CASE NOTE:

Not Fake News, But Fake Claims–A Federal Court Dismisses Nine of Twelve Claims in Plaintiff's "Shotgun" Style Complaint

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In *Moran v. Ruan Logistics, Corp.,*[1] the Southern District of Ohio last September granted a Motion For Partial Dismissal submitted by motor carrier Ruan Logistics Corp., its driver Anthony Alford, and the owner of the commercial tractor, Ryder Truck Rental. The decision, in effect, separated the wheat from the chaff, dismissing those claims that do not exist under Ohio law, were insufficiently pled, or were duplicative of other claims.

The case arises out of an incident in which one of the steer tires on the commercial vehicle operated by Alford sustained a blowout as a result of striking an object in the roadway. The tire happened to strike the plaintiff, who was painting a mailbox near the roadway. The plaintiff and his fiancé filed a Complaint asserting twelve claims under various theories of liability. The defendants filed a motion to dismiss nine of the claims. The Court dismissed all nine claims. The following is an overview of the Court's rationale for dismissing these claims.

Claim for "Violation of Motor Carrier Safety Regulations"

In the Complaint, the plaintiff asserted claims against each of the defendants entitled "Violation of Motor Carrier Safety Regulations." The plaintiffs' bar has been increasingly asserting claims like these in order to inject into the lawsuit a skewed focus on whether or not the motor carrier defendant has complied with a wide variety of Federal Motor Carrier Safety Regulations ("FMCSRs"), whether or not related to the incident giving rise to the lawsuit. In *Moran,* the defendants argued that no private cause of action exists under Ohio law for violation of the FMCSRs. In briefing, the plaintiff conceded to the argument and the Court consequently dismissed the claims.

"Negligent Leasing" Claim Against Ryder

Ryder moved to dismissed plaintiff's "Negligent Leasing" claim, also for the simple reason that no such cause of action exists under Ohio law. In briefing, the plaintiff could identify no authority to support negligent leasing as a stand-alone cause of action. For this reason, the Court dismissed the claim.

The Graves Amendment Prohibition

The plaintiff asserted three additional claims against Ryder Truck Rental, a company that is engaged in the business of renting commercial motor vehicles: (1) *respondeat superior;* (2) negligent entrustment; and (3) negligent maintenance. Ryder argued the Graves Amendment bars the *respondeat superior* and negligent entrustment claims. Under the Graves Amendment, companies engaged in the trade or business of renting or leasing motor vehicles "shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease[.]"[2] The Graves Amendment does not apply when there is negligence or criminal wrongdoing on the part of the owner, or an affiliate of the owner.[3] This is known as the "savings clause."[4]

In *Moran,* the Court held the Graves Amendment bars the *respondeat superior* and negligent entrustment claims. The Court applies the straight-forward language of the statute and found that the savings clause "only applies to claims predicated on criminal wrongdoing and negligent maintenance claims – not claims of negligent entrustment."[5]

Negligent Hiring Claim Was Insufficiently Pled

Ruan moved to dismiss a negligent hiring claim on the basis that it was insufficiently pled. Ruan argued the Complaint contained nothing more than conclusory and formulaic allegations with respect to the negligent hiring claim, which do not meet the plausibility pleading standard of *Iqbal/Twombly.* The Court agreed. The Court explained how a plaintiff must plead the five elements of negligent hiring and "[t]he mere incantation of the elements of a negligent hiring claim, i.e., the abstract statement that the [employer] knew or should have known about the employee's criminal or tortious propensities, without

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more is not enough."[6] Further, a plaintiff "cannot rely on the alleged incident itself to establish that the employee's conduct was foreseeable to the employer."[7]

The Court then explained how the plaintiffs' Complaint "contains no specific allegations that Alford was incompetent as is required to plead negligent hiring."[8] The plaintiff had not alleged that Alford was unqualified, had prior accidents or moving violations, or had a history of incidents such as the incident that gave rise to the lawsuit. Since the Complaint "contains no specific allegations that Ruan was aware of dangerous propensities that would make them negligent in hiring and retaining Alford," dismissal of the claim was warranted.[9]

Plaintiffs' Request for Punitive Damages Was Insufficiently Pled

The defendants argued the plaintiffs' request for punitive damages because nowhere in the Complaint did the plaintiffs allege the breach of any duty beyond the duty of reasonable care, nor did the plaintiffs allege any facts that, if true, would justify an award of punitive damages. The Southern District of Ohio had recently dismissed requests for punitive damages against a motor carrier where the plaintiff failed to offer "factual allegations indicating actions [the motor carrier] took that purportedly demonstrated its conscious disregard or reckless indifference." *Baker v. Swift Trans. Co. of Arizona, LLC,* 2018 WL 2088006, *6 (S.D. Ohio May 4, 2018). The *Moran* Court relied on this opinion in dismissing the request for punitive damages.

In briefing, the plaintiff had argued that the request for punitive damages was justified based on the negligent hiring claim and a potential spoliation claim. The Court first explained that since the plaintiff had not actually pled a spoliation claim, this nonexistent claim could not support a request for punitive damages. Second, since the Court had found that the plaintiff failed to adequately plead a negligent hiring claim, this claim also could not support a request for punitive damages.

Fiancé's Loss of Consortium Claim

Finally, the defendants moved to dismiss the fiancé's loss of consortium claim on the basis that loss of consortium in Ohio "is a right which grows out of marriage, is incident to marriage, and cannot exist without marriage."[10] The plaintiffs did not allege the fiancé had been married to the plaintiff at any time. In briefing, the plaintiffs argued that the fiancé sustained damages by having to take care of the plaintiff, endure his emotional and physical trauma, and observe his deterioration. The Court explained how "[t]his may be true; however, [the fiancé's] claim is without merit" since a fiancé cannot have a loss of consortium claim under Ohio law.[11]

Concluding Thoughts

Shotgun pleading is not uncommon in trucking litigation today. With a variety of claims and legal theories in the case, the plaintiff can cast a wide net in discovery. So long as a discovery request has some relation to at least one of the claims or theories, Courts generally are inclined to compel discovery. With numerous claims and theories in suit, the plaintiff can also inject numerous issues into the case and before a jury that are attenuated to the primary issues in the case.

For these reasons, it can be beneficial to challenge the shotgun-style complaint at the outset of the lawsuit by moving to dismiss those claims that are not supported by the law, are insufficiently pled, or are duplicative of other claims. In *Moran,* the defendants did not move to dismiss all twelve claims in the lawsuit, only the nine claims that were meritless for the reasons outlined above. The Court appropriately granted the motion, leaving a more limited pleading appropriately narrowed to the primary issues in the case.

Endnotes

1 2018 WL 4491376 (S.D. Ohio Sept. 19, 2018).
2 49 U.S.C. 30106(a).
3 *Id.*
4 *See e.g. Dubose v. Transp. Enter. Leasing, LLC,* 2009 WL 210724, at *5 (M.D. Fla. Jan. 27, 2009).
5 2018 WL 4491376 at *4 (internal quotations omitted).
6 *Id.* at *5 (internal quotations omitted).
7 *Id.* (internal quotations omitted).
8 *Id.* at *6.
9 *Id.*
10 *Namenyi v. Tomasello,* 2014 WL 5089113, 2014-Ohio-4509, ¶ 22 (Ohio App. Oct. 10, 2014) (quoting *Haas v. Lewis,* 8 Ohio App.3d 136, 137, 456 N.E.2d 512 (Ohio App. Dist. 1982)).
11 2018 WL 4491376 at *6.