STATE OF MINNESOTA TRANSPORTATION AND LOGISTICS COMPENDIUM OF LAW

Prepared by
Larson • King, LLP
Mark Solheim / Nick Rauch
30 East Seventh Street
Suite 2800
St. Paul, MN 55101
(651) 312-6500
www.larsonking.com

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A. Theories of Liability

In Minnesota, an employer may be vicariously liable for the actions of its employees or independent operators under the theory of *respondeat superior*. An employer may be directly liable for the actions of its employees or independent operators for the employer's negligence in entrusting the employee with a vehicle or in hiring or retaining the employee. Minnesota takes the minority view that a plaintiff may proceed under multiple theories of recovery, such that a plaintiff may seek to recover against an employer for both *respondeat superior* and theories of direct liability. *See Lim v. Interstate Sys. Steel Div., Inc.*, 435 N.W.2d 830, 833 (Minn. App. 1989).

1. *Respondeat Superior*

a. Generally

An employer is subject to vicarious liability for the negligence of its employees if the negligence is committed within the course and scope of the employment. *Gackstetter v. Dart Transit Co.*, 269 Minn. 146, 149, 130 N.W.2d 326, 328 (1964); *Oldakowski v. M.P. Barrett Trucking, Inc.*, 680 N.W.2d 590, 593 (Minn. Ct. App. 2004). An action is within the course and scope of employment if (1) the conduct was substantially within work related limits of time and place; (2) the conduct is of a kind authorized by the employer or reasonably related to that employment; (3) the act was motivated at least in part by the employee's desire to further the employer's interests; and (4) the employer should have foreseen the employee's conduct, given the nature of the employment and the duties relating to it. CIVJIG 30.15. If the employee commits a tort in the pursuit of a personal activity, the employer is not liable. *Gackstetter*, 269 Minn. at 150, 130 N.W.2d at 329. An employee does not cease to be acting within the scope of employment because of an incidental personal act if the main purpose is still to carry on the business of the employer. *Mensing v. Rochester Cheese Express, Inc.*, 423 N.W.2d 92, 94 (Minn. Ct. App. 1988). Acts that "are necessary to the life, comfort, and convenience of the [employee] while at work, though strictly personal … and not acts of service, are incidental to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment." *Id.* at 95 (internal citations omitted).

There is no "hard and fast rule" defining the scope of employment; each case must be determined on its individual facts. *Oldakowski v. M.P. Barrett Trucking, Inc.*, 680 N.W. 2d 590, 593 (Minn. Ct. App. 2004). For example, the *Oldakowski* court found issues of material fact as to whether the driver was acting within the scope of employment. In this case, the driver transported a load of hay bales to a friend's farm. Transporting the hay was clearly within the scope of the driver's contract with the employer. The driver then unloaded the hay at the farmer's request, injuring the farmer when several bales of hay fell on him. The employer argued that unloading the hay was a personal favor, not within the scope of the driver's contract. The court, however, found that the contract allowed for unloading in some instances, creating an issue of material fact as to whether the accident occurred within the course and scope of employment. *Id.* at 592-94.

b. Logo Liability

Under the logo liability rule, the motor carrier whose number is displayed on the tractor will be held liable to the public for the negligent operation of the leased vehicle. *Acceptance Ins. Co. v. Canter*, 927 F.2d 1026, 1027 (8th Cir. 1991); *Grinnell Mut. Reins. Co. v. Empire Fire & Marine Ins. Co.*, 722 F.2d 1400, 1404 (8th Cir. 1983). The carrier's liability is limited by common law principles of *respondeat superior*.

In *Gackstetter*, for example, the court observed that the lease agreement between the trucking company and the truck owner-driver incorporated language required by the I.C.C. for operating non-owned equipment under a carrier franchise. *Id.* The rules and the language quoted in the contract make the owner-driver an employee of the lessee. *Id.* Nevertheless, because the driver was off-duty and on the way home when the subject accident occurred, the court held that as a matter of law he was outside the scope of employment and the employer was not vicariously liable.

c. Safety Responsibility Law

Under Minnesota Statutes, the owner of a vehicle is vicariously liable for accidents caused by persons driving that vehicle with permission:

> Whenever any motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner of such motor vehicle in the operation thereof.

Minn. Stat. § 169.09, subd. 5(a) (2013). This statute creates owner liability on the ground of *respondeat superior*. *Kisch v. Skow*, 305 Minn. 328, 332, 233 N.W.2d 732, 734 (1975). In practice, this statutory liability overlaps significantly with logo liability, because the court has interpreted a long-term lease to render the lessee as the owner of the motor vehicle for purposes of the Safety Responsibility Act. *Vee v. Ibrahim*, 769 N.W.2d 770, 771 n.1 (Minn. App. 2009).

