

NEW MEXICO INJURY ATTORNEY BLOG

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Trucking Accidents and Meth Usage: Respondeat Superior Still Applies in New Mexico

The 10th Circuit Court of Appeals addressed the scope of agency and respondeat superior under New Mexico law in *Frederick v. Swift Transportation*. The case addressed these issues in the context of a trucking accident involving a truck driver who had ingested methamphetamine.

At trial, the jury awarded the plaintiff \$23,500,000. The court reduced the judgment to \$15,275,000 based upon the plaintiff's comparative negligence in the accident. Swift Transportation appealed on several grounds including the court's ruling that the driver acted within the course and scope of employment as a matter of law. Based upon this ruling, the court issued a jury instruction that Swift was liable for the negligence of its driver.

Swift argued that the driver was outside the course and scope of employment due to the driver's consumption of methamphetamine. In part, Swift argued that it was a disputed fact whether the meth was ingested prior to or after the accident.

The 10th Circuit relied on New Mexico law citing *Ovecka v. Burlington Northern* as follows, "whether an employee was acting within the scope of his employment is [generally] a question of fact for the jury." However, the court cited *Ovecka* further, "when no facts are in dispute and the undisputed facts lend themselves to only one conclusion, the issue may properly be decided as a matter of law."

The Court cited New Mexico's uniform jury instructions which state that an employee is acting within the scope of employment when:

1. It was something fairly and naturally incidental to the employer's business assigned to the employee, and
2. It was done while the employee was engaged in the employer's business with the view of furthering the employer's interest and did not arise entirely from some external, independent and personal motive on the part of the employee.

The Court found that it was undisputed that the driver was acting within the course and scope of employment as set forth under New Mexico law. The Court ruled further that the ingestion of meth did not remove the driver from the

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course and scope of employment no matter when the meth was ingested. The Court was careful to state that the ingestion of drugs might remove an employee from the course and scope of employment depending on the circumstances. However, in this case, the driver was clearly pursuing the interests of the employer and the use of meth did not meet the exception.

Interestingly, the Court did not mention the widespread use of meth among truck drivers due to the demands of the job. However, it is certainly something to keep in mind for those injured in a trucking accident since it is clear from *Frederick v. Swift* that the employer is held responsible for this on the job drug usage which in turn may be factored into an award of punitive damages.

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