J. INDIVIDUAL EMPLOYMENT RIGHTS, Vol. 6(4) 305-317, 1997-98

INJURED CUSTOMERS MAKE EMPLOYERS PAY UNDER THE NEGLIGENT HIRING DOCTRINE: EVOLUTION, EXPLANATION, AND AVOIDANCE OF NEGLIGENT HIRING LITIGATION

JEFFREY BENNETT COHEN
Law Student, Widener University School of Law

ABSTRACT

Litigation aimed at compensating victims injured by the intentional or negligent acts of others has blossomed in recent years. Through the negligent hiring doctrine, injured customers may hold employers responsible for hiring decisions and the injury that proximately results. Through more effective preemployment investigations, coupled with employers' basic desire to produce the best products and services, customers will be safer and cases of uncompensated victims will be minimized. The negligent hiring doctrine is that conduit. This article explains the history of negligent hiring, its present-day implications, and suggestions to employers for avoiding negligent hiring litigation in the future.

Comment: Injured customers make employers pay under the negligent hiring doctrine: evolution, explanation, and avoidance of negligent hiring litigation.

As employers are becoming more responsive to the needs, concerns, and safety of their customers, they have been compelled to undertake more responsibility when investigating and hiring applicants for positions where the employee may come in contact with the general public. In addition to recognizing the concerns of customers, employers have adopted this additional responsibility as a result of incidents where employees negligently or intentionally harmed customers, and customers have instituted suits directly aimed at holding employers responsible for hiring the offending employee. This has resulted in liability to the

doi: 10.2190/C0D7-J2M6-RQQY-PFKY
http://baywood.com

employer for the tort of negligent hiring, also referred to as the "negligent hiring doctrine" [1].

This article informs employers and potential customers of the evolution of the negligent hiring doctrine, its application, and explains the potential causes of action an injured customer may bring. In addition, this article provides employers with suggestions on how to improve their hiring procedures to avoid potential negligent hiring litigation.

This article is divided into several sections to provide a quick reference to information. The historical background leading to the negligent hiring doctrine is first discussed. This includes an explanation of the predecessors to the negligent hiring doctrine, including the respondeat superior doctrine, the negligent entrustment doctrine, and finally the negligent hiring doctrine. Next a general definition of negligent hiring is provided, followed by a description of several situations where cause of actions for negligent hiring is commonly found, including who the participants of the cause of action are and what their potential liability typically is.

The next section includes an in-depth analysis of the elements of negligent hiring, including a discussion of the employment relationship, the unfitness of the employee, the knowledge of the employer, the injury producing action, and its causation. The final section discusses the policy considerations of negligent hiring litigation, including suggestions on how to avoid negligent hiring litigation.

HISTORICAL BACKGROUND

The two predecessors to the negligent hiring doctrine are the doctrine of respondeat superior and negligent entrustment. The doctrine of respondeat superior states that an employer may be held liable for any tortious conduct of an employee as long as the employee was acting within the scope of his/her employment [2]. The scope of the employment includes what is listed in the employee's job description and that which is done in furtherance of the employer's objectives or instructions.

Negligent entrustment is where an employer is held liable for physical harm resulting from an employee's act where the employer entrusted the employee with property, and the employer had reason to believe the employee was incompetent and posed a foreseeable risk of harm to others [1, § 213, § 216]. Most of the cases that involve negligent entrustment include a situation where an employer entrusted an automobile to an employee when the employer knew or should have known this would endanger the safety of others [3]. However, not all negligent entrustment cases must involve motor vehicles [4].

Each of these two causes of action is similar to negligent hiring in that they both hold the employer responsible for the acts of his/her employee. Unlike respondeat superior, where the employer is held responsible for the employee's

actions within the employee's course or scope of employment, in a negligent hiring case, an attempt is made to hold the employer liable for the employee's actions that occurred outside the course and scope of the employee's employment [5]. The negligent hiring doctrine permits employers to be found liable for third-party injuries resulting from the intentional acts of their employees, even when committed outside the scope of employment, as long as a relationship exists between the injured parties and the employer. These relationships include licensees, invitees, and most importantly, customers [6].

The theories on which the respondeat superior doctrine and the negligent hiring doctrine are based are also different. Respondeat superior is based on the theory that the employee is an agent of or is acting for the employer. The negligent hiring doctrine is based on the risks incurred by subjecting members of society to potentially dangerous employees. Furthermore, the scope of employment limitation is not implicit in the wrong of negligent hiring [7].

Some of the other aspects of the respondeat superior doctrine and the negligent hiring doctrine make the two dissimilar. The penalty available to an unsuccessful defendant is one of these aspects. In a case under respondeat superior, punitive damages are not available; however, in a negligent hiring suit, negligent hiring will "expose the employer to punitive damages if there was gross negligence or recklessness in hiring an employee" [6, at 515].