The statute defines a "motor vehicle" as "every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires." Minn. Stat. § 169.011, subd. 42 (2013). The court of appeals has held that a semi-trailer does not fit within this definition. In *Vee*, for example, the tractor driver negligently caused an accident. The trailer was owned by a different company. The court held that trailer was not a "motor vehicle" under the statute, such that the owner of the trailer was not vicariously liable for the negligence of the tractor driver. 769 N.W.2d at 755.

2. Negligent Entrustment

Minnesota courts define negligent entrustment as "a separate wrongful act when the negligence of the driver is reasonably foreseeable and the entrustor fails in the duty to take steps to prevent operation of the vehicle by the driver. *Lim v. Interstate Sys. Steel Div., Inc.*, 435 N.W.2d 830, 832 (1989). Minnesota has adopted Restatement (Second) of Torts § 390:

> 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 physical harm resulting to them.

Axelson v. Williamson, 324 N.W.2d 241, 243-44 (Minn. 1982). The duty of the entrustor "runs directly to those who might be put at risk as a result of the negligent entrustment." *Johnson v. Johnson*, 611 N.W.2d 823, 827 (Minn. Ct. App. 2000). Negligence in entrusting a vehicle to someone who is incompetent creates only the potential for liability; in order for liability to attach the supplier must also be found to be the legal cause of the harm. *Axelson*, 324 N.W.2d at 244.

In *Lim v. Interstate System Steel Division, Inc.*, 435 N.W.2d 830 (Minn. Ct. App. 1989), for example, judgments in wrongful death and personal injury actions were appealed. The consolidated appeals arose from an accident that occurred between a car containing six occupants and an 18-wheel semi driven for Interstate and leased from Gaylon Mills, who employed the driver and received a percentage of the gross revenue from each load. 435 N.W.2d at 831. Five of the six occupants in the car were killed. *Id.* at 832. The semi driver tested positive for four stimulants after the crash, including one controlled substance for which he did not have a prescription. *Id.* At trial, the court admitted evidence that the semi driver had been arrested four months earlier for possession of a controlled substance while driving as a Gaylon Mills employee. *Id.* The court held Gaylon Mills could be held vicariously liable for the driver's negligence as well as independently liable for negligent entrustment. *Id.* at 833-34.

3. Negligent Hiring and Retention

Negligent hiring is "the negligence of an employer in placing a person with known propensities, or propensities which should have been discovered by reasonable investigation, in an employment position in which, because of the circumstances of employment, it should have been foreseeable that the hired individual posed a threat of injury to others." *M.L. v. Magnuson*, 531 N.W.2d 849, 857 (Minn. Ct. App. 1995), *review denied* (July 20, 1995) (citing *Ponticas v. K.M.S. Invs.*, 331 N.W.2d 907, 911 (Minn. 1983)). Liability is determined by the totality of the circumstances surrounding the hiring, and whether the employer exercised reasonable care. *Yunker v. Honeywell, Inc.*, 496 N.W.2d 419, 422 (Minn. Ct. App. 1993). The degree of care required in hiring depends on the particular duties required by the job. *Ponticas*, 331 N.W.2d at

913. In order to establish a claim, a plaintiff must also prove proximate cause, which is not to be determined by whether a particular, specific injury is foreseeable; rather, the focus is on the type of previous acts by the person committing the injury. *Ponticas*, 331 N.W.2d at 912-13.

In *Ponticas v. K.M.S. Investments*, 331 N.W.2d 907 (Minn. 1983), the owners and operators of a residential apartment complex were found liable for negligently hiring a resident manager who sexually assaulted a female tenant. *Id.* at 908. At the time he was hired, the manager was on parole following a conviction in another state for armed robbery. *Id.* at 909. On his application, he indicated he had been convicted of a crime, but described it as "traffic tickets." *Id.* at 910. The owners made no further inquiry into his criminal history before hiring him. *Id.* The Minnesota Supreme Court held the jury "could have found, as it did, that it was reasonably foreseeable that a person with a history of offenses of violence could commit another violent crime, notwithstanding the history would not have shown him to ever have committed the particular type of offense." *Id.* at 912. The Court held that the negligence in hiring found by the jury was the proximate cause of the plaintiff's injury and affirmed. *Id.* at 915-16.

An employer's liability for negligent retention arises out of the employer's "personal fault in exposing others to an unreasonable risk of injury in violation of the [employer's] duty to exercise due care for their protection." *Porter v. Grennan Bakeries*, 219 Minn. 14, 22, 16 N.W.2d 906, 910 (1944). Negligent retention arises "when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further action such as investigating, discharge, or reassignment." *Yunker*, 496 N.W.2d 419, 423 (Minn. Ct. App. 1993) (internal quotation omitted). Actual knowledge of potential problems is not required to support a negligent retention claim. *Doe v. Centennial Indep. Sch. Dist. No. 12*, No. A04-413, 2004 WL 2939861, at * 3 (Minn. Ct. App. Dec. 21, 2004).

