2013
STATE OF UTAH
TRANSPORTATION
COMPENDIUM OF LAW

Peter H. Christensen
Ryan P. Atkinson
Kathryn T. Smith
Strong & Hanni, PC
3 Triad Center, Suite 500
Salt Lake City, Utah 84180
Tel: (801) 532-7080
Email: pchristensen@strongandhanni.com
Email: ratkinson@strongandhanni.com
Email: ksmith@strongandhanni.com
A. Elements of Proof for Derivative Liability Claims

Generally in Utah, no defendant may be held liable for more than his own proportionate share of fault. However, an employer may be responsible for the fault of one of its employees or agents. The most common circumstances of derivative liability involve respondeat superior, negligent entrustment, and negligent hiring / retention / supervision of an employee. An employer generally avoids liability where the employee or agent has no legal liability.

1. Respondeat Superior (“let the master answer”)

A principal or employer is responsible for injury to a third party when its employee or agent commits negligence while acting within the scope and course of his employment or agency relationship. Utah courts consider the right and degree of the principal’s control over the details and manner of the agent’s work in determining whether to impose derivative liability. *Glover v. BSA*, 923 P.2d 1383 (Utah 1996).

There is no Utah case law on placard liability. The 10th Circuit in *Mercer Transp. Co. v. Greentree Transp. Co.*, 341 F.3d 1192 (10th Cir. 2003), rejected the application of placard or “logo liability” to a situation other than those involving federal leasing regulations under the ICC.

2. Negligent Entrustment

Negligent entrustment involves misfeasance by the defendant. The defendant’s liability is premised on supplying a potentially dangerous instrumentality to an individual that the defendant knows or should know is not capable of handling it safely. The dangerous instrumentality is frequently a motor vehicle. For example, where an employer provides a vehicle to an impaired or untrained driver and the driver crashes the vehicle and causes injury, the injured party may successfully sue the employer who provided the vehicle under a theory of negligent entrustment.

Utah courts generally follow the provisions of the Restatement (Second) of Torts. Section 390 of the Restatement provides the following standard for claims of negligent entrustment:

One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for the physical harm resulting to them.

Utah appellate courts have not dealt with the subject of negligent entrustment very extensively. In *Lane v. Messer*, 731 P.2d 488 (Utah 1986), the Utah Supreme Court affirmed a grant of summary judgment in favor of an employer on claims of negligent entrustment and
vicarious liability. In *Lane*, the plaintiff was injured in an automobile accident with a Honeywell employee in a van assigned to the employee and owned by Honeywell. On the evening of the accident, the employee left work to go home for the weekend. Later that evening, he drove the van to a private club where he consumed several alcoholic drinks. The accident occurred while the employee was on his way back home. The employee was intoxicated at the time.

Honeywell prohibited personal use of company vehicles except for commuting between home and work, unless the employee received express prior authorization. Employees were not to drive after drinking. Company personnel frequently violated the company’s written policy. Honeywell also required its employees to have Class A Chauffer’s licenses which its employee did not have.

Lane sought recovery against Honeywell on two theories: first, the employee was acting within the scope of his employment and, second, that Honeywell negligently entrusted the van. The Court explained that generally, ownership of a motor vehicle does not alone subject the owner to liability for the negligence of permissive users. 731 P.2d at 491. However, an owner can be held liable for negligence if he negligently entrusted the vehicle to a driver that he knows or in the exercise of reasonable care should have known to be an incompetent, careless, reckless, or inexperienced driver or an intoxicated driver. *Lane*, 731 P.2d at 491.

Lane also asserted that since personal use of Honeywell vehicles was rampant and known by management, that the employee should be deemed to have been operating the van with the express or implied permission of Honeywell. However, such facts alone were insufficient to make Honeywell liable under a negligent entrustment theory.

The Court noted that the facts simply did not show any negligence on the part of Honeywell in providing a vehicle to its employee. The Court noted that the employee had a valid driver's license, and had been employed by Honeywell for eighteen months without any driving incidents. The Court further found that there was no evidence that the employee had ever driven the vehicle while intoxicated.

