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Advocate's View

Suing employees for negligence?

The client was furious. While making a delivery, his employee of many years was involved in a trucking accident. No one was injured, and the accident did not cause third-party property damage. The driver had driven off the road over the river and into the woods. The accident destroyed the manufactured products of an entire project valued at over $150,000, the company truck and other heavy equipment. The driver tested positive for illegal drug use.

The problems were mounting. The client's customer claimed breach of contract for non-delivery and threatened to seek consequential and incidental damages. The insurance company was notified. The truck driver's employment was terminated immediately.

Without knowing the result of the insurance company's adjustment for the loss, the client wanted to know if he was permitted to pursue a claim in negligence against his former employee.

There is a paucity of case law in New York on the concept because most claims of this sort are resolved by an employer's insurance carrier. Once a case involving a negligent employee driver is settled by insurance, a carrier may not pursue its normal subrogation rights since an employee is typically a permitted user of a company vehicle, and therefore is an insured under the employer's auto policy. The insurance carrier may not pursue a subrogation claim under a policy of insurance against its own insured. This is known as New York's anti-subrogation rule. North Star Reinsurance Corp. v. Cont'l Ins. Co., 82 NY2d 281 (1993).

By PAUL LECLAIR
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The rule, however, does not address the employer's own rights to recover against a negligent employee in the event of inadequate insurance. While in Canada the failure to secure adequate insurance is held against an employer, this is typically not the result in the United States and is not the current common law in New York. Canadian employers may not recover against their employees in negligence, but in most of the states and in New York, an employer's right to sue its own employees is found in the common law. Criticism of the practice was made by the New Jersey Supreme Court in Eule v. Eule Motor Sales, 170 A.2d 241, 242 (N.J. 1961)

To be clear, there is no recent New York case that specifically holds that an employer may sue an employee driver in negligence for property damage, but there are a handful of cases that acknowledge an employer's right to sue in negligence for property damage under the common law. The issue has come to light in litigation involving the Federal Employer's Liability Act.

FELA permits railroad workers to recover for their personal injuries arising from their own employers' negligence. Railroad workers are not covered under New York's Worker's Compensation scheme. In several such cases, railroads have interposed counterclaims against the injured employee for property damage that occurred during the subject accident allegedly caused by the employee's negligence. In those cases, courts have acknowledged an employer's common law right to sue its own employees in negligence. Gabourel v. Bouchard Transp. Co., Inc., 901 F. Supp. 142, 144–45 (S.D.N.Y. 1995).

Finally, while the practice does not appear to be prohibited by statute or case-made law, suing an employee in negligence raises several practical policy considerations. An employer must consider the potential impact such a claim may have on its remaining work force and whether it may serve as a serious disincentive to remain employed — particularly given what the employer might reasonably expect to recover from the tort-feasing employee. Because an employee's negligence may give rise to vicarious liability, the employer must also assure itself that its admissions in alleging employee negligence do not create greater liability to a third-party than what it may recover.

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