

Breaking Through Stereotypes

Is It Possible in the Transportation Industry?

By John Stalzer and Steven Westfall

In lawsuits arising out of truck accidents, plaintiffs assert claims for negligence against the truck driver and respondeat superior against the trucking company. In an accident where the driver's negligence and agency relationship is established, the plaintiff is entitled to recover compensatory damages and pain and suffering against the trucking company as well as the truck driver.

In addition to negligence of the driver, plaintiffs often assert claims directly against the trucking company for negligent hiring, entrustment, supervision, or retention. But the plaintiff is not entitled to additional damages for negligent hiring unless there is a basis for punitive damages. The question arises, however, in admitted liability cases whether the plaintiff should be permitted to offer evidence of negligent hiring, entrustment, supervision, or retention if the defendants stipulate to negligence and agency.

Negligent hiring or retention claims

provide an opportunity for plaintiffs to seek discovery and to introduce evidence that promotes negative stereotypes associated with the transportation industry. Evidence sought to suggest defendants are bad truck drivers and unsafe truck companies relating to a truck driver's inexperience, failure to maintain log books on unrelated trips, prior accidents or prior moving violations, and an employer's failure to maintain adequate records is generally not relevant to the ultimate issue of damages caused in the specific accident. But this evidence has a potential prejudicial effect that may serve to antagonize the jury against transportation defendants.

