ANKIN LAW OFFICE LLC

OFFICE LOCATION
Ankin Law Office
162 W Grand Ave
Chicago, IL 60654

Tel: 312-346-8780
Fax: 312-346-8781

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Family of Worker Killed on the Job can Sue Third Party – 'Logo Liability' Imposed on Owner of Truck

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By Howard Ankin

Illinois attorneys might be surprised by the recent holding of the state Appellate Court that allowed tort damages in a case involving injuries on the job. The ruling shows that workers' comp attorneys should routinely assess all potential third party claims before concluding the sole source of recovery is under the Workers' Compensation Act.

The well-known general rule is an employee injured by a co-employee during the course of employment cannot sue the co-employee or employer for damages in tort. Instead, the exclusive remedy for the employee is under the Illinois Workers' Compensation Act.[i] The public policy underlying this law is to provide efficient recovery for petitioners in exchange for limited exposure to employers.[ii]

However, the decision in U.S. Bank v. Lindsey and Carmichael Leasing Co., Inc.[iii] shows that public policy under federal law trumps Illinois state law and provides a surprising outcome. In the case, the plaintiff was injured by a co-worker negligently operating a licensed interstate truck displaying a company logo. Interstate trucking law allowed recovery in tort against the co-worker and the owner of the truck.

When an employee is injured by the negligent operation of a licensed interstate carrier, the truck owner can be vicariously liable for the actions of the truck driver – even if the driver is not employed by the truck owner.[iv]

Delivery gone awry

In U.S. Bank v. Lindsey, a driver backing up a delivery truck struck and

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killed a co-employee who was unloading supplies from another truck in a dock area. Both men worked for Open Kitchens, a food delivery company based in Chicago. The truck was owned by a third party, Carmichaels Leasing Co., Inc., which leased the truck to Open Kitchens.

The driver was guided by another co-employee to a stop, but then the truck suddenly lurched backwards pinning and crushing the decedent against another truck. Evidence at trial indicated the decedent had a high level of morphine in his bloodstream when the accident occurred, and Carmichael Leasing argued that the decedent was impaired as a result.

After trial, a Cook County jury returned a $3 million verdict against Carmichael Leasing, although the jury reduced the verdict by 50 percent because of the decedent's contributory negligence. The trial court judge rejected Carmichael Leasing's argument that it was immune from suit under the Illinois Workers' Compensation Act, and denied its motions for directed verdict and for judgment notwithstanding the verdict.

'Logo Liability'

In affirming the trial court ruling, the Illinois Appeals Court said the fact that the truck driver and decedent were co-employees and were working at the time of the accident had no bearing on Carmichael Leasing's vicarious liability as owner of the truck.[v] The court noted that under Illinois law interstate carriers operating under a grant of authority from the Interstate Commerce Commission, and with a corporate name displayed on the truck, are vicariously liable for the negligence of drivers operating their trucks under a lease.[vi]

This vicarious liability (known as "logo liability") is mandated by federal law and dispenses with issues of agency and scope of employment. Logo liability is intended to bar licensed carriers from trying to immunize themselves from liability by leasing trucks to third parties.[vii] The overarching policy is to protect the general public from the negligent operation of trucks on the nation's highways.[viii]

The court rejected Carmichael Leasing's argument that the decedent was not a member of the general public within the meaning of the Interstate Commerce Act. No Illinois precedent has ruled on this precise topic, however, the court relied on case authority from other jurisdictions that

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has rejected this reasoning.[ix]

This line of authority emphasizes that a truck owner can be vicariously liable for the negligent operation of its truck when the injured worker (such as the decedent in the U.S. Bank case): (i) is not employed by the truck owner: (ii) is not a co-driver of the vehicle; (iii) was never in the truck prior to the accident; (iv) was not paid or in any way controlled by the truck owner; and (v) has no knowledge of the lease arrangement between his employer and the truck owner.

In essence, the injured worker is a "stranger" to the truck owner as if he was a general member of the public at the time of an accident.[x]

The court also reasoned that Carmichael Leasing could be liable despite the Illinois Workers' Compensation Act because it hadn't paid workers' compensation premiums for either the negligent truck operator or decedent, had no employment relationship with either one of them, and had no relationship with their employer beyond the lease of the truck.

The court did note that under Illinois law an employer can be immune from suit when it "borrows" an employee from another employer as long as it exercises control over the temporary employee's work activities and controls the length of the temporary work assignment.[xi]

The court also rejected Carmichael Leasing's argument that it was immune from liability because the negligent driver and decedent were "statutory employees" at the time of the accident. The defendant argued that the negligent driver, decedent and other workers present at the time of the accident were "freight handlers" under federal regulations, and were engaged in activities directly affecting commercial motor vehicle safety. Accordingly, Carmichael Leasing argued that under the regulations they are deemed to be its "employees."[xii]

However, the court said this regulatory definition of "employee" is meant to insure an interstate carrier's responsibility to shippers and the general public, and is not meant to create an employment relationship for workers' compensation purposes.[xiii]

The court said the vicarious liability as between the negligent driver and Carmichael Leasing "is a legal fiction that neither has an effect on nor is affected by the [Workers' Compensation] Act, but, rather, is simply a

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designation by virtue of the Interstate Commerce Act for purposes of protecting the public."[xiv]

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) specializes in workers' compensation and personal injury law. Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.

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[i] 820 ILCS § 305/5(a). See Ramsey v. Morrison, 175 Ill. 2d 218 (1997).

[ii] Rylander v. Chicago Short Line Railway Co., 17 Ill. 2d 618, 628 (1959).

[iii] 920 N.E.2d 515 (2009).

[iv] See Schedler v. Rowley Interstate Transp. Co., 68 Ill. 2d 7 (1977); Kreider Truck Service, Inc. v. Augustine, 76 Ill. 2d 535 (1979); Fulton v. Terra Cotta Truck Services, Inc., 266 Ill. App. 3d 609 (1994).

[v] U.S. Bank v. Lindsey, 920 N.E.2d at 527.

[vi] Id. at 525.

[vii] See American Trucking Association, Inc. v. United States, 344 U.S. 298, 303 (1953).

[viii] U.S. Bank v. Lindsey, 920 N.E.2d at 525.

[ix] See, e.g., Proctor v. Colonial Refrigerated Transportation, Inc., 494 F.2d 89 (4th Cir. 1974), and progeny.

[x] U.S. Bank v. Lindsey, 920 N.E.2d at 531.

[xi] Evans v. Abbott Products Inc., 150 Ill.. App. 3d 845, 849 (1986).

[xii] 49 CFR 390.5.

[xiii] See Walker v. Midwest Emery Freight Systems, 119 Ill. App. 3d 640, 646-47 (1983).

[xiv] U.S. Bank v. Lindsey, 920 N.E.2d at 528.