



## **Sample Negligent Hiring Cases**

The negligent hiring and negligent retention theories of liability have been recognized in a number of states. For example,

### **In a decision by an appellate court in Illinois...**

a supermarket chain was found liable for negligent retention of an employee who attacked a 4-year-old boy outside one of its stores. The employee, a manager for the supermarket chain, stopped by his store while off-duty, allegedly after he had been drinking. He saw an older boy urinating on the side of the building. He chased the boy to a car where he shouted racial insults at the driver, the boy's mother. He then pulled a younger 4-year-old boy out of the car and threw him through the air. The boy was injured, spent four days in the hospital, and required medical attention for a month. The jury awarded the child \$150,000.

In affirming the jury award, the appellate court took note of prior incidents of violence by the manager. Seven years before, the manager had thrown a milk crate at a co-worker. He was not disciplined for the incident. The manager had also been convicted of aggravated battery for an attack on his own son at his home. The court said that even if supermarket officials did not know about these prior incidents, the manager's friends and co-workers knew. Thus, the court said the defendant had "corporate knowledge" of the attacks and could be found liable for negligent retention of the manager.

### **The Court of Appeals of Maryland...**

has in several cases, explored the duty of employers to inquire into the criminal record of prospective employees. In an early decision, the court concluded that a tavern owner was not liable on a theory of negligent hiring for injuries sustained by a patron who had been assaulted by a bartender. The court found that the owner had conducted a reasonable investigation into the bartender's fitness for employment and could not have foreseen that the bartender would shoot one of the patrons in the tavern. Unknown to his employer, the

bartender had a significant criminal record, including several convictions for assault. The tavern owner had made no inquiry concerning a possible criminal record. The plaintiff contended that because the bartender necessarily had frequent contact with the public, the proprietor had a duty to investigate the employee's criminal record.

The court of appeals noted that an employer has a duty to use reasonable care in the selection and retention of his employees and that this duty would be owed not only to other employees, but to members of the general public. The court found that this duty was satisfied because the tavern owner had a good recommendation from the bartender's former employer and the tavern owner also had prior personal knowledge of the bartender. The court said that there was no evidence that the tavern owner should have known that the bartender was potentially dangerous, and therefore, the owner was not liable under the doctrine of negligent hiring.

### **In another decision by the Maryland Court of Appeals...**

the court was again faced with a negligent hiring claim when a woman sued her landlord, the Housing Opportunity Commission, after she was raped by an inspector who was an employee of the Commission. The inspector had been convicted of robbery, assault, and burglary, and at the time of his hire was under indictment for rape. Although the jury found that the plaintiff did not prove that the Housing Commission was negligent in hiring the inspector, the court of appeals overturned the verdict because the lower court had excluded evidence concerning the inspector's criminal convictions and the accessibility of that information to the Housing Commission. The court of appeals stated that the question of whether the plaintiff had established a relationship between the hiring of the housing inspector, his criminal record, and the rape was one for the jury to decide.

### **A decision out of Minnesota...**

demonstrates that the mere fact of a criminal record will not necessarily give rise to negligent hiring liability, but retention of that same individual after several threatening incidents will be negligent if the employee subsequently murders another employee. In this case, the employer rehired a former employee who had spent time in jail for the strangulation death of a co-worker. They assigned him to a maintenance crew where he became enamored with another female member of the crew. After the female employee rejected the advances

of the ex-convict, he began to harass her and threaten her both at work and at home.

Finally, the female employee found a death threat scratched on her locker door. She reported the threat but the male employee never returned to work and 10 days later resigned his employment with the company. Eight days after his resignation, the male employee went to the female employee's home and killed her with a close-range shotgun blast. The female employee's heirs sued the company for negligent hiring and negligent retention.

Where members of the public will be unusually dependent upon the competence of an employee, the employer may be required to conduct a more exhaustive investigation before hiring the employee. For example, a court of appeals in Georgia held that where the hospital employed an orderly who had been convicted as a "peeping tom," the hospital was required to exercise ordinary care in determining the competency of its employees after the orderly molested a minor child who was a patient in the hospital. The court said that the jury was entitled to consider whether the hospital acted reasonably in not inquiring into the criminal record of the orderly when he applied for employment.

In another decision dealing with access to especially vulnerable members of the public,

### **The Virginia Supreme Court...**

held that the mother of a 10-year-old girl who was raped by a handyman could state a claim for negligent hiring against the church that had employed him. The supreme court stated the test of negligent hiring to be whether the employer has negligently placed an unfit person in an employment situation involving an unreasonable risk of harm to others. The plaintiff alleged that the church knew, or should have known, that its employee had recently been convicted of aggravated sexual assault on a young girl, and that he was on probation for this offense and that a specific condition of his probation was that he not be involved with children. The complaint alleged that the church gave the employee free run of its building in a job that brought him frequently into contact with children, and that as a result, plaintiff's daughter had been raped "numerous times." The

court concluded that these allegations were sufficient to support a claim of negligent hiring.

