

## **FALL 2016 NEWSLETTER**

### **COMMERCIAL TRUCKING UPDATE**

**By George Lankford**

In *Onofre v. CR England*, 2016 WL 3406196 (WD Tex, San Antonio, June 17, 2016), the Plaintiff and her two minor children were sitting in a parked 2012 Jeep Liberty when a commercial tractor-trailer hit the rear door and lifted the Jeep four feet off the ground. CR England owned the tractor trailer and the driver was driving for them. Plaintiff sued them for negligence. As for the employer, Plaintiffs sued for *respondeat superior*, negligent hiring, training, supervision and retention of the driver. The Court granted the employer's motion for summary judgment on negligent hiring, negligent training, negligent supervision, but denied it on negligent retention and negligent entrustment.

For negligent hiring, training and supervision, the Plaintiff must show the employer's direct negligence, rather than vicarious liability. The employer owes a duty to its other employees and the general public to ascertain the qualifications and competence of the employees it hires, especially when the employee is engaged in occupations that require skill or experience. The employer must show a failure to investigate, screen, or supervise its hires that proximately causes the plaintiff's injuries.

In this matter, on negligent hiring, the Plaintiff contends it showed: (1) the employer was aware the driver had had an accident in the last five years, but hired him anyway, and (2) the driver received low scores in his final driving evaluation. The Court held that the one accident was for pulling into a side street to back up and turn around. For which he received no ticket and there were no injuries. This was insufficient to show negligence on the employer's part for hiring him. Regarding his final exam, the record shows he failed a mid-turn traffic check. However, his score on the commercial trucking exam was 90% and on the written portion it was 91.4%. All passing grades. There was also evidence of a thorough screening performed of his qualifications prior to offering him the job. This, Defendant's motion for summary judgment was granted.

On negligent training and supervision, the evidence must show a reasonably prudent employer would have provided training beyond that which was given and that such failure proximately caused the damages that were foreseeable. In this matter, Plaintiff again focused on the driver failing to execute a mid-turn traffic check. However, the Court noted the driver had passed a commercial driver's license program and test, passing the driving portion with an 80%, and received additional training after two accidents. Furthermore, the Court noted there was no evidence that any failure to train or supervise "proximately caused" the accident. "Rather, it appears that Johnson had his accident despite the remedial training and supervision...." The Court granted the summary judgment motion.

On negligent retention, an employer can be liable where it knew or should have known through the exercise of reasonable care that an employee was incompetent or unfit and that his ... retention would thereby create an unreasonable risk of harm to others.” The Court noted that the accidents after he was hired were scored as the lowest in severity, and one involved turning and one involved turning in a parking lot. The Court these facts created a question of fact, and thereby denied the motion for summary judgment.

Regarding the negligent entrustment claim, the Court again denied the motion because of the existence of a question of fact for the jury. The Court noted that whether or not a driver is reckless or incompetent is determined at the time of the entrustment, rather at the time of the hiring of the accident. Plaintiff contended he was reckless or incompetent because: (1) he had a turning-related accident before he was hired, (2) he did not receive a perfect score in turning or backing when taking his final road evaluation ; and (3) he had multiple accidents prior to the accident at issue. The Court held these matters are for the jury. Additionally, on a negligent entrustment claim, the Plaintiff must prove that the driver was negligent on the occasion in question and that such proximately caused the accident. In this matter, neither party submitted the driver’s negligence to the Court for summary judgment. Consequently, the motion had to be denied.