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EVIDENCE OF IMMIGRATION STATUS

On March 15, 2010, the Texas Supreme Court ruled on the admissibility of evidence of a party's immigration status. In the ever-changing landscape of today's cultural makeup, the Court found that a party cannot seek to introduce evidence of a party's illegal immigration status simply to inflame the jury. The Court found that "[s]uch appeals to racial and ethnic prejudices, whether 'explicit and brazen' or 'veiled and subtle,' cannot be tolerated because they undermine the very basis of our judicial process."

TXI TRANSPORTATION CO. V. HUGHES¹

TXI Transportation Co. v. Hughes involved a tractor-trailer accident that killed several members of the Hughes family. Hughes was driving westbound on a two-lane highway, with four other family members in her vehicle. Ricardo Rodriguez, the tractor-trailer driver for TXI Transportation Company ("TXI"), was traveling in the opposite direction. The Hughes vehicle crossed the center line into TXI's lane and collided with the TXI truck. At TXI's tail end, the Hughes vehicle spun sideways into the path of a third vehicle. The resulting collision killed everyone in the Hughes vehicle except Hughes' infant grandson.

Hughes' husband and other family members sued Rodriguez and his employer, TXI, for the deaths.

What caused the Hughes vehicle to cross into TXI's lane was the critical issue at trial. Each side relied on accident-reconstruction experts to explain their respective theories. During trial, the Hughes Plaintiffs sought to introduce evidence regarding Rodriguez's status as an illegal immigrant to impeach Rodriguez. The Hughes Plaintiffs argued that Rodriguez's misrepresentations about his qualifications and experience as a commercial truck driver were relevant to their claims of negligent hiring and negligent entrustment. In particular, the Hughes Plaintiffs relied on the Federal Motor Carrier Safety Regulation Act (FMCSRA), which requires motor carriers to make mandatory employment checks when hiring new drivers. Under these regulations, a carrier must ensure that prospective drivers have a commercial license, have a working knowledge of English, and possess the training or experience to safely operate a commercial vehicle.²

¹ *TXI Transportation Co. v. Hughes*, No. 07-0541 (Tex. Mar. 15, 2010).

² 49 C.F.R. §§ 383.23, 391.11(b)(2)--(7), 391.15

After trial, the jury found that Rodriguez's and TXI's negligence proximately caused the accident. The jury awarded compensatory as well as exemplary damages to the Hughes Plaintiffs. On appeal, the court of appeals set aside the award of exemplary damages, but otherwise affirmed the judgment against Rodriguez and TXI.

ILLEGAL IMMIGRATION STATUS

TXI argued that it was error for the trial court to admit evidence of Rodriguez's immigration status and his misrepresentation of that status in order to live and work in this country because the illegal immigrant status was irrelevant to any issue in the case. Rodriguez's status was impermissibly used to inflame the jury and impeach Rodriguez's credibility. In sum, the repeated questions on this subject by the Hughes Plaintiffs prejudiced TXI's defense and effectively denied it a fair trial.

In a negligent-hiring or negligent-entrustment claim, a plaintiff must present evidence to prove the following:

1. The risk which caused the entrustment or hiring to be negligent also proximately caused the plaintiff's injuries. Essentially, the plaintiff must prove that the risk that caused the entrustment or hiring to be negligent also caused the accident at issue.
2. Anything found in a background check would cause a reasonable employer to not hire the employee, or would be sufficient to put the employer on notice that hiring the employee would create a risk of harm to the public.
3. A plaintiff will not succeed on a negligent entrustment or hiring claim where an investigation would not have revealed the risk.

The Supreme Court held that Rodriguez's immigration status did not cause the collision and was therefore not relevant to the negligent entrustment or hiring claims. Even if TXI failed to properly screen Rodriguez's immigration status, TXI's failure to discover Rodriguez's inability to work in the United States did not create the condition that made the accident possible. Neither Rodriguez's status as an illegal alien nor his use of a fake Social Security number to obtain a commercial driver's license created a foreseeable risk that Rodriguez would negligently drive the gravel truck.

Because the trial court improperly introduced evidence of Rodriguez's immigration status, the Supreme Court reversed the trial court's judgment and remanded to the trial court for a new trial.

WHEN IS A PARTY'S IMMIGRATION STATUS RELEVANT AND ADMISSIBLE?

The Supreme Court cautioned against the introduction of the immigration status of a party even in cases where it is relevant. "Even assuming the immigration evidence had some relevance, its prejudicial potential substantially outweighs any probative value. Even in instances where immigration status may have limited probative value as to credibility, courts have held that such evidence is properly excluded for undue prejudice under Rule 403."

The only context that courts have widely accepted using such evidence for impeachment is in criminal trials, where a government witness's immigration status may indicate bias. This is particularly true where the witness traded testimony for sanctuary from deportation.

However, here are some things to think about when faced with a party that is an illegal immigrant:

1. A plaintiff's illegal immigration status may be relevant in a case where the plaintiff alleges lost wages. The jury should evaluate any lost wages in terms of the currency of the Plaintiff's home country. If the plaintiff is a Mexican national, the jury should award lost wages in terms of Mexican currency rather than the U.S. dollar. Based on this opinion, however, the defendant **cannot** seek to argue that the plaintiff's illegal immigration status somehow caused the accident.
2. Any mention that the plaintiff or the defendant was an illegal immigrant is not relevant to prove that the person caused the accident. For example, if a party seeks to prove that the party is not qualified to drive, whether a party is entitled to be in the United States does not prove that he was an incompetent driver. The party must prove by some other avenue that the driver did not meet the qualifications to drive.

If your opposing counsel asks questions about a party's illegal immigration status at trial, or if a witness testifies about another's immigration status, it is vital that an objection be made. An employer is not negligent simply because it hired an illegal immigrant.



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