EMPLOYER LIABILITY FOR EMPLOYEE’S PERSONAL USE OF VEHICLE

By Bruce D. Rudman
Abdulaziz, Grossbart & Rudman

While our practice generally stays away from employment law, two recent cases came to our attention and because a number of our clients either require their employees to use personal vehicles while conducting business, or actually provide company vehicles to their workers, we thought these issues were important enough to make sure that our clientele knew of their potential liability for their employees’ actions even when off work.

Two recent cases came from different districts of the Court of Appeal approximately two weeks apart from each other. One came from the Second District which governs a large part of Los Angeles and Ventura County, and a second came from the Fifth District and concerns events that occurred in Kern County. Each appears to reach a different result, but a distinction can be drawn from the facts of the two cases.

In the first case, *Moradi v. Marsh USA*, the Court of Appeal found that an employer, March USA, a very large insurance brokerage, was liable for injuries to a motorcyclist involved in a vehicle accident with an employee who was running personal errands on her way home from work. Indeed, she stopped for frozen yogurt and was on her way to take a yoga class, which admittedly are events that had nothing to do with the workplace, but employer liability was found to have arisen. In the *Moradi* case, the employer required the employee to use her personal vehicle to travel to and from the office and make work related trips during the day.

On the date of the incident, the employee used her personal vehicle to transport herself and co-employees to a company sponsored program. When the program was over, she returned to the office. At the end of her workday, she planned to stop on the way home for frozen yogurt and thereafter to attend a 6:00 p.m. yoga class. Her office was in Downtown Los Angeles and her home was in Woodland Hills, about 30 miles apart. All three of her ultimate destinations were within two miles of her home in Woodland Hills. While making a left turn into a parking lot, the employee hit Mr. Moradi who was driving a motorcycle. Moradi filed an action against the employee and against the employer.

There are some important maxims of law that were considered in the case. The first is the theory of “respondeat superior,” where employers are held liable for negligent acts of their employees *that occur during the course and scope of their employment*. This theory is well established and does not raise many eyebrows. It is the extension and exceptions to this rule that create issues such as in these two cases. Because accidents often happen when employees are en route to and from work, the courts had come up with the “going and coming” rule where employers were generally exempt from liability for negligence committed by their employees while on the way to and from work. In these situations, employees were said to be outside of the course and scope of employment during their daily commute. The courts held that the employment relationship was “suspended” from the time the employee leaves the workplace until he or she returns to the workplace and that while commuting, the employee is not rendering a service to the employer.

But, the courts also made an exception to this “going and coming” rule where the employees’ use of his or her own car gives some incidental benefit to the employer. The inquiry was on whether there was some benefit derived by the employer. The exception has been referred to as the “required-vehicle” exception. Now, there have been a number of cases in the workers’ compensation area of the law holding employers liable for injuries to workers that occurred to and from work when the personal vehicle must be provided by the employee. What had never been decided before the *Moradi* case was whether the employer was liable to a third-party when the employee was required to drive a vehicle to and from work and an accident occurs during the commute while the employee was pursuing a personal matter. The Court found that the minor stops for yogurt and to attend a yoga class did not change the “incidental benefit” to the employer of having the employee use his or her personal vehicle to travel to and from the office and other work-based destinations. The Court held that these minor deviations were not so unusual or startling that it would be unfair to include liability to the employer for injuries caused by the employee in using the required vehicle.

Following the *Moradi* case, if one requires an employee to use their personal vehicle for business purposes, they can be held liable for injuries to others caused by that employee while driving to and from work or for other personal reasons that are incidental to driving to and from work.

Now, as mentioned above there was another case that came out of the Court of Appeal from a different district. In that case, *Halliburton Energy Services, Inc. v. Department of Transportation*, which was a combination of three separate lawsuits (six persons claimed injuries), Halliburton had an employee named Troy Martinez who was required to use a pick-up truck to drive to and from work and for business purposes. Mr. Martinez had the option of using his personal vehicle (with reimbursement) or being assigned a company truck and he chose the company truck. He was allowed to use the company vehicle to go to and from work and for “personal reasons while traveling to and from work.”

Mr. Martinez lived approximately 45-50 miles from Bakersfield, where he worked about 50% of the time. The other 50% of the time he worked on oil rigs for Halliburton at other locations around California. On a particular day in question, Mr. Martinez had been assigned to work on an oil rig near Seal Beach, California, which was approximately 140 miles from Bakersfield. He was assigned there for the entire week; he was staying in a local hotel while commuting home on the weekend. But, on a particular day while on assignment in Seal Beach, after his shift ended he drove 140 miles to Bakersfield for the sole purpose of conducting personal business – to purchase a vehicle for his wife. The deal fell through and after stopping for lunch with his family, Martinez began to return to Seal Beach. While en route back to Seal Beach from Bakersfield he was involved in an accident injuring six individuals who each sued Martinez and Halliburton, along with the State of California in three separate actions.

Halliburton filed a Motion for Summary Judgment, asking the court to determine that it was not liable because Martinez was not acting within the course and scope of his employment at the time of the accident. Contrasted with the *Moradi* case, Halliburton actually provided the vehicle that was used by Martinez at the time of the accident. However, the evidence offered by Halliburton was that the vehicle was not being used to commute to and from home or for stops that were en route to or from home. The undisputed evidence was that Martinez was not performing his duties for Halliburton at his place of business, or at his assigned workplace. The accident occurred between shifts 120 miles away from his assigned worksite. The court agreed that Halliburton was not liable on the facts before it.

Thus, we have two cases with a very different set of facts. In *Moradi*, the stop where the accident occurred was within a mile or two of the employee’s home. In *Halliburton*, the accident occurred after the employee drove 140 miles away from his assigned workplace for a purely personal trip and not while commuting to and from work.

The moral of the story is that if you are compensating employees to use their personal vehicles or providing a company vehicle, you can be liable for the actions of the employee, including incidents that occur while they are running personal errands while on their way to and from home.

Bruce Rudman has been practicing construction law for 15 years. He has garnered a great reputation in the construction field not only as a litigator but on licensing issues with the CSLB, particularly disciplinary proceedings. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice.

Since laws change frequently, contact an attorney before using this information. Bruce Rudman can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at brucedr@agrlaw.com, or at www.agrlaw.com