TAYLOR WELLONS POLITZ & DUHE

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LOUISIANA GENERAL LIABILITY NEWSLETTER

RECENT CASES AND NEWS

COURT OF APPEAL ISSUES SIGNIFICANT RULING IN FAVOR OF TWPD'S RIDESHARE CLIENT

For several years, TWPD has battled the plaintiffs' bar over the application of a New Orleans City Ordinance which required Transportation Network Companies ("TNCs") to maintain $1 million in uninsured motorist coverage. The City's ordinance conflicts with a Louisiana state statute which allows TNCs to select lower UM limits or reject UM coverage altogether. This issue once again came to a head when a rideshare driver filed suit for TWPD's rideshare client to step into the shoes of its insurance carrier and pay plaintiff's uninsured losses up to $1 million.

At the district court, TWPD filed an Exception of No Cause of Action on the grounds that Louisiana state law allowing its client to reject UM coverage preempts the City ordinance at issue.

The exception was overruled, but the matter was taken up by the Court of Appeal. On supervisory review of the district court's decision, the Court of Appeal unanimously agreed with the arguments TWPD set forth in its original Exception of No Cause of Action. It specifically held that the plaintiff had no cause of action against TWPD's rideshare client which was entitled to waive UM coverage. Moreover, the Court of Appeal confirmed that the Louisiana TNC statute preempts the City ordinance which purportedly requires TNCs to carry $1 million in UM coverage.

The decision in this case comes several years after TWPD obtained a similar ruling in favor of its rideshare client's insurer. This recent decision is therefore significant in permitting TNCs to make independent decisions regarding UM coverage rather than government mandate.

Attorney Spotlight

Caroline Murley

Caroline M. Murley was born and raised in Mandeville, Louisiana. She graduated magna cum laude from Louisiana State University with a Bachelors or Arts degree in Political Science. She then continued her education at Louisiana State University, earning her Juris Doctor and Graduate Degree in Comparative Law from Paul M. Hebert Law Center at LSU in 2015. While in law school, Caroline was a member of the Moot Court Board and graduated Order of the Coif.

Prior to joining the firm, Caroline served as law clerk to Honorable Judge Christopher J. Bruno, Orleans Parish Civil District Court.

RECENT DEVELOPMENTS IN DISCOVERY ALLOWED FOR NEGLIGENT HIRING CLAIMS

Last year, in *Martin v. Thomas*, the Louisiana Supreme Court held that a truck driver's employer who admits it is vicariously liable for an accident because its employee-driver was acting in the course and scope of employment, is not relieved from liability for its own independent negligence in hiring, supervising, and training its driver, and the plaintiff is not precluded from conducting discovery about the employer's independent fault. One question that was left unanswered by *Martin* is: If the employer confesses 100% liability, can it then avoid an inquiry into its policies and procedures with respect to hiring, supervising, and training? A trio of recent cases addressed this question.

1. *Ferguson v. Swift Transp. Co. of Arizona*

In *Ferguson*, the defendants stipulated that the defendant driver was 100% at fault for the accident, and that his employer was vicariously liable for the driver's negligence (since the driver acted in the course and scope of his employment. The court denied plaintiff's motion to reopen discovery on the issue of independent negligence of the employer, reasoning that discovery of the employer's direct negligence was unneeded because "[n]o evidence of the [the employer's] negligent hiring, training, supervision, or entrustment can raise [the employer's] percentage of fault above 100."

The *Ferguson* court rejected plaintiff's argument that *Martin* required a different result. The court distinguished *Martin*, noting that in that case, there was no stipulation to fault for the accident. By contrast, in *Ferguson*, the defendants stipulated that the driver was 100% at fault. Because the *Martin* defendants did *not* stipulate to fault, the *Ferguson* court found the *Martin* holding "inapplicable."

The editors find the *Ferguson* reasoning persuasive. The *Martin* decision was based on Louisiana's comparative-fault regime, and specifically the concern that the jury might allocate too much fault to the plaintiff or to non-parties if it is able to compare the plaintiff's actions only to those of the defendant driver, without regard to the actions of the more sophisticated employer of that driver. The *Martin* concern with skewed allocations of fault, however, does not apply when the defendants judicially confess to 100% liability. *Ferguson*, 2023 WL 173143, at *3 (distinguishing *Martin*). Rather, Plaintiff will necessarily be allocated 0% of the fault. So as *Ferguson* recognized, an employer's stipulation to 100% liability should obviate the comparative-fault rationale or applying *Martin*.

2. *Guidry v. Prime Ins. Co.*

The Louisiana Third Circuit Court of Appeal came to a different conclusion than *Ferguson*, affirming the admission of evidence of the trucking company's independent fault despite its stipulation to 100% liability. *Guidry*, however, provides virtually no analysis. Instead, it mechanically cites *Martin*, without considering that *Martin* involved no stipulation of 100% liability, and without explaining how evidence of liability can be relevant when 100% liability has already been stipulated.

3. *Swinney v. Griffith*

Finally, in *Swinney* the Federal district court reached the allocation issue only by means of dicta. The holding of *Swinney* was to deny plaintiff's motion to strike defendants' stipulation of 100% liability. In dicta, the court sought to reassure plaintiff that its holding did not destroy her independent-negligence claim against the driver's employer, mechanically citing *Martin*. In so doing, the *Swinney* court (like Guidry) applied *Martin* broadly for the notion that a plaintiff is always entitled to pursue direct-negligence and vicarious-liability claims simultaneously. Judge Foote did not discuss why *Martin* should apply even when the employer stipulates to 100% liability. The editors thus believe that Judge Hicks' *Ferguson* holding is more persuasive than dicta from Judge Foote's unpublished *Swinney* decision.

The authorities are 2-1 in favor of broadly applying *Martin* to always allow a plaintiff to press an independent-negligence claim against the driver's employer, even if the employer confesses to 100% liability. However, while *Ferguson* represents a "minority view," it is the only one of these authorities to explain its position, and the only one that was neither offering dicta nor affirming a lower court's decision. The issue is certainly not settled—and it will be interesting to see how the law develops on this issue in the coming months.

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