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Confusion Likely As Calif. Revisits Respondeat Superior

Law360, New York (October 28, 2013, 1:43 PM ET) -- Just weeks after the Second Appellate District of California Court of Appeal held that an employer could be liable for an employee's auto accident occurring while she was running personal errands on her way home after work, (Moradi v. Marsh USA Inc.; Smith, Gregory M. "Respondeat Superior Can Continue After Closing Time." Law360. Oct. 15, 2013), the Fifth Appellate District of California Court of Appeal has revisited respondeat superior in the context of a post-work auto accident.

In Halliburton Energy Services Inc. v. Department of Transportation,[1] the court held that an employer was not liable for an automobile accident where the employee was driving a company-owned truck on a purely personal errand after the workday had ended.

Halliburton employee Troy Martinez lived in Caliente, Calif., and worked on an oil rig off the shore of Seal Beach, Calif. Halliburton provided a company truck for Martinez to commute between home and work. Halliburton's policy was that company vehicles were to be used to commute to and from work, and specifically permitted personal stops during the commute.

After Martinez's shift ended on Sept. 13, 2009, Martinez drove the company truck 140 miles to Bakersfield, Calif., to meet his wife at a car dealership to purchase her a vehicle. (Bakersfield is approximately 45 to 50 miles from Martinez's home in Caliente.)

When the Martinez family decided against purchasing a car, Martinez began driving back to Seal Beach for his next shift. He never stopped at his home in Caliente. While driving to Seal Beach, Martinez was in a head-on collision that injured six individuals.

The six injured individuals sued Halliburton (and others) on theories of respondeat superior, negligent supervision and negligent entrustment. Halliburton won on a motion for summary judgment, arguing that it could not be held liable on any of the three theories because Martinez was not acting within the course and scope of his employment when the incident occurred.

Plaintiffs appealed, and the Fifth Appellate District affirmed, holding that Halliburton could not be held liable for the accident because Martinez's trip to Bakersfield to purchase his wife a car was outside the course and scope of his employment.[2]

The doctrine of respondeat superior provides that an employer is liable for the torts of its employees that are committed within the course and scope of their employment.[3] The court explained that public policy favors allocating losses caused by the torts of employees to employers because such losses are, as a practical matter, certain to occur in pursuit of the employer's enterprise.

An employer's enterprise should not stand to profit from these losses. Additionally, an employer is better able to redistribute these losses to society with price-point management or insurance.[4]

The well-established "going-and-coming rule" provides that an employee's travels to and from work are generally not within the course and scope of employment such that the employer cannot be held liable for torts that occur during that time.[5] An exception to the "going-and-coming" rule arises where an employee's travel to and from work yields an incidental benefit on his employer.[6]

However, the Halliburton court explained that the incidental-benefit exception is a doctrine of limited applicability and does not apply in two instances. First, the incidental-benefit exception does not apply, and an employer will not be held liable, under respondeat superior, where an employee's trip "deviate[s] substantially from a direct commute in order to carry out his own personal business."[7]

Whether an employee's departure is substantial — thus falling outside the scope of employment — turns on whether the employee's conduct is foreseeable. In the context of respondeat superior, an employee's conduct is foreseeable if it is "not so unusual or startling" that it would be unfair to include it in the employer's cost of doing business.[8]

Second, the incidental-benefit exception does not apply where the employee's trip altogether serves only the employee's personal interest. In such an instance, the employee is not deviating from serving the employer's enterprise, but rather the employee is not serving the employer's enterprise at all.

After citing a number of prior cases that examine the parameters of a minor deviation, the court ultimately found that Martinez's trip to Bakersfield fell within the second exception. That is, Martinez's trip to Bakersfield served only his own personal interest and provided no benefit to Halliburton.

On appeal, plaintiffs argued that Halliburton generally benefited from Martinez's use of a company-owned vehicle to travel to and from work. Regardless of any incidental benefit Halliburton may have received by assigning Martinez a company truck, Halliburton received no such benefit on Sept. 13, 2009, because Martinez's trip to Bakersfield was purely personal in nature.

Specifically, the court rejected the plaintiffs' attempt to sever the return leg of the trip from the purpose of Martinez's trip on the whole. Were the court to agree with plaintiffs, the incidental-benefit exception would render the return leg of any personal trip in a company vehicle within the course and scope of employment.[9]

Rather, the court found that Martinez's trip was purely personal in nature because he went to meet his wife to purchase a car at a location 140 miles from his assignment in Seal Beach.

Furthermore, at the time of the incident, Martinez was designated as on-call 24 hours, seven days a week and could have been assigned to a different location at any time. However, he did not obtain authorization from, let alone inform, his supervisor that he would be making a six-hour trip. The court commented that this conduct was "a marked turn aside from the employer's business as to be inconsistent with its pursuit."[10]

Likewise, the court declined to adopt plaintiffs' argument that Martinez's trip to Bakersfield was a minor deviation from his commute, thus distinguishing this case from Moradi.

In Moradi, an employee who regularly drove her own car to work appointments got in an accident when she stopped to buy frozen yogurt and take a yoga class on her way home from work. The Moradi court held that since she used her car for her employer's benefit during the day, that her commute was also for the benefit of her employer, and that it was foreseeable that she would run personal errands on the way home from work. Essentially, stopping for yogurt and yoga was a minor deviation.[11]

Halliburton is distinguishable from Moradi because Martinez never went home. Rather, he met his wife in Bakersfield, multiple hours away from work, and nearly an hour away from his home in Caliente.

The court found that there was no nexus between Martinez's trip and his employment because Martinez's shift had ended and he did not pursue any business on Halliburton's behalf during his trip. The mere fact that Martinez was driving a Halliburton truck on a purely personal trip was not sufficient in and of itself to give rise to respondeat superior liability.

The court affirmed the lower court's finding that Martinez was not acting within the course and scope of his employment. Accordingly, Halliburton was not liable on the theory of respondeat superior.

While it is possible to factually distinguish the Halliburton case from Moradi, the circumstances are similar enough that confusion as to the state of respondeat superior during commutes is likely. Until the California Supreme Court steps in to clarify the doctrine, both Halliburton and Moradi are good law.

Frustration for clients and insurers is all but assured as counsel struggles to give them straight answers regarding liability for accidents while commuting.

--By Gregory M. Smith and Cristina Guido, Haight Brown & Bonesteel LLP

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Haight Brown & Bonesteel is representing Martinez in the ongoing litigation. Martinez and Haight did not participate in the appeal.

[1] Consolidated action with Carly Baker v. Halliburton Energy Services Inc. and Michael Buxbaum v. Halliburton Energy Services Inc. (Nos. F064888, F064935, and F064950, respectively).

[2] Plaintiffs did not challenge the judgment as to negligent entrustment and negligent supervision. As such, the court only addressed the respondeat superior claim.

[3] Halliburton at 5, citing Ducey v. Argo Sales Co. (1979) 25 Cal.3d 707, 721-22.

[4] Id. at 6.

[5] Id. at 8.

[6] Id.

[7] Id. at 16.

[8] Id. at 11-12.

[9] Id. at 17.

[10] Id. at 18.

[11] Id. 12-13.
