STATE OF CALIFORNIA TRANSPORTATION COMPENDIUM OF LAW

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A. California's Law Regarding Derivative Liability of Employer for Acts of Employees in the Transportation Context

California allows an employer to be held responsible for the torts of its employees pursuant to three theories: 1) Respondeat Superior; 2) Negligent Entrustment; and 3) Negligent Hiring/Retention/Supervision.[1]

1. Respondeat Superior

The doctrine of respondeat superior, literally "let the master answer," allows that an employer is vicariously liable for the wrongful conduct of his or her employees or agents committed within the scope of the employment or agency. Randi W. v. Muroc Joint Unified Sch. Dist. (1997) 14 Cal.4th 1066, 1070, 929 P2d 582. See also California Civil Code Section 2338, which states that a principal is liable to third persons for the negligence of its agent. The rationale for the doctrine lies in the fact that the principal or employer derives the benefit from the service of the agent or employee and is a better position to insure itself against losses arising out of the service. The losses caused by employee torts are placed on the employer as a cost of doing business. In order to apply the doctrine, two criteria must be established. First, the employment or agency relationship must be proven. Second, it must also be shown that the employee or agent was acting within the scope of that employment. Societa per Azioni de Navigazione Italia v. City of Los Angeles (1982) 31 Cal.3d 446, 461, 645 P.2d 102. Upon establishing these two criteria, the employer or principal can be held responsible for its employees' torts absent any other showing of independent negligence on the part of the employer or principal.

2. Negligent Entrustment

Under the theory of negligent entrustment, liability is imposed on a vehicle owner or permitter (for our purposes, the employer) pursuant to his or her own independent negligence and not the negligence of the driver, provided that the plaintiff can prove that the harm was proximately caused by the driver's incompetency. Under this theory, however, an entrustor may not be held liable unless the entrustee is adjudged negligent. See CACI No. 724. Establishing negligent entrustment usually requires a plaintiff to offer proof of prior accidents, moving violations, etc. and the employer's knowledge of these prior violations which served to make the subject accident foreseeable.

3. Negligent Hiring, Retention and Supervision

Similarly, the theories of negligent hiring, retention and supervision seek to impose liability on the employer for the employer's own independent acts or omissions which were negligent and contributed to or caused a plaintiff's injuries. The employer must

[1] The employer may also be held liable under a theory of permissive use, if it is the owner of the vehicle driven by it's employee in the accident under California Vehicle Code section 17150. However, liability is limited to $15,000 per person, $5,000 for property damage, and $30,000 per accident under California Vehicle Code section 17151.

have had reason to believe that an undue risk of harm to others would exist because of the employment. Underwriters Ins. Co. v. Purdie (1983) 145 Cal.App.3d 57, 60-62.

B. Defenses

1. Traditional Tort Defenses

Depending on the facts of a particular case, traditional tort defenses such as lack of duty, no breach, no causation, failure to mitigate damages, superseding and intervening cause, etc. can be used in defense of an employer alleged to be liable for its employees' tort.

2. Admitting Liability under Respondeat Superior.

In Armenta v. Churchill, (1954) 42 Cal.2d 448, 267 P.2d 303, the Supreme Court of California joined the majority of jurisdictions in holding that an admission by an employer of liability, if any, for it's employee's alleged tort under a theory of respondeat superior removes the legal issue of the employer's liability for the tort from the case. Id. at 309.

In Armenta, a husband driver and his employer, his spouse, were sued when he backed his dump truck over an asphalt worker. His spouse was sued under two theories, respondeat superior and negligent entrustment because she knew that her husband was a careless and reckless driver. Although the spouse admitted her liability, if any, for her husband's actions, because he was her employee and was acting in the course and scope of his employment, the plaintiff sought to admit evidence showing that the driver had been convicted of 37 traffic violations, including a conviction for manslaughter. Id. at 308. The court held that her admission of liability pursuant to respondeat superior rendered the negligent entrustment cause of action moot and therefore the prior traffic convictions were inadmissible because there was no material issue remaining to which they would be relevant.

Since Armenta was decided, California has enacted Evidence Code section 1104 which provides that character or trait evidence is inadmissible to prove conduct on a specific occasion. Using Armenta and Evidence Code section 1104, an employer can successfully avoid a negligent entrustment cause of action by admitting liability pursuant to respondeat superior and thereby prevent the admission of inflammatory and prejudicial evidence of prior acts or omissions of the employee.
Armenta and its progeny are silent on the issue of whether or not admitting liability pursuant to respondeat superior will remove other derivative liability causes of action, other than negligent entrustment, against an employer. However, the rationale behind other jurisdictions' similar holdings that such an admission removes all derivative liability causes of action is the same as that behind Armenta. Admission of evidence for the derivative claims would prejudice the defendant, waste judicial resources, and result in a greater percentage of fault attributable to the employer than to the

employee.[2] Accordingly, it can be successfully argued at the trial court level that Armenta's holding applies to all derivative liability claims against the employer, not just negligent entrustment.

C. Admissibility of Prior Acts/Omissions Evidence where Punitive Damages are Sought

Armenta and its progeny also do not address the question of whether or not evidence of prior acts or omissions by the employee which can be excluded pursuant to Evidence Code section 1104 are admissible for the purpose of proving that punitive damages are warranted against an employer for the employer's own independent acts of negligence, even where the employer has admitted liability pursuant to respondeat superior. Their silence allows the possibility that the inflammatory evidence may be admitted by the trial court where punitive damages are sought from the employer.

In California, punitive damages against an employer for derivative liability are subject to the heightened "clear and convincing" standard. According to Civil Code section 3294, an employer can not be found liable for punitive damages based upon acts of its employee unless "the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." Regarding corporate employers, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice "must be on the part of an officer, director, or managing agent of the corporation."

[2] See McHaffie v. Bunch, (1995) 891 S.W.2d 822; Neff v. Davenport Packing Co., (1971) 131 Ill. App. 2d 791, 268 N.E.2d 574; Cole v. Alton, (1983) 567 F. Supp. 1084; Elrod v. G & R Constr. Co., (1982) 275 Ark. 151, 628 S.W.2d 17; Clooney v. Geeting, (1977) 352 So. 2d 1216; Willis v. Hill, (1967) 116 Ga. App. 848, 159 S.E.2d 145, rev'd on other grounds, 224 Ga. 263, 161 S.E.2d 281 (1968); Wise v. Fiberglass Sys., Inc., (1986) 110 Idaho 740, 718 P.2d 1178; Ledesma v. Cannonball, Inc., (1989) 182 Ill. App. 3d 718, 538 N.E.2d 655, 131 Ill. Dec. 280; Houlihan v. McCall, (1951) 197 Md. 130, 78 A.2d 661.