For example, in *Jones v. Blandin Paper Co.*, No. 31-C5-02-1205, 2003 WL 23816532 (D. Minn. Sept. 23, 2003), an employee of a staffing agency who worked at Blandin Paper Company sued Blandin in connection with alleged incidents of sexual harassment. 2003 WL 23816532, at *2. Among the claims alleged was negligent retention. *Id.* Blandin moved for summary judgment based upon the fact that the plaintiff failed to utilize their sexual harassment procedure in order to provide proper notification. *Id.* at *3. The plaintiff opposed summary judgment on the basis that Blandin had knowledge that supervisors were sexually harassing employees, but did not discipline the supervisors or terminate their employment. *Id.* at *11. The court denied Blandin's motion for summary judgment on the negligent retention claim. *Id.* at *12. The court held that the plaintiff had presented sufficient evidence to withstand summary judgment by introducing evidence that Blandin's manager of employee relations had known that sexual misconduct occurred at the Blandin plant, but had chosen to wait to investigate until an employee formally objected to harassment. *Id.*

4. Negligent Supervision

Negligent supervision is the failure of an employer "to exercise ordinary care in supervising the employment relationship, so as to prevent the foreseeable misconduct of an employee from causing harm to other employees or third persons." *Cook v. Greyhound Lines, Inc.*, 847 F. Supp. 725, 732 (D. Minn. 1994). Negligent supervision derives from the doctrine of respondeat superior, so the claimant must prove that the employee's actions occurred within the scope of employment in order to succeed on a claim. *Id. See also Pecore v. Lewis Truck Lines, Inc.*, No. C9-94-1710, 1995 WL 81354, at * 3 (Minn. Ct. App. Feb. 28, 1995).

In *Pecore v. Lewis Truck Lines, Inc.*, No. C9-94-1710, 1995 WL 81354 (Minn. Ct. App. Feb. 28, 1995), the court affirmed summary judgment dismissing a discharged dock supervisor's claims against his former employer, Lewis Truck Lines, which included breach of contract, intentional infliction of emotional distress, and negligent supervision theories. The plaintiff claimed that his supervisor "had a confrontational supervisory style," and "frequently reprimanded [the plaintiff] in harsh and severe language that included profanity," which ultimately caused him to suffer a nervous breakdown. 1995 WL 81354 at *1. In affirming summary judgment, the court noted that even if Lewis Truck Lines had been on notice of the supervisor's behavior, the plaintiff had not established compensable damages because personal injury, and not just economic loss, is required to sustain a negligent supervision claim. *Id.* at *3.

Minnesota does not recognize a cause of action for negligent training. *Johnson v. Peterson*, 734 N.W.2d 275, 277 (Minn. Ct. App. 2007) (citing *M.L. v. Magnuson*, 531 N.W.2d 849, 856 (Minn. Ct. App. 1995)).

B. Defenses

1. Admission of Agency

Minnesota does not follow the majority view that once an employer has admitted to the existence of an agency relationship with an employee it is no longer proper to allow a plaintiff to pursue other theories of derivative or dependent liability. In Minnesota, courts will permit an injured party to proceed under other theories of recovery in addition to vicarious liability. *Lim v. Interstate Sys. Steel Div., Inc.*, 435 N.W.2d 830, 832-33 (Minn. Ct. App. 1989) (holding evidence of negligent entrustment was admissible even though vicarious liability was conceded). *See also Jones v. Fleischhacker*, 325 N.W.2d 633, 640 (Minn. 1982) (entrustor found both causally negligent and vicariously liable for entrustee's negligence).

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 comparative fault, failure to mitigate damages, superseding and intervening causes, etc.

C. Litigation Issues

i.) Minnesota Seatbelt Gag Rule

Pursuant to Minn. Stat. § 169.685 (subd. 4), evidence regarding the use or failure to use a seat belt, or restraint, is inadmissible in "any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle. The language of the seatbelt gag rule is unambiguous and applied strictly by Minnesota courts. *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 494 (Minn. 1997); see also *Burck v. Pederson*, 704 N.W.2d 532, 536 (Minn. App. 2005). However, Minn. Stat. § 169.685, subd. 4(b) articulates a single exception to the rule for claims arising from products liability. Minn. Stat. § 169.685 subd. 4(b) (excluding application of the rule to "an action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint system.").

