

Lawsuit highlights importance of background checks

The Tenth Circuit Court of Appeals found that an employer had a duty to check the driving record of a new employee who would be driving as part of his job. In this case, however, the employer was not liable for injuries sustained by two other people during a traffic accident caused by the employee because the employee was not working at the time.

The Case

Mr. Weese worked as a plumber for Performance Plumbing & Heating, Inc. As part of his job, he was required to drive to various worksites in his own truck. On September 15, 1997, Weese was driving home from work when he changed lanes and collided with two cars parked in the far right-hand lane of the road. Carolyn Raleigh and her son Kevin C. Raleigh were adjusting a tow strap between their two parked cars when the accident occurred. Both Carolyn Raleigh and her son sustained serious injuries as a result of the accident. Carolyn Raleigh's left leg was injured and required amputation. Kevin Raleigh's tibia and fibula were fractured.

The Raleighs sued Weese and Performance Plumbing. The lawsuit claimed that Weese was negligent in moving into the right lane without first confirming that it was unobstructed. The lawsuit also claimed that Performance Plumbing was liable for negligent hiring because Weese had multiple moving traffic violations and his driver's license was suspended at the time he was hired. In fact, Performance Plumbing had obtained a release from Weese to conduct a background check, but the company never bothered to run the check.

The case went to trial and the jury found Weese 70 percent responsible for the accident and Performance Plumbing 30 percent responsible. The jury awarded damages of over \$10 million. The jury found that Performance Plumbing had a duty to use reasonable care in hiring a safe driver who would not create an undue risk of harm to the public in performing his employment duties. The jury found that Performance Plumbing had breached its duty by hiring Weese without checking his driving record.

Performance Plumbing appealed the decision. The appeals court overturned the jury's verdict on the negligent hiring claim. Although the court agreed that Performance Plumbing had a duty to the Raleighs, the breach of that duty did not cause the Raleigh's injuries. The jury had found that Weese was not acting within the course of his employment when he caused the accident.

What this Case Means for Counties

In this case, the employer was not liable for the injuries because the employee was not working at the time. However, counties can be liable for employees' accidents that occur during the course of their work. To avoid negligent hiring lawsuits and to reduce the likelihood of serious accidents, counties should perform driving record checks on all employees who have to drive as part of their jobs.

For more information, contact CTSI at 303-861-0507.

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