

FALL 2017 NEWSLETTER

TRUCKING/AUTOMOBILE LIABILITY UPDATE

By George L. Lankford

In *Allways Auto Group, LTD v. Steven Walters*, 2017 WL 4320712 (Tex. September 29, 2017)(*per curiam*), Plaintiff Walters was injured in his truck when John Heyden drove his loaner car into it. Heyden had purchased a car from Defendant Allways Auto Group (AAG), but it broke down so Heyden had a loaner car from AAG. Heyden did not have a valid drivers license, but he convinced AAG to accept a photocopy of a drivers license. (He had lost his Illinois drivers license in another state because of accident. He obtained a Texas drivers license, but lost it when he refused a breathalyzer test. He had kept a photo copy of his Illinois license. Heyden was an alcoholic and he admitted at trial to a history of drinking and driving. He was drinking at the time he received the loaner car because he had recently lost his job. Eighteen days later he had the instant accident. He tested with a blood alcohol level of twice the legal limit. He was convicted of intoxication assault and sentenced to ten years imprisonment. Plaintiff faulted AAG for not investigating Heyden's criminal record and for not being aware of his past offenses.

AAG testified that were not aware of his history and he did not appear intoxicated when he picked up the loaner car.

The trial court granted AAG's motion for summary judgment on the basis that "an accident that occurs eighteen days after entrustment is too attenuated to constitute legal cause." Thus, there was no proximate cause on which to base a negligent entrustment ground of recovery. The Court of Appeals reverse and remanded on the basis that it was a question of fact.

The Supreme Court reversed the Court of Appeals without oral argument, and reinstated the trial court's judgment. The Court stated, "for entrustment to be a proximate cause, the defendant entrustor should be shown to be reasonably able to anticipate that an injury would result as a natural and probable consequence of the entrustment." In this case, the Court recognized that even if Heyden had been intoxicated on the day of the loan, AAG "could not have foreseen that Heyden would get drunk eighteen days later and drive the loaner car. The connection between the defendant and the plaintiff's injuries simply may be too attenuated to constitute legal cause."