Certain defenses applicable to a respondeat superior action, including guest statutes or assumption of risk, are avoided under the negligent hiring theory [8]. In addition, unlike in a respondeat superior suit, a plaintiff is permitted to introduce evidence of prior misdeeds of the employee in determining liability against an employer in a negligent hiring case. "[T]he character of the employee for competency and skill is at issue and may be proven by incidents and reputation" [9, at 946-947]. This may also include prior criminal acts for the purpose of showing that the employer failed to exercise reasonable care in hiring the alleged incompetent or dangerous employee [10].

Negligent hiring can also be distinguished from negligent entrustment. In negligent hiring, the injury is a result of something the employee usually does rather than something that happened through the employee's use of property given to him/her by the employer.

Both theories have laid the groundwork for the negligent hiring doctrine, which has the potential of holding employers to a strict standard in their employee hiring practices. This, in turn, may lead to better employers, better products and services, and most important, a better business and customer relationship.

NEGLIGENT HIRING DEFINED

Negligent hiring, as its name suggests, is based on the theory of negligence. To make out a prima facie case under negligent hiring, the plaintiff must establish the elements of an ordinary negligence action, including duty, breach, causation, and

damages. Negligence, generally, is based on an assertion that a person who owes a duty to another fails to exercise the degree of care an average reasonable person under the same or similar circumstances would.

In a negligent hiring action, an employer can be held liable for injuries caused to a third party by an employee if the employer breached a duty to use reasonable care in selecting the employee. The employer's duty of care is not owed to the public at large. Instead it is owed only to people within the zone of foreseeable risk. When it is determined that the employer owes the injured plaintiff a duty of care, it must then be proven that the duty was breached. This is done by showing that the employer failed to use reasonable care in the hiring of the employee under the circumstances. Thus, a cause of action arises when employers negligently hire or retain employees who they knew, or should have known, had the propensity to harm a third party. The exact interpretation of what the duty includes and what reasonable care includes is explained later.

SITUATIONS COMMONLY RESULTING IN NEGLIGENT HIRING ACTIONS

There are a number of situations where negligent hiring actions are commonly found. The following four cases are examples of the factual situations that can potentially result in a negligent hiring action. In *North Houston Pole Line Corp. v. McCallister* [11], a jury awarded $500,000 to a plaintiff who was injured in an accident with a truck driver for a telephone pole company. The truck driver was driving a large truck and trailer with telephone poles on the back. When the employee for the telephone pole company was hired, he was not asked to show his license and was not asked about any traffic tickets. The driver told the potential employer he had driven a similar truck for a prior employer for four months. However, the truth was that he had been employed by this prior employer for only two months, had never driven a similar truck, and had received at least five speeding tickets in the previous eighteen months. In addition, it was discovered that his only truck driver training was what he taught himself [11].

In *Stevens v. A-Able Rents Co.*, the plaintiff claimed she had been sexually assaulted by the defendant's employee when he was moving furniture in her home. The plaintiff claimed the employer had been negligent in failing to conduct preemployment inquires. The court held that because a prior employer and other references listed on the offending employee's application indicated he abused drugs, the employer's failure to make inquiries may have breached the duty of care and subsequently remanded the case for trial [12].

In *Welsh Manufacturing, Div. of Textron, Inc. v. Pinkerton's, Inc.*, Pinkerton's supplied security guards to Welsh Manufacturing to guard gold. One of the guards was found to be involved in three thefts at Welsh. Pinkerton, when hiring the guard, failed to contact the character references listed. The court stated that "Pinkerton's cursory investigation prior to Lawson's [the guard's] employment

provided it with little current intelligence on him and could well support an inference of negligence in hiring for such a sensitive assignment as the guarding of gold" [13, at 442-443].

In *Gaines v. Monsanto Co.*, a female secretary who worked at Monsanto was murdered by a coworker, a male law clerk. The parents of the victim claimed Monsanto knew the clerk had previously been convicted of rape and robbery and also made advances toward female employees, yet it still hired him. The court held the victim's parents should have a right to prove negligent hiring [14].

Each of these cases shows no specific action results in negligent hiring, but each hiring situation requires a degree of investigation depending on the employment tasks the applicant is being hired to perform.

PARTICIPANTS/PARTIES TO A NEGLIGENT HIRING ACTION

The relationship between the parties in a negligent hiring litigation is unusual. Usually when one has been harmed, that person typically sues the person who directly harmed him/her. For example, if a furniture repairperson goes into a customer's home and stabs the customer, whether negligently or intentionally, the first potential person the victim would sue would be the repairperson. This was the person who actually forced the knife into the victim's body. However, often the offender does not have the financial resources to compensate the victim for his/her injuries. A response to the unfortunate outcome of the victim left uncompensated has been the growing use of a negligent hiring action. In this action the plaintiff is the injured person, and the employer defendant is viewed as the offender or person responsible. The actual person who committed the wrongful act, the repairperson in the example above, is not even a party to the negligent hiring action. Since employers usually have more financial resources than the employees, the chance that the victim will go uncompensated is minimized.

