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Arizona Supreme Court Limits Employer's Vicarious Liability for Employee's Off-Duty, On-Location Assignment Car Accident

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On July 9, 2012, the Arizona Supreme Court issued an employer-friendly opinion holding that an employer was not vicariously liable for negligent conduct committed by an employee during an out-of-town assignment, after work hours. *Engler v. Gulf Interstate Engineering, Inc.*, No. CV-11-0273-PR, Arizona Supreme Court (July 9, 2012).

Gulf Interstate Engineering, Inc. assigned Ian Gray to a project based in Mexico. Gray lived in Houston, Texas, but traveled each week to Yuma, Arizona, where he stayed in a hotel and drove daily across the border to the worksite in Mexico. On the occasion at issue, after returning to the hotel, Gray and a co-worker drove to a restaurant for dinner. While driving back from dinner to his hotel, Gray struck and injured a motorcyclist. The injured driver sued both Gray and Gulf Interstate for the injuries he sustained in the accident.

Under the doctrine of *respondeat superior*, an employer may be held liable for negligent conduct committed by its employee during the course and scope of employment. In its decision, the Arizona Supreme Court explained that to determine liability, courts generally examine the extent to which the employee is subject to the employer's control. In refusing to hold Gulf Interstate vicariously liable, the court found that the employer was not exercising any control over Gray at the time of the accident. Gray was not serving his employer's interests by driving to dinner during his off-hours, nor did his employer control where or when Gray ate dinner.

The Supreme Court declined to extend a recent Arizona court of appeals decision in *McCloud v. Kimbro*, where the court of appeals had found that an Arizona DPS officer was acting in the course and scope of his employment when he crashed his state-owned vehicle into the plaintiff's car while heading to lunch during an out-of-town business trip. Instead, the Supreme Court found that an employer is not vicariously liable for the conduct of its employee over whom it had no control at the time of the accident. The court pointed out that the fact that "eating is incidental to a multiple-day assignment" is not sufficient to show that an employee is acting "within the course and scope" of his or her employment. As further explained by the court, where an employee is acting on his or her own time (such as when obtaining a meal after working hours), such conduct is not within the control of the employer and is not "serving his [or her] employer's purpose."

The court likewise rejected the plaintiff's argument that workers' compensation standards regarding compensating an employee injured while working should be applied to determine the "scope of employment." According to Tibor Nagy, managing shareholder in Ogletree Deakins' Tucson office, this distinction suggests that had Gray himself been injured in the accident in question and filed a claim for workers' compensation benefits, he conceivably could have been awarded such benefits, even though the *third party* injured in that same accident could not similarly obtain damages from Gray's employer under the theory of vicarious liability.

Employers should take heed that the *Engler* decision *does not* set any new "course and scope" liability standards for workers' compensation cases. However, the case does clarify (and some might argue that it narrows) the definition of "course and scope" conduct in cases where a non-employee is seeking damages for an employee's negligence. Despite this ruling, employers should continue to stress that employees use caution both on and off duty, and maintain policies and procedures designed to enhance the safety of employees and the general public.

Additional Information

If you have questions regarding this ruling, contact the Ogletree Deakins attorney with whom you normally work or the Client Services Department at clientservices@ogletreedeakins.com or 866-287-2576.

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