Admissions of Agency:

Pennsylvania Trucking Defense Gains Instructive Momentum

Matthew J. McColgan, Esq. | *German, Gallagher & Murtagh, P.C.*

United States District Courthouses in Pennsylvania applying the law of this Commonwealth have been progressing a recent development in the litigation of commercial vehicle accident cases, particularly, dismissing claims of direct negligence against a defendant driver's employer, upon both motions in the pleadings phase as well as for after the close of discovery. The common denominator among these dismissals is the admission by the employer that the alleged tortfeasor-employee was acting within the course and scope of his/her employment at the time of the accident which forms the basis of the lawsuit. It is noteworthy that this is not a blanket principle, as another commonality is the lack of punitive damages alleged against the employer. From a defense perspective, these cases deserve a closer look.

A decision from the Western District of Pennsylvania, *Miller v. M.H. Malueg Trucking, Co., LLC*, published in March 2021, demonstrates this growing precept. *Miller* stems from a motor vehicle accident in which Plaintiff, Sarah Miller's vehicle was rear-ended by a tractor trailer driven by Defendant, Dazhong Zhuang ("Zhuang"). Zhuang was working as an employee of M.H. Malueg Trucking Co., LLC ("Malueg Co.") at the time of this accident. At the outset, the parties worked to correct the pleadings: Plaintiff filed a motion to amend the caption and to remove Zhuang from the case; and, by stipulation, the parties amended the corporate identity of Malueg Co. and agreed that Zhuang was an agent of Malueg Co. on the date of loss. As for the Complaint, Plaintiff alleged in Count I that Malueg Co. was vicariously liable for the negligence of Zhuang, and in Count II that Malueg Co. was negligent in the hiring, training, monitoring, and supervising of Zhuang; negligent in its failure to ensure that Department of Transportation regulations were followed; and negligent in its failure to maintain a proper driving safety program for its drivers. In response, Malueg Co. sought dismissal of Count II pursuant to Federal Rule of Civil Procedure 12(b)(6).

Malueg Co.'s argument cited *Sterner v. Titus Transportation*, a case involving an accident in which one tractor trailer hit another. The *Sterner* Court held that "a plaintiff cannot pursue a claim against an employer for negligent entrustment, hiring, supervision, or training when the employer admits that its

employee was acting within the scope of employment when the accident occurred."[1] The *Miller* Court highlighted the rationale underlying *Sterner*'s decision, noting that "[n]othing can be gained from when the defendant employer has admitted the agency of the driver, and to permit the action to proceed . . . would allow the introduction of evidence of prior accidents of the driver, highly prejudicial, irrelevant and inadmissible . . . ."[2] Moreover, *Sterner* acknowledged that such a dismissal is required because pursuit of such claims "becomes unnecessary, irrelevant, and prejudicial if the employer has already admitted vicarious liability under *respondeat superior*."[3]

In opposition, Plaintiff argued that two (2) cases Defendants relied upon—*Allen*[4] and *Testa*[5]—were grants of summary judgment as opposed to 12(b)(6) motions to dismiss, and emphasized their inapplicability to the case before them due to the absence of discovery. Plaintiff admitted, however, that she had not pled facts sufficient to support a claim for punitive damages, nor did she cite to any legal authority to support the argument that corporate negligence claims in commercial vehicle negligence actions can only be decided at summary judgment, two (2) Achilles heels because *Sterner* expressly rejected these contentions. Because Plaintiff did not make a claim for punitive damages, nor did she raise any allegations that could serve as the predicate for punitive damages, the *Miller* Court ruled that Plaintiff could not pursue a direct negligence claim against Malueg Co.

Within weeks of the *Miller* decision, Judge Joseph F. Leeson, Jr. of the Eastern District granted a motion for summary judgment, on largely the same issue, in *Carson v. Tucker*.[6] *Carson* involved a truck collision between Plaintiff, Jermaine Carson ("Carson") and Defendant, Timothy Tucker ("Tucker"). At the time of the collision, Tucker was employed by Defendant, Western Express, Inc. ("Western Express"). There, Carson asserted four (4) claims against Defendants: negligence against Tucker; punitive damages against Tucker; negligence against Western Express; and punitive damages against Western Express.

