeral procession going through the intersection. Evidence that the employer hired the driver without checking into his driving record, that his driver's license had been suspended three years earlier for habitual violations and that he was convicted after employment for four traffic violations including two accidents.

\$88,178.07 actual damages; demand for punitive damages not sustained.

Negligent Hiring – Gross Negligent Entrustment; Punitive Damages

Motor vehicle collision involving defendant's truck striking another truck while negotiating a U-turn. Evidence that the defendant driver lacked judgment and suffered from visual and hearing deficiencies, could not handle stressful situations, was slow in learning how to drive a truck, and had had his driver's license suspended. Employer failed to check driving record.

\$10,681.00 actual damages (cost to repair, loss of use of vehicle); \$5,000.00 punitive damages.

Negligent Entrustment

Driver, who had been drinking, drove employer's dump truck onto the wrong side of a busy highway, and ran head-on into plaintiff's automobile, killing the plaintiff. Evidence that the driver did not have a chauffeur's license and had a record of drinking, known to the employer.

Unspecified damages.

Negligent Hiring (vis. Criminal Background Checks)

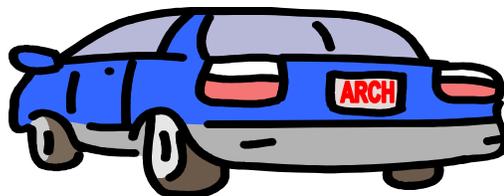
Hitchhiker brought action against employer of over-the-road truck driver for sexual assault committed by truck driver. Evidence that employer failed to check driver's driving record or criminal background. Driver had history of convictions for violent sex-related crimes and had been arrested the year prior for aggravated sexual assault of two teen-age hitchhikers while driving an over-the-road truck for another employer.

Unspecified damages.

(Note: This was settled as a claim against the Commercial Auto policy because the incident arose out of, and in the course of operation of, an insured auto.)

HOW TO MINIMIZE YOUR EXPOSURE

- ✚ Perform background checks on all applicants. Special care should be taken in instances in which the nature of the job requires the employee to be entrusted with equipment that poses particular hazards to the public, such as trucks.
- ✚ Applications and resumes should be checked carefully. They may reveal matters that a prudent employer should investigate prior to making a hiring decision. Obtain a written authorization/release to verify the representations made on an application or resume, and to otherwise investigate the applicant's background. When an application or resume reveals gaps or frequent changes in employment, investigate those circumstances closely. Make sure applicants completely fill out application forms.
- ✚ When possible, do not hire an individual until a pre-hire background check has been completed.
- ✚ Make certain that all employees, supervisors and management personnel are thoroughly trained with respect to their duties and responsibilities. This is especially important when an employee's duties or responsibilities involve special hazards or extensive involvement with the public, such as drivers.
- ✚ Document all training methods used. This documentation should include information concerning who was trained, when the training occurred, and the content of the training.
- ✚ Monitor and document the performance of every employee. An employer should take steps to ensure that every employee receives some sort of regular feedback with respect to performance.
- ✚ Make sure that all regulatory requirements in Part 391 of the Federal Motor Carrier Safety Regulations are met on all regulated vehicle operators.
- ✚ Put all work rules and policies into writing. These rules should be distributed to employees, who should sign a document indicating that they received, read and understand these policies.
- ✚ Take prompt remedial action to any failure to comply with these work rules and policies.



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