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AEI CLAIMS LAW QUIZ

Can an Employer Be Exposed to Direct Liability if It Acknowledges Vicarious Liability for the Conduct of Its Employee?

[Ref. Law of Agency, Para. 4.02]

FACTS: Green was employed by Pan-Oceanic Engineering Co. to haul construction equipment to different job sites. On August 17, 2012, Green's supervisor, Singh, asked him to pick up a skid steer from Patten Industries. The skid steer weighed more than three tons and after it was loaded onto his trailer by Patten employees, Green noticed it looked crooked. Believing it was improperly loaded, he asked the Patten employees to reload it, but they refused. Green then called Singh and expressed his concern about the load. Singh, who was busy at the time, told Green the load was fine and that Green should bring the skid steer back to Pan-Oceanic. His final words to Green were "be safe." While Green was driving to Pan-Oceanic, his trailer swung into a car driven by McQueen who was injured.

McQueen filed a three count lawsuit against Green and Pan-Oceanic. In Count I, he alleged that Green was negligent for operating his vehicle with an improperly loaded skid steer. In Count II, he claimed that Pan-Oceanic was negligent for failing to train Green on how to respond to an unsafe load. He also claimed that Pan-Oceanic should have rejected the load, and that it wrongfully ordered Green to transport the load when it knew or should have known it was unsafe to do so. In Count III, McQueen sought punitive damages on the grounds that Pan-Oceanic acted in reckless disregard of the safety of others.

Pan-Oceanic acknowledged that Green was its agent who was acting within the scope of his agency at the time of the accident and acknowledged its vicarious liability for Green's conduct.

At trial, Green testified that he didn't think the skid steer was loaded properly, but that Singh assured him it would be alright to transport it. Green ultimately complied with his supervisor's instructions. He testified that he was afraid he'd be fired if he didn't follow those instructions.

The jury found that Green was not at fault for the accident, but that Pan-Oceanic was. It also found Pan-Oceanic liable for punitive damages in the amount of \$1 million.

Pan-Oceanic made a motion for entry of judgment notwithstanding the verdict and argued that it couldn't be liable for negligent training, supervision, or entrustment because the jury entered a verdict in Green's favor. It reasoned that the verdicts entered in favor of Green, but against Pan-Oceanic were legally inconsistent given the agency relationship between the two defendants. Since Pan-Oceanic had already admitted *respondeat superior* liability for Green's conduct, any

other theory of liability against it should be dismissed as redundant and unnecessary. The plaintiff countered that the legal theories asserted against Pan-Oceanic did not seek to impute Green's misconduct to Pan-Oceanic. Rather, the plaintiff claimed that Pan-Oceanic should be held liable for its own wrongful acts. The evidence established that Pan-Oceanic was liable for its own direct negligence in failing to train Green how to respond to an unsafe load, for telling Green to drive with the unsafe load, and for accepting the unsafe load from Patten. The evidence also established that Pan-Oceanic's failure to reject the load could constitute a willful and wanton disregard of the safety of others on the highway sufficient to warrant punitive damages.

The trial court denied the motion and agreed with the plaintiff that the allegations of negligence and willful and wanton misconduct against Pan-Oceanic focused on the fault attributable to Pan-Oceanic and was not derivative of the claim against Green. An appellate court, however, reversed and held that a plaintiff can't maintain a claim for direct negligence against an employer who admits responsibility for the employee's conduct under respondeat superior. The court reasoned that once an employer concedes liability for its employee's negligence, any liability alleged under an alternate theory is irrelevant and should be dismissed. An appeal was taken to the Illinois Supreme Court.

QUESTION: Can an employer be exposed to direct liability if it acknowledges vicarious liability for the conduct of its employee?

ANSWER: Yes, according to the Supreme Court of Illinois in *McQueen v. Green*, 2022 Ill. LEXIS 364 (Ill. 2022). The court held that an employer's acknowledgment of vicarious liability for its employee's conduct does not bar a plaintiff from proceeding with direct negligence claims against the employer.

The court began by recognizing that state courts are split on the issue of whether an employer's acknowledgment of vicarious liability for its employee's alleged negligent conduct precludes a plaintiff from pursuing other claims of direct negligence against the employer. The court noted that some states follow the Missouri Supreme Court's ruling in *McHaffie v. Bunch*, 891 SW2d 822 (Mo. 1995), as did the appellate court in this case. *McHaffie* holds that claims of direct negligence against an employer are barred once the employer accepts vicarious liability for its employee's conduct. The *McHaffie* court reasoned that the additional claims against the employer would serve no real purpose once the employer admitted vicarious liability, and that potentially irrelevant and inflammatory evidence could be admitted into the record if the plaintiff were allowed to pursue the additional claims.