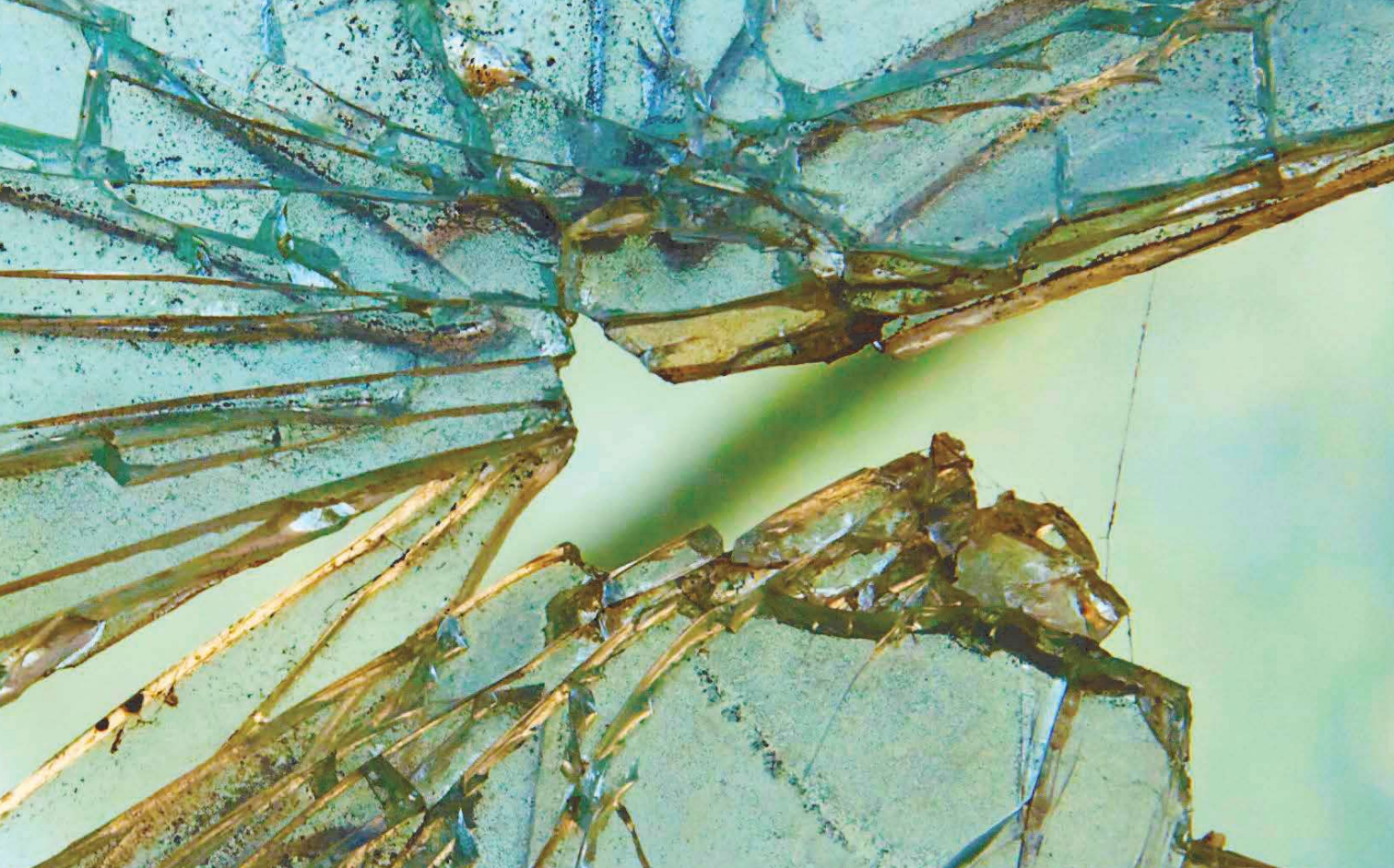
Negligent Hiring

While a truck driver can negligently cause another's injury, a trucking company may be negligent if it knows or should know that a driver is incompetent but continues to employ the driver. Unless the trucking company is grossly negligent, however, the injured plaintiff is entitled to the same measure of damages for

the respondeat superior claim as he/she is in the negligent hiring claim. Therefore, when a trucking company admits the driver was negligent in the course and scope of his employment, discovery associated with negligent hiring arguably becomes irrelevant and prejudicial.

The majority of jurisdictions will not allow a plaintiff to bring claims for negligent hiring and retention when the trucking company admits an agency relationship with the driver. In those jurisdictions, the courts find that evidence of negligent hiring and retention serves no real purpose if liability against the trucking company is already established by an admission of vicarious liability. In the trucking accident context, the trucking company cannot be liable for negligent hiring if the truck driver was not negligent. The potentially inflammatory evidence of a "bad" driver or company is irrelevant.

On the other hand, courts that espouse the minority view believe



it is a strange proposition that a stipulation as to one cause of action could somehow prohibit the pursuit of another. They believe that juries can fairly implement the rule that a plaintiff is only entitled to recovery once where a plaintiff asserts multiple causes of action. The trial courts are equipped with the ability to craft jury instructions to prevent unfair inferences to be drawn from certain evidence. Therefore, the minority view permits a plaintiff to pursue negligent hiring claims when a defendant admits to vicarious liability for its driver's negligence.

Practical Pointers

Practically, this issue is important to transportation claims handlers and litigators because there are different approaches taken by courts. One needs to know if the jurisdiction follows the majority rule or the minority rule. Knowledge of the specific venue's tendency is helpful in evaluating the risk of the potential for discovery and admissibility at trial of evidence that the driver or

trucking company is "bad." If the jurisdiction is willing to limit negligent hiring claims, trucking defendants may avoid discovery and certainly admissibility of facts focused on the driver's competence and the employer's independent negligent conduct.

In jurisdictions that do not allow a separate claim against a truck company where vicarious liability is admitted for the acts of a driver, opposing discovery of negligent hiring and retention should be considered. Since courts are generally loathe to inhibit discovery, claims handlers and litigators need to know the extent of the bad evidence to determine its potential impact. Most jurisdictions will not allow a separate claim against the trucking company as long as the evidence does not demonstrate gross negligence.

Where discovery will be permitted, defendants in the majority rule jurisdictions should file a motion for summary judgment at the close of discovery. Those jurisdictions will

not allow negligent hiring or retention claims to be presented at trial if the evidence does not demonstrate gross negligence. An employer's gross negligence supports a claim beyond the employee's negligent act.

Of course, the best way to promote positive stereotypes in the trucking industry is for trucking companies to ensure that safety procedures are in place and record keeping is exemplary. Direct negligent hiring and retention claims are easily defended when the trucking company has verified its driver's motor vehicle record and contacted past employers. Negligent supervision claims are most effectively rebuffed when truck companies and drivers perform DOT-required physicals, motor vehicle inspections, and random drug testing. But the trial attorney and the claims adjuster should be well-prepared to handle these claims in all jurisdictions. [LM](#)

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