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Volume 5, Issue 2

THE BASSETT BULLETIN™

GOODYEAR TIRE & RUBBER CO. V. MAYES PART II

In the last newsletter, we discussed the Texas Supreme Court's ruling in *Goodyear Tire & Rubber Co. vs. Mayes*, as it pertained to negligent entrustment. 236 S.W.3d 754 (Tex. 2007). However, the Supreme Court also discussed what it means for an employee to be in the "course and scope" of his employment. This newsletter discusses the Court's discussion on this topic.

As you will recall, in *Goodyear Tire & Rubber Co. vs. Mayes*, Corte Adams, the Goodyear employee, left work and was headed to another Goodyear store by his house with a tire delivery. By the time he arrived, the store was closed. Adams then drove to his father's nearby home, with the tires still on the back of the truck. There he ate dinner, drank a few beers, and slept for approximately five hours.

A little before 3:00 a.m., Adams left the apartment to purchase cigarettes for his father. On his way to the convenience store, Adams fell asleep at the wheel, crossed the center line into oncoming traffic, and struck head-on a truck driven by Patrick Mayes. Both Mayes and Adams were injured in the collision.

An important issue in this case was whether Adams was in the course and scope of his employment. The Plaintiff wanted Goodyear to be vicariously liable for the negligent acts of Adams because Adams could have been furthering the business of Goodyear since he was in their company truck when the accident occurred.

Another interesting fact in this case was that Adams, the Goodyear employee, actually received workers' compensation benefits for the injuries he sustained in the accident. Workers' compensation benefits are normally given to an employee when they have been injured on the job. Thus, Mayes alleged this was additional evidence that Adams was in the course and scope of his employment when the accident occurred.

In the [Goodyear case](#), the Texas Supreme Court delved into these issues and set some boundaries in favor of the employer.

COURSE AND SCOPE

Generally, the rule for employers is that they are liable for the tortuous acts of their employees as long as the employees are acting within the course and scope of the employer's business. The employee's actions must be within the general context of what the employer has authorized them to do in furtherance of the business.

However, if the employee deviates from his/her job duties, the employer may not be liable for the employee's negligent actions. The Texas Supreme Court took a different approach in looking at the facts of the *Goodyear* case in deciding that Goodyear was not liable for the actions of Adams, their employee.

Here is what the Court focused on:

1. "The summary judgment record contained uncontraverted evidence that Adams awoke at his father's home close to 3:00 a.m.
2. Adams drove the Goodyear truck to a nearby convenience store to purchase his father's cigarettes and planned to return.
3. It was during this personal errand that Adams fell asleep at the wheel and hit Mayes's truck head-on.
4. Adams' personal errand was not an act in furtherance of his employer's business or for the accomplishment of the object for which he was hired.
5. Evidence that Adams had possession of the Goodyear truck with Goodyear tires on board, had a morning delivery to make, was available via pager twenty-four hours a day, and was not restricted from using the truck for personal business fails to support the requirements of respondeat superior."

As such, the Texas Supreme Court held that the undisputed facts of this case did not show that Goodyear should be liable for Adams' accident because he was running a late night personal errand with the intention of going back home.

PAYING WORKERS' COMPENSATION

A second issue was that Goodyear's insurance provider paid Adams workers' compensation benefits. Mayes alleged that Adams was acting within the course and scope of his employment because Goodyear paid for Adams' injuries.

The Court of Appeals considered "Goodyear's authorization of workers' compensation payments to Adams for the injuries he sustained in the accident" sufficient to raise a genuine issue of material fact as to whether Adams was acting in the course and scope of his employment. The Court of Appeals noted that there was some discrepancy as to whether or not Adams actually received these benefits, and whether or not Goodyear approved them.

However, the Texas Supreme Court held that just because Adams may have received workers' compensation benefits, it was not competent evidence that Adams was acting within the course and scope of his employment for Goodyear at the time of the accident.

In fact, the Court further added that "no reasonable juror could conclude that Goodyear admitted Adams was acting within the course and scope of his employment based on all of the evidence in this record."

According to the Texas Supreme Court's ruling, providing an employee with workers' compensation benefits does not necessarily mean that the employer is condoning the employee's behavior. This must be weighted with all the other facts of the accident to get the "big picture" view of the actions and the accident.

REDUCING YOUR EXPOSURE

What can you do to limit the possibilities of this type of litigation happening? Here are some tips that you can apply to reduce your chances of being sued, or, help your defense should you be in this situation:

1. A written policy on driving company vehicles is a great place to start. Make sure that your employees are trained on it and have signed it. For example, set out (1) when your employees are allowed to drive, (2) where they are allowed to drive to, (3) the hours that they are allowed to drive, and (4) for what activities are they allowed to use the vehicle for (i.e., deliveries, picking up supplies, or transporting products).
2. Consider reducing or stopping employees from using company vehicles for personal errands. If you are able to do this, then consider putting this in writing as well. For example, you may allow employees to get lunch between the hours of 11 a.m. to 1 p.m. during their work shifts. However, outside of that 2 hour period, all activities outside of work will be considered a deviation. Also, you may want to limit or stop employees from using company vehicles to travel to and from work.
3. Explain to your employees what is considered a deviation and why it is important to know your rules. Remind them that they can be sued individually for accidents that happen while they are driving company vehicles. Often times, employees forget that they may not always be protected by the shield of their employer. Therefore, it is important to explain this to your employees so they understand the consequences and feel a part of your team.

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