

October 3, 2017

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TEXAS LAW★ALERT

Texas Supreme Court Narrows Proximate Cause Application for Negligent Entrustment

In an opinion issued on September 29, 2017, the Texas Supreme Court reversed the Thirteenth [Corpus Christi/Edinburgh] Court of Appeals finding that there must be a present causal link between the knowledge of a vehicle owner and the eventual tortious act of the driver.

In *Allways Auto Group, Ltd. v. Walters*, 2017 WL 4320712 (Tex. Sept. 29, 2017) (per curiam), Allways Auto rented a vehicle to driver John Heyden. Eighteen days after renting the vehicle, Mr. Heyden, whose life was apparently not going well, decided to end that life by drinking a fifth of whiskey, 12 beers, then driving off a bridge. On the way to the bridge, he crossed the road, striking the plaintiff's vehicle and injuring the plaintiff.

At the time he had rented the vehicle in question, Mr. Heyden did not have his license, but presented a photocopy of a prior Illinois license. A background check would have shown Mr. Heyden had a prior DWI in Illinois, and had his Texas license suspended for refusing a breath test at the accident precipitating the need for the rental vehicle.

Two days after renting the vehicle, it broke down. Mr. Heyden testified when he arrived back at Allways Auto, he was drunk; a condition unnoticed by the leasing representative who gave him the vehicle he was driving at the time of the accident.

The plaintiff filed suit against Allways Auto for negligent entrustment. The trial court granted Allways Auto's motion for summary judgment. The Court of Appeals reversed and remanded the case contending there was a fact issue regarding proximate cause. The Supreme Court reversed the appeals court and affirmed the summary judgment.

The issue before the Supreme Court was whether there was a sufficient causal link between entrusting a vehicle to someone who is

intoxicated, and the accident happening at some future date. The Court found that even if the Allways Auto representative knew Mr. Heyden was drunk at the time he rented the vehicle, his driving drunk and causing an accident eighteen days later was not a natural and probable result of that intoxication. In its conclusion, the Court noted that the connection between the actionable conduct of an owner and the wrongful conduct of the driver is not established if the owner does no more than to furnish the conduct that makes the plaintiff's injury possible.

ABOUT THE AUTHOR:

Lorin Subar is an associate in the Firm's appellate and coverage practice group. He has over 30 years practice experience including appeals in every Texas Court of Appeals, the Texas Supreme Court, the New Jersey Court of Appeals and Supreme Court, and the U.S. Federal Courts of Appeals for the Fifth and Eighth Circuits. His practice has included representing individuals to Fortune 500 Corporations, including trial representation, in personal injury and commercial litigation matters both within and outside Texas.

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