The Court recognized in *Lane* that a claim of negligent entrustment may exist even where the employee’s driving is outside of the scope of his employment relationship, provided that the employee is driving a vehicle knowingly provided by his employer. The Utah Supreme Court affirmed a grant of summary judgment in favor of an employer.

3. Negligent Retention/Hiring/Supervision

The seminal case in Utah on negligent hiring is *Retherford v. AT&T Communications*, 844 P.2d 949 (Utah 1992). In *Retherford*, the Supreme Court noted that the causes of action variously termed "negligent hiring," "negligent supervision," and "negligent retention" are all basically subsets of the general tort of negligent employment. These variants differ only in that they arise at different points in the employment relationship.

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1 The legislature has made an exception to that general rule for negligently supplying a vehicle to a minor. U.C.A., 1953, § 41-2-22.
Retherford involved a claim of sexual harassment by a co-worker. Although Utah appellate courts had previously recognized the tort of negligent hiring/retention in Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1048 (Utah 1991); Birkner v. Salt Lake County, 771 P.2d 1053, 1059 (Utah 1989), and Stone v. Hurst Lumber Co., 15 Utah 2d 49, 51, 386 P.2d 910, 911-12 (1963), the Court had never clearly articulated the elements of such a claim. In Retherford, the court established the following requirements: (i) the employer knew or should have known that its employees posed a foreseeable risk to third parties, including fellow employees; (ii) the employee did indeed inflict such harm; and (iii) the employer's negligence in hiring, supervising, or retaining the employees proximately caused the injury.

B. Defenses

1. Admission of Agency

Utah has no case law on whether it is proper to allow a plaintiff to proceed against the employer on any other theory of derivative or dependent liability once an employer has admitted that the tort occurred in the course and scope of the employee or agent’s agency relationship with the employer.

However, at least one federal district court in a neighboring state has held that where punitive damages are claimed against an employer under a theory of negligent hiring, such claims may be pursued against the employer even after an admission of agency. The rationale for the ruling was stated as follows:

If an employer's negligence in hiring, training, or supervising an employee rises to the proper level, then the employer may be subject to an award of exemplary damages when the employee is not. Such a claim for exemplary damages is not essentially duplicative of the underlying negligence claim against the employee.


2. Traditional Tort Defenses

Depending on the facts of a particular case, given the derivative nature of these theories, traditional tort defenses may also apply such as lack of proximate cause, comparative fault, failure to mitigate damages, superseding and intervening cause, etc.

C. Punitive Damages

1. Standard and Burden of Proof

In Utah, punitive damages must be proved by clear and convincing evidence. Utah Code Ann. § 78-18-1(1)(a). Punitive damages are recoverable only upon proof of “willful and
malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and a disregard of, the rights of others.” Id. These standards, however, do not apply to any claim of punitive damages arising out of a tortfeasor’s operation of a motor vehicle while “voluntarily intoxicated or under the influence of any drug or combination of alcohol and [illicit]drugs.” Utah Code Ann. § 78-18-1(1)(b). Discovery into the defendant’s financial wealth cannot be done until “the party seeking punitive damages has established a pram facie case on the record that an award of punitive damages is reasonably likely against the party against whom discovery is sought,” except when the case involves an alcohol or drug impaired driver. Utah Code Ann. § 78-18-1(2).

It is unsettled in Utah whether an employer may be jointly and severally liable for an award of punitive damages due to the conduct of an employee or agent committed within the course and scope of his employment.

This Compendium outline contains a brief overview of certain laws concerning various litigation and legal topics. The compendium provides a simple synopsis of current law and is not intended to explore lengthy analysis of legal issues. This compendium is provided for general information and educational purposes only. It does not solicit, establish, or continue an attorney-client relationship with any attorney or law firm identified as an author, editor or contributor. The contents should not be construed as legal advice or opinion. While every effort has been made to be accurate, the contents should not be relied upon in any specific factual situation. These materials are not intended to provide legal advice or to cover all laws or regulations that may be applicable to a specific factual situation. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to contact a lawyer authorized to practice law in the state for which you are investigating and/or seeking legal advice.