



**Vidaurri, Lyde, Rodriguez  
& Haynes, LLP**

A South Texas Law Firm  
Edinburg • San Antonio

# Newsletter

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## In This Issue: Negligent Entrustment and an Employer's Vicarious Liability

### OUR FIRM

*Vidaurri, Lyde, Rodriguez & Haynes, LLP, is a full service insurance defense law firm representing insured individuals, professionals and companies across a broad spectrum of industries, including healthcare, transportation, retail, and manufacturing.*

### KEY POINTS

Generally, a master is vicariously liable for the torts of its servants committed in the course and scope of their employment.

Where the employer's liability rests solely on respondeat superior, an adjudication acquitting the employee of negligence bars a subsequent suit against the employer.

### NEWS

VLRH would like to welcome Pablo Rivera to the firm. Pablo earned his B.A. in Applied Sciences in 2008 from the University of Incarnate Word, while serving in the Army, and his J.D. from St. Mary's University School of Law earlier this year. Pablo will clerk for the firm's San Antonio office, pending his bar results. Welcome Pablo!

### EVENTS

VLRH's ethics luncheon seminar for adjusters will be held on October 26, 2011. Please save the date, invitation to follow.

[www.vlrhlaw.com](http://www.vlrhlaw.com)

Although we are still setting records for how hot it is outside, the summer is winding down. That means that the Texas Supreme Court is trying to clear its docket before August 31, 2011, the end of its fiscal year. Last month we updated you on the *Haygood* case, where the Texas Supreme Court clarified the paid vs. incurred issue. This past month, the Court issued an opinion dealing with negligent entrustment of an automobile and an employer's vicarious liability for one of its employee's entrusting a personal car to another employee.

To establish negligent entrustment of an automobile, a plaintiff must prove the following elements: (1) the owner entrusted the automobile; (2) to a person who was an incompetent or reckless driver; (3) who the owner knew or should have known was incompetent or reckless; (4) the driver was negligent; and (5) the driver's negligence proximately caused the accident and the plaintiff's injuries.

In *G&H Towing Company v. Magee*, Joseph Violante, an employee of G&H Towing, crashed a car that was loaned to him by William Colson, another employee of G&H Towing, into a car driven by Douglas Magee. Magee's family sued Violante, Colson, and G&H Towing. The Magees alleged that Colson was liable for negligent entrustment and G&H Towing was vicariously responsible for Colson's entrustment of his personal car because it was company policy for employees to loan each other their cars.

G&H Towing is a tugboat operator. Colson and Violante worked on the same tugboat but on different shifts. The tugboats did not

have a regular route that allowed each crewmember to return to where his shift began, so the crewmembers would loan their personal cars to one another to drive home at the end of a shift. Whether G&H Towing required or endorsed this practice was disputed before the trial court. After his shift, Violante picked up Colson car, drove to a bar, got drunk, and then got into the accident. Violante was later convicted of intoxication manslaughter.

After the Magees filed suit, Colson filed a no-evidence motion for summary judgment, and G&H Towing filed a traditional motion for summary judgment. The trial court granted both. The court of appeals affirmed the summary judgment as to Colson, but it reversed the one as to G&H Towing.

G&H Towing appealed the court of appeals' decision. G&H Towing argued that because the court of appeals affirmed the summary judgment as to Colson, the court should have affirmed the summary judgment as to G&H Towing. The Texas Supreme Court agreed. It noted that generally a master is vicariously liable for the torts of its servants committed in the course and scope of their employment. The Court also wrote that where the employer's liability rests solely on respondeat superior, an adjudication acquitting the employee of negligence bars a subsequent suit against the employer.

The Texas Supreme Court reversed the court of appeals judgment and remanded the case back to it for consideration of the other summary judgment issues.