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## THE BASSETT BULLETIN™

### GOODYEAR TIRE & RUBBER CO. V. MAYES PART I

Can you get rid of a Plaintiff's negligent entrustment claim before trial? What if your driver has a driving history of a rear-end collision with two traffic citations? Apparently, the answer to this question is "Yes." The Texas Supreme Court recently ruled on this issue in *Goodyear Tire and Rubber Co. v. Mayes*, 236 S.W.3d 754 (Tex. 2007). They held that such facts alone were not enough to survive summary judgment.

#### WHAT IS NEGLIGENT ENTRUSTMENT?

Negligent entrustment is when someone entrusts a vehicle (and it can even be a golf cart) to someone he or she should know or knows is an unlicensed, incompetent, or reckless driver. Additionally, the driver must be negligent and the driver's negligence must be the proximate cause of the injury. It's really a direct negligence claim against an owner of a vehicle ("entrustor").

#### THE FACTS OF THE CASE

In *Goodyear*, Corte Adams, a Goodyear employee, worked in Bryan, Texas, but lived in Houston, which is about a two-hour daily commute. One of his duties was to deliver tires from the Bryan store to the store in Houston. Goodyear allowed Adams to use the truck for personal use.

On the day of the accident, Adams was unable to deliver the tires to the Houston store before it closed. With the tires still in the truck (which he was to deliver in the morning), he went to his father's house where "he ate dinner, drank a few beers, and slept for ...five hours." At 3:00 a.m., he awoke and left to buy his father cigarettes. He fell asleep on the road and drifted into oncoming traffic injuring Patrick Mayes, the Plaintiff.

Mayes sued both Adams and Goodyear, alleging Goodyear was negligent both directly under an entrustment theory, and vicariously as an employer. Mayes sued Goodyear alleging that Adams was in the course and scope of his employment (this will be discussed later). At the trial court level, Goodyear moved for summary judgment on both claims and won. Goodyear was severed from the case against Adams and a final, take-nothing judgment was rendered in Goodyear's favor.

The Appellate court reversed, stating there was sufficient evidence of both claims to survive summary judgment, putting Goodyear back into the lawsuit. As to the claim for negligent entrustment, the Appellate court looked to Adams' three-year driving record that Goodyear knew of prior to his hiring, which contained two citations. One was for rear-ending a vehicle at a stoplight and another was for driving without insurance. They also looked at his daily two-hour commute as a fact issue of his competence as a driver. The appellate court found these facts were enough to defeat a summary judgment.

## **THE TEXAS SUPREME COURT'S DECISION**

The Texas Supreme Court reversed the appellate court and held that Mayes should take nothing against Goodyear. The Supreme Court held that the facts before them were insufficient to create a fact issue. The Court stated that the evidence did not raise a genuine issue of material fact as to whether Adams was, or whether Goodyear knew or should have known that Adams was, an incompetent or reckless driver at the time Goodyear entrusted him with the truck. Although the Court found that all the other negligent entrustment elements were indisputably met (of entrusting, negligence, and causation of damages), the Court held the Plaintiff had no facts that warranted summary-judgment survival as to the recklessness or incompetence elements of the claim.

## **WHAT DOES THIS MEAN?**

The analysis of what's reckless or incompetent is still determined on a case-by-case basis. *See, e.g., Monroe v. Grider*, 884 S.W.2d 811, 815 (Tex. App.—Tex. Dallas 1994, writ denied). According to *Goodyear Tire*, however, it appears we have a relatively clear fact situation that fails to be negligent entrustment as a matter of law. Here are some things you can do to reduce your exposure to a lawsuit or to get rid of this type of claim if it is asserted:

1. Make sure to thoroughly examine your driver's qualifications to operate a vehicle. It is also a good idea to investigate previous employment history to ensure there is nothing that could raise a red flag down the road.
2. Conduct regularly scheduled checks of your driver's motor vehicle record. Drivers may get tickets while in their personal vehicles that you may not know about.

3. If a negligent entrustment claim is asserted, think about filing a Motion for Summary Judgment to defeat the allegation. If your facts are within the parameters of this case, it will be good supporting authority for your case.

Remember, this is a *direct* negligence claim. There is no defense to this claim for your driver exceeding the scope of entrustment, as you would have as an employer under an indirect, vicarious theory when a worker exceeds the scope of employment. Also, exposure to punitive damages is possible, even if your driver was only ordinarily negligent. A key inquiry for this type of claim is what an entrustor knew or should have known at the time of entrustment.

In this case, the Supreme Court also addressed “course and scope” of employment. Specifically, was the driver in furtherance of his employer’s business when the accident took place? This will be discussed in our next issue. Stay tuned...

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