



PUNITIVE DAMAGES EXCEPTION RECOGNIZED TO GENERAL RULE PRECLUDING DIRECT LIABILITY AGAINST EMPLOYERS WHO ADMIT VICARIOUS LIABILITY FOR EMPLOYEES' NEGLIGENCE

ROBIN J. WILSON V. IMAGE FLOORING, LLC AND BRANDON RAPP, --- S.W.3D ---, 2013 WL 1110878 (Mo.App. W.D. MARCH 19, 2013)

The Court of Appeals for the Western District of Missouri has answered in the affirmative a question left open by the Missouri Supreme Court almost two decades ago: whether a claim for punitive damages can in fact serve as an exception to the general rule that once an employer had admitted *respondeat superior* liability for an employee's negligence, it is improper to allow a plaintiff to proceed against the employer on any other theory of imputed liability.

In *McHaffie v. Bunch*, 891 S.W.2d 822 (Mo. banc 1995), the Missouri Supreme Court addressed whether a plaintiff who brings suit against an alleged tortfeasor and his employer can assert against the employer both a vicarious liability theory based upon the doctrine of *respondeat superior* and direct liability theories based upon claims of negligent hiring and supervision of the employee. The Supreme Court adopted the majority view "that once an employer has admitted *respondeat superior* liability for an employee's negligence, it is improper to allow a plaintiff to proceed against the employer on any other theory of imputed liability." *Id.* at 826. The Court reasoned that where the direct negligence claims against the employer are necessarily based upon a finding that the employee's conduct was negligent and the employer has already admitted vicarious liability, the evidence submitted to establish other theories serves no real purpose and would needlessly allow into the record potentially inflammatory evidence that was irrelevant to any contested issue. *Id.*

The *McHaffie* opinion noted the possibility that there might be an exception to this general rule where an employer is potentially liable for punitive damages. *Id.* However, because punitive damages were not alleged in that case, the Court held a decision on such a possibility would have to wait for another day. *Id.* Since *McHaffie*, no Missouri appellate court had addressed this possible exception until this current opinion from the Western District.

In the current case, Plaintiff Wilson alleged negligence arising from an accident wherein a box truck, owned by Image Flooring and driven by employee Brandon Rapp, rolled away from a loading dock, causing Plaintiff to fall to the concrete surface below. As against Image Flooring, Plaintiff alleged it was vicariously liable for Rapp's conduct as his employer and that it was also directly liable for negligent hiring, training and supervision and negligent entrustment. Before trial, Image Flooring moved for and was granted partial summary judgment on Plaintiff's direct liability negligence claims on basis of the *McHaffie* rule. After a verdict in his favor on the remaining claims, Plaintiff appealed the partial summary judgment ruling. The Western District reversed.

The Court began its analysis with *McHaffie* and the punitive damages question hinted to but left open by that opinion, noting that since that 1995 opinion many federal courts have addressed and largely split on the question of whether there exists a punitive damages exception. "Although the Court's mention of punitive damages as a possible exception to the general rule announced in *McHaffie* was dicta, we find that dicta persuasive and believe that, if faced with the issue now, our Supreme Court would determine that such an exception exists."

The Western District noted the rationale behind the *McHaffie* rule was that, where vicarious liability is admitted, none of the direct liability theories could prevail in the absence of proof of the employee's negligence, making the employer's liability necessarily fixed by the negligence of the employee. "Thus, any additional evidence supporting direct liability claims could serve only to waste time and possibly prejudice the defendants." According to the Court, however, the same cannot be said when a claim for punitive damages based upon the direct liability theories is raised. "If an employer's hiring, training, supervision, or entrustment practices can be characterized as demonstrating complete indifference or a conscious disregard for the safety of others, then the plaintiff would be required to present additional evidence, above and beyond demonstrating the employee's negligence, to support a claim for punitive damages." This evidence, unlike the extraneous, potentially prejudicial evidence which was of concern in *McHaffie*, would have a relevant, non-prejudicial purpose.



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The Western District cautioned, however, that to avail oneself of the exception to the *McHaffie* rule, it is not enough simply to make a demand for punitive damages in the petition. Rather, a party must also allege sufficient facts to support the claim for punitive damages. It is already the law in Missouri that when making a claim for punitive damages generally, a party is required to plead facts supporting that claim. According to the Western District, the need for a plaintiff to allege sufficient facts to support a punitive damages claim is arguably greater when the reason for doing so is to meet the exception and allow the plaintiff to proceed on claims that would otherwise be barred. “Thus, to invoke the punitive damages exception to the rule in *McHaffie*, a plaintiff must plead sufficient facts to support a claim for punitive damages.”

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