The Supreme Court of Illinois, however, rejected this rationale, finding no justification for failing to hold an employer directly liable for its own negligence simply because the employer acknowledged that it could be vicariously liable for its employee's negligence. The court explained:

The justifications for the *McHaffie* rule are policy driven and not well founded. Courts adopting the *McHaffie* rule have expressed concern that, without it, irrelevant and unfairly prejudicial evidence may be admitted. Yet, we generally rely on the trial court to determine when otherwise relevant evidence should be inadmissible because its probative value is outweighed by the risk of unfair prejudice. ... The trial court can limit unduly prejudicial evidence in this context as well.

Courts that have adopted the *McHaffie* rule also argue that it is necessary to prevent the plaintiff from obtaining a double recovery for the same injury. ... The *McHaffie* rule, however, offers a "blunt instrument to deal with that potential issue." ... The trial court can prevent the jury from awarding a double recovery through proper jury instructions ... and by use of special interrogatories. Indeed, a court has a myriad of other tools to address a potential double recovery: it can instruct the jury, provide special verdict forms, or even remove the doubly-covered portion through post-trial motions.

Turning to the facts, the Illinois Supreme Court concluded that there was sufficient evidence in the record to support the jury's finding that Green acted reasonably under the circumstances and that Pan-Oceanic was directly liable for the plaintiff's damages.

The evidence showed that Green saw that the skid steer had not been properly loaded and that he asked for it to be reloaded. When Patten employees refused his request, Green called his supervisor, who ultimately ordered him to return with the load. Pan-Oceanic's president testified that Green followed the proper protocol before driving with the load. Thus, the jury could have found that Green acted as a reasonably careful person would have under the circumstances.

At the same time, the evidence showed that Singh did not probe Green for additional information when he called with concerns about the load. Singh testified that he was multi-tasking at the time. Singh acknowledged that he did not understand the scope of the problem; nonetheless, he ordered Green to drive on the expressway with a heavy piece of equipment that his employee had described as crooked. Further, Green testified that no one at Pan-Oceanic had trained him how to respond if a skid steer was not loaded properly. Given this and other evidence, the jury could reasonably have concluded that Pan-Oceanic demonstrated utter indifference toward the safety of others. Thus, the jury's verdicts were not absolutely irreconcilable.

The court also held that the punitive damages award was not excessive.

As we noted above, the evidence showed that although Green called Singh to express concerns about how the skid steer – a machine that weighs several thousand pounds – was loaded onto the trailer, Singh ordered him to bring it back to Pan-Oceanic. Singh told him to return with the load, despite a lack of understanding as to the scope of the problem and despite the fact that it was rush hour and, thus, traffic was likely to be heavy on the expressway. According to Green, the skid steer and trailer were bouncing along the highway before he struck plaintiff's vehicle. Although plaintiff's injuries apparently were not life-threatening, the jury could properly have found that Pan-Oceanic's failure to reject the load was so grossly negligent that it amounted to a wanton disregard for the rights of others on the highway. Further, Pan-Oceanic's president testified that the company earned more than \$2 million per year in the three years before trial. Given these factors, the manifest weight of the evidence does not suggest that the jury's award of \$1 million in punitive damages was excessive.

In reaching its holding, the Illinois Supreme Court rejected the *McHaffie* rule, concluding that "a potentially meritorious cause of action should not be barred simply because the employer acknowledges vicarious liability for its employee's misconduct in a separate cause of action." According to the court, "so long as a good faith factual basis exists for a plaintiff's claim of direct negligence against an employer, the plaintiff should be allowed to pursue such a claim in addition to a claim of vicarious liability."

CONCLUSION: Courts are split on whether an employer's admission of vicarious liability for its employee's conduct should prevent a plaintiff from raising claims of direct liability against the employer. The *McHaffie* rule, followed by many jurisdictions, holds that an employer cannot be held directly liable for its negligence after it accepts vicarious liability for the actions of its employee. These courts reason that the additional claim would be redundant, unnecessary, and could result in a double recovery or prejudicial evidence being admitted against the employer. Courts that reject the *McHaffie* rule, like the Illinois Supreme Court in *McQueen*, believe that these issues can be effectively handled by trial courts that are accustomed to dealing with the threat of a double recovery or prejudicial evidence. They reason that plaintiffs should be free to pursue all causes of action against any parties who might have contributed to causing their damages.