



WEEKLY LAW RESUME™

Issue By: MARK F. HAZELWOOD

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Torts-Claim For Negligent Hiring Cannot Be Pursued Where Employer Has Already Admitted Vicarious Liability

Dawn Renae Diaz v. Jose Carcamo, et al.
California Supreme Court (June 23, 2011)

If an employee is involved in a motor vehicle accident and injures someone while in the course and scope of employment, the injured person may sue not only the employee, but also the employer. The injured person can pursue tort claims against the employer for respondeat superior, a form of vicarious liability, and negligent entrustment or negligent hiring. The issue in this case was whether a plaintiff could still pursue multiple theories, when the employer admitted vicarious liability for negligent driving by the employee.

Plaintiff Dawn Diaz was driving southbound on Highway 101. Defendant Jose Carcamo, a truck driver for defendant Sugar Transport of the Northwest, LLC. ("Sugar Transport"), was driving northbound in the center of three lanes. Defendant Karen Tagliaferri was traveling directly behind Carcamo. Immediately prior to the accident, Tagliaferri passed Carcamo on the left and then, without signaling, attempted to merge back into the center lane. While merging back into the center lane, Tagliaferri's vehicle struck Carcamo's truck. Tagliaferri's vehicle went out of control and flipped over into the southbound lanes where it struck Diaz's vehicle. Diaz sustained severe injuries. Diaz subsequently filed suit against Tagliaferri, Carcamo, and Sugar Transport. Diaz alleged that Sugar Transport was both vicariously liable for Carcamo's negligent driving and directly liable for its own negligence in hiring Carcamo.

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At trial, evidence was offered that both Carcamo and Tagliaferri were negligent. Sugar Transport offered to admit vicarious liability if Carcamo was found negligent. Over Sugar Transport's objections, the trial court would not dismiss the negligent hiring claim and admitted evidence of Carcamo's prior accident history; illegal residence in the country; and terminations from prior trucking jobs. The jury found for Diaz. The jury allocated fault as follows: Tagliaferri - 45%; Sugar Transport- 35%; and Carcamo- 20%. Diaz was awarded \$17.5 million in economic damages and \$5 million in noneconomic damages. As a result of the verdict, Sugar Transport was responsible for 55% of Diaz's damages (its 35% plus Carcamo's 20%).

Sugar Transport appealed arguing that the negligent entrustment claim should have been dismissed after Sugar Transport admitted liability for Carcamo's driving. The Court of Appeal affirmed the judgment. The California Supreme Court then granted review and reversed the Court of Appeal.

In reversing the judgment, the Supreme Court relied in part on its earlier decision in *Armenta v. Churchill* (1954) 42 Cal.2d 448. *Armenta* held that an employer's admission of vicarious liability made a negligent entrustment claim irrelevant. The Court of Appeal in this case distinguished *Armenta* because it involved a claim of negligent entrustment rather than negligent hiring. The Supreme Court held that whether the additional claim was for negligent hiring or entrustment- the difference was immaterial. An admission of vicarious liability removed the legal issue of liability from the case.

Diaz contended that *Armenta* was decided prior to California's decision to use a comparative fault system and the passage of Proposition 51, which defines the scope of joint and several liability. Diaz argued that in cases like this where Proposition 51 requires an allocation of fault among multiple tortfeasors, *Armenta* is inconsistent with principles of comparative fault. The Supreme Court again disagreed, citing *Jeld-Wen, Inc. v. Superior Court* (2005) 131 Cal.App.4th 853. In *Jeld-Wen*, a Court of Appeal rejected a similar argument holding that negligent entrustment may establish an employer's own fault, but should not impose additional liability. An employer's liability should not exceed that of the employee. The Supreme Court in this case agreed with that holding, reasoning that to assign an additional share of fault to the employer would be inequitable. The Supreme Court, therefore, determined that the Court of Appeal erred in not relying on *Armenta* and found that Sugar Transport

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had been prejudiced. The trial court judgment was reversed and the case was remanded for a complete retrial.

COMMENT

This is an important case for employers. The Supreme Court re-affirmed its earlier holding that a vicariously liable employer's fault cannot exceed that of its employee. In cases such as this, employers should consider admission of vicarious liability where it may be important to keep out inflammatory evidence relating to hiring or retention of an employee.

For a copy of the complete decision see:

[HTTP://WWW.LOWBALL.COM/WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/S181627.PDF](http://www.lowball.com/www.courtinfo.ca.gov/opinions/documents/S181627.pdf)

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