STATE OF NORTH CAROLINA
TRANSPORTATION
COMPENDIUM OF LAW

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A. Employers' Liability for Employees' Actions Without Negligence on the Part of the Employer

1. Respondeat Superior ("Let the Master Answer")

   a. What are the elements necessary to establish liability under a theory of Respondeat Superior?

      An employer may be liable for the acts of an employee under a respondeat superior theory when the employee's act was:

      1. expressly authorized by the employer; or
      2. committed within the scope of and in furtherance of the employer's business; or
      3. ratified by the employer

      Medlin v. Bass, 398 S.E.2d 460 (N.C. 1990). If an employee injures someone while working for the employer and performing duties for the employer, that employer may be liable for any harm done under the respondeat superior theory of liability. If an action is not expressly authorized or ratified by the employer, an employer is only liable for an employee's actions if they are done in the scope of the employee's employment. "To be within the scope of employment, an employee, at the time of incident, must be acting in furtherance of the principal's business and for the purpose of accomplishing the duties of his employment." B.B. Walker Co. v. Burns Int'l Sec. Serv., 566 S.E.2d 172, 174 (N.C. Ct. App. 1993).

      North Carolina does not recognize the doctrine of strict placard liability, or "statutory employment." Instead, the North Carolina courts have held that there is a rebuttable presumption of agency in which an employment relationship is presumed between the parties bound by the I.C.C. regulations, but that the carrier-lessee's liability is ultimately determined by a common law “independent contractor” analysis. Parker v. Erixon, 473 S.E.2d 421 (N.C. Ct. App. 1996).

B. Elements of Proof for the Derivative Negligence Claims of Negligent Entrustment, Negligent Hiring, Negligent Retention, and Negligent Supervision

1. Negligent Entrustment

   a. What are the elements necessary to establish liability under a theory of negligent entrustment?

      If a carrier allows a driver it knows is careless or reckless or should know is careless or reckless to operate one of its trucks, the carrier faces potential liability under a negligent entrustment theory. An employer will be liable for negligent entrustment when it entrusts a vehicle to a "person whom he knows, or by the
exercise of due care should have known, to be an incompetent or reckless driver" who is "likely to cause injury to others in its use." Swicegood v. Cooper, 459 S.E.2d 206, 207 (N.C. 1995) (citing Heath v. Kirkman, 82 S.E.2d 104, 107 (N.C. 1954)).

2. Negligent Employment and Negligent Retention

   a. What are the elements necessary to establish liability under a theory of negligent employment or negligent retention?

   North Carolina recognizes a claim for negligent employment or negligent retention when a plaintiff proves:

   1. a specific negligent act that caused his or her harm;
   2. incompetency, by inherent unfitness or by previous specific acts of negligence from which incompetency may be inferred;
   3. either actual notice to the employer of such incompetency, or constructive notice, by showing that the employer could have known the facts had he used ordinary care in oversight and supervision; and
   4. that the incompetency caused the harm

   See Medlin v. Bass, 398 S.E.2d at 462.

3. Negligent Supervision

   a. North Carolina recognizes a cause of action for negligent supervision. The elements of this claim are very similar to those for negligent employment and negligent retention. To support a claim of negligent supervision against an employer, a plaintiff must prove:

   1. the incompetent employee committed a tortious act resulting in injury to plaintiff; and
   2. that prior to the act, the employer knew or had reason to know of the employee's incompetency


4. Example Case: Boyd v. L. G. De Witt Trucking Co.

   In Boyd v. L. G. De Witt Trucking Co., 405 S.E.2d 914 (N.C. Ct. App. 1991), the plaintiff's husband was killed when the vehicle he was driving was rear-ended by a tractor trailer. The plaintiff sued the driver, but also sued his employer under theories of respondeat superior and negligent entrustment. The driver had worked for the carrier on and off for 20 years, and was hired 11 times during that period. During those 20 years, the driver had two convictions for driving under the
influence of alcohol, three convictions for reckless driving, and six speeding convictions.

The court held that the plaintiff had presented sufficient evidence from which a jury could find the driver was unsafe and the carrier either knew or should have known of the danger the driver presented to the rest of the driving public. The court also held that given the number and severity of the offenses the driver had committed, the evidence could also support a jury's finding that the carrier's negligent entrustment was willful or wanton. This ruling opened up the possibility of a punitive damages award against the carrier.

C. Defenses

1. Admission of Agency

In North Carolina, if an employer admits an agency relationship exists between it and the employee, the plaintiff may only proceed on a respondeat superior theory and may not pursue any derivative negligent entrustment claims. Negligent entrustment is applicable only when a plaintiff undertakes to impose liability on an owner not otherwise responsible for the conduct of the driver of the vehicle. Heath v. Kirkman, 82 S.E.2d 104, 107 (N.C. 1954). If a lawsuit is based on both respondeat superior and negligent entrustment, and the agency relationship is admitted, the employer's liability would rest on the doctrine of respondeat superior only, and the cause of action for negligent entrustment cannot be maintained. Id.

There is one limited exception to the rule of law that negligent entrustment is inapplicable when an agency relationship has been admitted. In Plummer v. Henry, 171 S.E.2d 330 (N.C. 1969), the court allowed an exception to the general rule where the issue of negligent entrustment was relevant in a claim for punitive damages based on the willful and wanton entrustment of a vehicle to a person likely to endanger the safety of others.

2. Traditional Tort Defenses

Carriers may be able to defend derivative negligence claims using the traditional defenses available in negligence cases, including:

1. contributory negligence
2. failure to mitigate damages
3. superseding or intervening causes

D. Punitive Damages

1. Are punitive damages available in derivative negligence actions?
Punitive damage awards in North Carolina are governed by statute. Punitive damages are not available for simple negligence. Under N.C. Gen. Stat. § 1D-15(a), punitive damages may be awarded only when a claimant proves that a defendant is liable for compensatory damages and that one of three aggravating factors: fraud, malice, or willful or wanton conduct, was both present and related to the injury for which compensatory damages were awarded.

Punitive damages may not be awarded on the basis of vicarious liability – they may only be awarded upon a showing that the defendant carrier participated in the aggravating conduct or if its officers, directors or managers condoned the aggravating conduct.

Chapter 1D of the North Carolina General Statutes reinforces the common-law purpose behind punitive damages by providing that they are to be awarded "to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts." N.C. Gen. Stat. § 1D-1. N.C. Gen. Stat. § 1D-25 limits what plaintiffs may recover as punitive damages. It requires (1) that the trier of fact shall determine the amount of punitive damages separately from the amount of compensation for all other damages, and (2) that punitive damages awarded against a defendant shall not exceed three times the amount of compensatory damages or $250,000, whichever is greater. Id.

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.