---

[1] *Sterner v. Titus Transportation, LP*, 2013 WL 6506591, at *4 (M.D. Pa. 2013) (quoting *Peterson v. Johnson*, No. 11 CV804, 2013 WL 5408532 at *1 (D. Utah Sept. 25, 2013)).
[2] *Id.* (citing *Holben v. Midwest Emery Freight System, Inc.*, 525 F. Supp. 1224, 1224–25 (W.D. Pa. 1981)).
[3] *Id.* (citing *Zibolis–Sekella v. Ruehrwein*, 2013 WL 3208573, at *2 (D.N.H. 2013)).
[4] *Allen v. Fletcher*, 2009 WL 1542767 (M.D. Pa. 2009).
[5] *Testa v. Senn Freight Lines, Inc.*, 2016 WL 465459 (E.D. Pa. 2013).
[6] No. 5:20-CV-00399 (E.D. Pa. March 30, 2021, Leeson, J.).

This litigation began with a transfer from the Middle District to the Eastern District of Pennsylvania. Once venue was settled, Defendants filed a partial motion to dismiss Plaintiff's claims for punitive damages without prejudice, which the Court granted. Plaintiff thereafter filed an Amended Complaint, to which Defendants responded with a motion to dismiss claims for punitive damages with prejudice. The court granted this motion also, thereby leaving only Plaintiff's claims of negligence to go forward against both Tucker and Western Express. The claims of negligence against Western Express included claims of both direct and vicarious liability. Thus, Defendants targeted the claims of direct liability for summary judgment because it was undisputed that, during the time of the subject collision, Tucker was employed as a tractor trailer driver for Western Express and was operating within the course and scope of his employment.

Granting partial summary judgment, the Court acknowledged that, while a corporation may be subject to direct liability for negligent entrustment, instruction, supervision, monitoring, and hiring of its employees,[7] state courts have dismissed claims for negligent supervision and hiring in instances when a supervisor defendant conceded an agency relationship with the co-defendant.[8] The lone exception to this general rule permits a direct liability claim to proceed against an employer despite an admission of agency "when a plaintiff has a valid claim for punitive damages."[9]

Addressing Plaintiff's opposition, Judge Lesson rejected Plaintiff's reliance upon *Scampone v. Highland Park Care Center, LLC*[10] and explained that *Scampone* did not address whether a direct liability claim should be permitted to proceed where a defendant-supervisor admits agency and where the plaintiff has no viable punitive damages claim. Judge Lesson discerned, rather, that *Scampone* dealt with a very different question: whether a corporate negligence theory could be applied to a skilled nursing facility and the healthcare company responsible for its operations. The *Scampone* discussion centered on whether a certain category of employers should be exempted from direct liability altogether. Furthermore, Judge Lesson distinguished *Scampone* given that the plaintiff there

---

[7] *See Belmont v. MB Inv. Partners, Inc.*, 708 F.3d 470, 487–89 (3d Cir. 2013).

[8] *See Calhoun v. Van Loon*, No. 3:12-cv-458, 2014 WL 3428876, at *4 (M.D. Pa. 2014) (quoting *Fortunado v. May*, Civ. A. No. 04-1140, 2009 WL 703393, at *5 (W.D. Pa. Mar. 16, 2009)).

[9] *See id.* (quoting *Sterner v. Titus Transportation, LP*, No. 3:cv-10-2027, 2013 WL 6506591, at *3 (M.D. Pa. 2013).

[10] *Scampone v. Highland Park Care Center, LLC*, 618 Pa. 363 (Pa. 2012).

offered enough evidence on its punitive damages claims to warrant submitting the claim to a jury.

The takeaway from these two (2) recent federal court cases, applying Pennsylvania law, is a highly favorable outcome to the defense of trucking cases: minimizing a company's potential exposure to redundant claims. In the absence of a viable case for punitive damages, direct claims of negligence against a commercial driver's employer should fail when the employer admits agency and pursues its dismissal. While this progeny equally advises the plaintiffs' bar on how to craft their cases, the primary tactic should be attacking any claim for punitive damages early and effectively. Although these two (2) examples relied upon published case law which may not be controlling in other jurisdictions, the underlying rationale is certainly valuable ammunition for a policy argument.