CCM ALERT

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Negligent Hiring Remains a Narrowly Construed Tort in Illinois

A recent opinion by Illinois' Second District Court of Appeals reaffirmed that the tort of negligent hiring will be narrowly construed in certain instances. So narrowly construed, in fact, that an employee may be denied a trial and the employer will be granted summary judgment.

The Facts in the *Brettman* Case

The case in *Brettman* arose from a traffic accident between Gina Brettman and a tractor trailer driven by Isreal Vela, an employee of E.G.G. Trucking. The driver, Mr. Vela, was contracted with by M&G, a Texas company that brokers freight delivery. M&G hired E.G.G. to transport a load of pickles from a Texas pickle plant to Huntley. *After* the load of pickles was delivered, and Mr. Vela was on his way to his next assignment, he ran a red light and hit Ms. Brettman's automobile causing her severe injuries.

Even though Mr. Vela was an independent contractor for M&G, Ms. Brettman and her Guardian sued M&G on a theory of negligent hiring and retention. Ms. Brettman alleged that if M&G had done an adequate investigation of Mr. Vela and E.G.G., it would have discovered that E.G.G. was an unrated motor carrier and Mr. Vela had a history of forging his timesheets.

Look to Proximate Cause Not Legal Duty Says the Court of Appeals

Illinois' Second District Court of Appeals declined to analyze whether M&G should have done a better job with its background check. It also declined to second guess whether M&G should have chosen a better trucking company or a driver less inclined to forgery. Instead, the Court held that as a matter of law M&G could not be found to have proximately caused Ms. Brettman's injuries because she was injured after the load of pickles had been delivered. It is unusual for a court to decide proximate cause issues as a matter of law without submitting them to a jury.

The Court said the relevant inquiry in negligent hiring or retention cases should focus on the work to be performed and whether the incompetent execution of that work caused harm to a third party. Since the delivery of the pickles was completed, the work that M&G contracted with Mr. Vela was completed. His subsequent accident with Ms. Brettman could not have been caused by M&G as a matter of law.

Employer Takeaways from Brettman

No Liability for Posttermintation Acts
The *Brettman* decision tells us that even when an employee or independent contractor makes a mistake and hurts a third party, the defense team should review when the accident or negligence occurred. Illinois courts will not find employers liable for negligent hiring or retention if the accident or injury occurs after the completion of the contracted-for-work.

May Be Liability for Out-of-Scope Acts
Brettman also affirms that an employer may be liable for out-of-the-scope acts by its employees, but *only* where the employee is on the employer's premises or using the chattel of the employer and the employer has reason to know of the need and opportunity for exercising control over the employee. A fuller discussion of this scenario is set forth in a case against the Boy Scouts.

Employers Must Still Be Careful Choosing Their Independent Contractors
Finally, even though an employer may be exonerated on summary judgment, *Brettman* is a reminder that plaintiffs will sue employers regardless of whether the wrong doer is an *employee* or an *independent contractor*. So keep doing those background checks, and hire with care.

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