EMPLOYER LIABILITY

Energy giant escapes liability for employee's car accident

by Michael Futterman and Jaime Touchstone

In between work shifts, a Halliburton driller drove his company truck 140 miles to run errands with his family and was involved in a car accident that injured several people. In addition to suing the employee, the injured parties sued Halliburton, alleging the employee was commuting in a company vehicle when the accident occurred and was therefore within the scope of his employment. The trial court and the court of appeal held that Halliburton wasn't liable because the employee was engaged in purely personal business at the time of the accident.

Halliburton employee crashes company pickup

Troy Martinez worked at jobsites around California as a directional driller for Halliburton. He lived in Caliente, approximately 50 miles from Bakersfield, and used a company truck to commute. Halliburton's written policy prohibits the use of company vehicles for personal business but allows employees commuting between home and work to make a stop directly en route for personal reasons. At the time the truck was assigned, Martinez's supervisor told him that he could use it to run personal errands as long as he made it back in time for his next shift.

In September 2009, Martinez was assigned to work on an oil rig off Seal Beach. After returning to shore following his shift one day, he drove his company pickup truck 140 miles to a Bakersfield automobile dealership where he intended to purchase a car for his wife. He didn't inform his supervisor of his plans.

After enjoying lunch with his family at a restaurant, Martinez began the return trip to Seal Beach, where he planned to pick up clean coveralls at his hotel and eat while he waited for the boat back to the oil rig for his 9:00 p.m. shift. Just south of Bakersfield, his pickup struck another vehicle, injuring six people.

The injured parties sued Martinez, Halliburton, and the California Department of Transportation. Halliburton asked the court to dismiss the case, arguing it couldn't be held liable because Martinez wasn't acting within the scope of his employment at the time of the accident. The trial court dismissed the case, and the court of appeal affirmed the decision.

Employers may be liable for damage caused by employees

The doctrine of *respondeat superior* permits an employer to be held vicariously liable for torts (wrongful acts) committed by an employee within the "scope of employment." The basis for imposing liability on the employer is grounded in a policy of risk appropriation, allocating responsibility to the employer as a cost of doing business. Fairness dictates that the employer, not an injured third party, should bear the costs of employee wrongdoing because an employer is better able to absorb the costs and distribute them to the public via insurance or price increases.

To determine if an employee's conduct falls within the scope of employment, courts apply a two-pronged test, asking whether (1) the employee's actions were either required or incidental to his job duties or (2) in the context of the employer's business, the employee's conduct wasn't so unusual or startling that it would seem unfair to include the cost of loss among the other costs of doing business. If an employee's actions fall under either category, the employer is liable for the injury.

An employee's commute is ordinarily considered outside the scope of employment, and the employer isn't liable for damages caused during this time unless the commute involves a benefit to the employer. The "incidental benefit" exception has been applied when the employer furnishes, or requires the employee to furnish, a vehicle for the job because the vehicle is then available for use during the workday and during off-duty hours for emergency business trips or to make business stops during the commute.

However, even when the exception applies, there is no *respondeat superior* liability if the employee substantially departs from the employer's business or is engaged in a purely personal activity at the time of the injury. For example, when an employee leaves the employer's premises to get lunch or run a personal errand and isn't otherwise performing any task for the employer, he isn't acting within the scope of employment.

Martinez was running personal errands

In disputing its *respondeat superior* liability, Halliburton asserted that Martinez wasn't performing his job duties at the time of the accident; rather, he was between shifts, running personal errands far from his worksite and his home. In response, the injured parties claimed that the incidental benefit exception applied because Martinez was driving his company truck and the trip to Bakersfield was part of his commute.

The court of appeal disagreed. There was no indication that Martinez was commuting between his home in Caliente and the oil rig at the time of the accident. To the contrary, he didn't go home because it was too far away. Instead, he drove to a dealership 50 miles from his home to purchase a car for his wife.

The injured parties next argued that Martinez was returning to his worksite when the accident occurred, so the return from Bakersfield constituted, at a minimum, part of his commute. The court disagreed. To accept that interpretation would mean that the return leg of any personal trip in a company vehicle, regardless of the time spent driving, the distance traveled, or the lack of connection between the trip and the employer's business or the employee's job duties, would give rise to *respondeat superior* liability if the employee's ultimate destination upon his return was the workplace. The court of appeal rejected this proposed expansion of the incidental benefit exception.

In this case, there was no nexus between Martinez's employment and his trip to Bakersfield to buy a vehicle for his wife. Halliburton didn't send him to Bakersfield. His supervisor was unaware of the trip. And he performed no work during the trip, which was for purely personal reasons unrelated to his employment duties. The risk of a traffic accident during the trip wasn't a risk inherent to or typical of Halliburton's enterprise. Thus, even though Martinez was driving a company pickup truck on his way back to a jobsite, the car accident didn't arise from his work, and Halliburton couldn't be held liable to the injured parties. *Halliburton Energy Services, Inc. v. Department of Transportation et al.* (California Court of Appeal, 5th Appellate District, 10/1/13).

Bottom line

The court's decision reinforces an important restriction on an employer's vicarious liability for accidents involving company cars. Despite this favorable decision, it's important to recognize the potential risks inherent in requiring employees to use personal vehicles for business purposes or furnishing vehicles to employees for business use. The keys to limiting liability are strong corporate policies addressing the use of company

vehicles, consistent enforcement of those policies, and an appropriate level of insurance coverage.

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