ii.) Minnesota No-Fault Thresholds

Minnesota is a no-fault jurisdiction which mandates that all drivers have no-fault coverage for medical expenses and lost wages. Minn. Stat. § 65B.41 (2020). Minnesota has certain no-fault thresholds that apply to claims involving a motor vehicle accident. The Minnesota No-Fault Act requires that the plaintiff prove his or her tort claim satisfies one of three thresholds: (1) that the sum of his or her medical expenses totals more than $4,000, (2) that his or her injury resulted in permanent disfigurement, permanent injury, or death, or (3) that the injuries disabled the Plaintiff, cumulatively, for 60 days. The plaintiff is barred from recovery, unless his or her claim evidences one of the three thresholds.

iii.) No-Fault Indemnity – Commercial Vehicles

If the accident involves a vehicle with a gross weight of over 5,000 and arises from the negligent operation, maintenance, or use of the vehicle, the opposing vehicle's no-fault carrier will have a separate and independent right of action against the insurer for the commercial vehicle. Minn. Stat. § 65B.53, subd. 1 (2020). This claim is not a traditional lien, but a separate and independent indemnity claim on behalf of the insurer.

iv.) Comparative Fault

Minnesota is a modified, comparative fault jurisdiction. Plaintiff will be able to recover if his contributory fault is not greater than the fault of the defendants. Minn. Stat. § 604.01 (2020).

v.) Worker's Compensation Subrogation

Pursuant to the plain language of Minn. Stat. § 604.02, an employer, subject to workers compensation laws, cannot be held jointly and severally liable with a third-party tortfeasor, and thus third-party tortfeasor is liable for the entire verdict awarded in a civil suit with no reduction for the employer's fault. *Fish v. Ramler Trucking, Inc.*, 935 N.W.2d 738 (Minn. 2019). According to the recent holding in *Fish*, if the employer is deemed at fault, they must pay the third-party tortfeasor an amount that equals the lesser of its percentage of negligence or its workers' compensation interest. *Id*.; see also Minn. Stat. § 176.061, subd. 6 (2020). Additionally, the plaintiff employer must reimburse the employer for its workers' compensation benefits paid to date, pursuant to the net formula articulated in Minn. Stat. § 176.061, subd. 6.

D. Punitive Damages

A mere showing of negligence is not enough to sustain a claim of punitive damages. *Berczyk v. Emerson Tool Co.*, 291 F. Supp. 2d 1004, 1008 (D. Minn. 2003). Punitive damages are allowed only upon "clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20 subd 1.

Punitive damages may be awarded against an employer because of an act done by an employee only if (a) the employer authorized the doing and manner of the act; (b) employee was unfit and the employer deliberately disregarded a high probability that the employee was unfit; (c) the employee was employed in a managerial capacity with the authority to establish policy or planning level decisions and was acting in the scope of that employment; or (d) the employer or its managerial agent ratified or approved the act while knowing of its consequences. Minn. Stat. § 549.20, subd. 2.

An award of punitive damages is to be measured by the following factors: (a) the seriousness of hazard to the public arising from the defendant's misconduct; (b) the profitability of the misconduct to the defendant; (c) the duration of the misconduct and any concealment of it; (d) the level of the defendant's awareness of the hazard; (e) the defendant's attitude upon discovery of the misconduct; (f) the number and level of employees involved in causing or concealing the misconduct; (g) the defendant's financial condition; and (h) the total effect of other punishment likely to be imposed upon the defendant. Minn. Stat. § 549.20 subd. 3.

To determine if a plaintiff has made a proper showing that the defendant demonstrated deliberate disregard for the rights of others, the court will review evidence in support of the motion without considering evidence submitted in opposition. *Northwest Airlines, Inc. v. American Airlines, Inc.*, 870 F. Supp. 1499, 1502-03 (D. Minn. 1994). In determining whether punitive damages should be awarded courts will focus on the defendant's conduct rather than on the type of damage that is the result of the conduct. *Jensen v. Walsh*, 623 N.W.2d 247, 251 (Minn. 2001).

For example, in *Kay v. Peter Motor Co.*, 483 N.W.2d 481 (Minn. Ct. App. 1992), a former employee who had been terminated brought suit against her former employer, an automobile dealership, alleging sexual harassment. The trial court awarded punitive damages pursuant to section 549.20, which was challenged on appeal. *Id.* at 485-86. In considering the award of punitive damages in relation to the factors set forth in section 549.20 subd. 3, the court noted that multiple acts of harassment had occurred during a period of several months, and that the chief executive officer had "failed to bring under control his own conduct, which he knew was offensive and knew or should have known constituted sexual harassment." *Id.* at 485 (internal citation omitted). The appellate court concluded that the trial court had properly considered the factors, and that the defendant had failed to demonstrate that the trial court's award of punitive damages was unreasonable. *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.