ELEMENTS OF NEGLIGENT HIRING

As with any negligence action, before liability is attached to a defendant, the plaintiff has the burden of proving there was a duty, the duty was breached, and the breached duty proximately caused the injury [15]. The majority of courts state employers have a "duty to exercise reasonable care in view of all of the circumstances in hiring individuals who, because of the employment, may pose a threat of injury to members of the public" [16, at 911]. Depending on the nature of the employment, the obligation of the employer is variable. If the employee will have no, or limited, contact with the general public, the obligation of the employer is limited. If, however, the employment gives the employee access to a customer's home or property, including meter readers, exterminators, or security guards, the employer may be held to a duty to make a "reasonable" investigation

into the applicant's background. This is also true in the cases where there is a special relationship between the employer and the plaintiff involving health, safety, and welfare [17]. Where an employee's duties may include entering a customer's home, the court in *Williams* stated that the employer "has the responsibility of first making some inquiry with respect to whether it is safe to do so" [17, at 1240].

There are a number of service providers that have a duty to provide their services safely to the public. For example, employers of bus drivers, train conductors, airplane pilots, and taxi drivers all owe a duty to provide safe transportation to their customers. The hiring of employees with driving violations, invalid licenses, drug or alcohol problems, and/or insufficient training, would constitute negligence on the part of the employer. Negligent hiring suits help to check these employers so that general public safety can be maintained [18]. This is also true of police departments, fire departments, and schools. These organizations have a clear duty to avoid hiring an employee with a violent history who may become violent and injure a citizen or student [19].

This duty requires an employer to act as a reasonable employer would under the circumstances. The greater the potential for harm, the higher the level of care required of the employer. The determination of reasonable care is made in light of the circumstances. The employer's duty extends to plaintiffs within the zone of foreseeable risks created by the employment. This means that if an employee will have considerable contact with the general public, there are a large number of people at risk if the employer hires someone dangerous. For that reason, the greater the preemployment investigation required.

What exactly this preemployment investigation should include has not been definitively determined. The *Garcia* court stated that an appropriate investigation would minimally include contacting the employee's references and prior employers for information [5].

Investigation may also include checking the applicant's criminal history and mental fitness. Generally, an employer has no duty to investigate an applicant's criminal record if the job does not involve security responsibilities or the use of weapons; however, courts have held otherwise [20]. The extent of an employer's investigation of criminal records or mental illness records depends on the duties of the job being applied for, the degree of mental illness, the gravity of the offense or offenses, the time that has passed since the conviction, and/or the completion of sentence or treatment [21]. The courts generally agree that an employer does not have a duty as a matter of law to make inquiry as to a prospective employee's criminal record. However, an employer's liability for negligent hiring rests on whether, under the totality of the circumstances surrounding the hiring, the employer exercised reasonable care [15, p. 913]. For example, if checking into a criminal record cost the employer only $15 to obtain police records, the fact that the employer did not incur the expense balanced against the wealth of information the records could potentially expose, including

the propensity for further consistent behavior, could effectively damage the employer's claim that s/he used reasonable care.

Once the employer's duty to the plaintiff has been established, there are five elements remaining to prove negligent hiring:

1. An employment relationship existed between the employer and the employee at the time of the injury;
2. The employee was "unfit" for the position;
3. The employer knew or should have known that the employee was unfit for the position;
4. The employee negligently or intentionally caused the third party's injury;
5. The employee's negligence was the proximate cause of the third party's injury [22, p. 282].

The case of *Santiago v. Phoenix Newspapers, Inc.* suggests the following criteria for evaluating whether an employment relationship existed between the employer and the employee at the time of the injury:

1. The extent of control exercised by the master (employer) over details of the work and degree of supervision;
2. The distinct nature of the worker's business;
3. Specialization or skilled occupation;
4. Materials and place of work;
5. Duration of employment;
6. Method of payment;
7. Relationship of work done to the regular business of the employer; and
8. Belief of the parties [23].

If an employer had continuous contact with an employee, supervised the employee, and oversaw the details of the employee's work, there is a good chance the courts will find an employer-employee relationship existed. The nature of the worker's business is also a significant factor. If the worker is out on assignment, or works out of the home, with little or no contact with the employer, a defense by the employer that there existed no relationship with the employee may be deemed credible. If the job is one of specialization or skilled occupation, or one where the employee works only with specialized materials, in a specialized setting, for a short period of time, the employer might claim the employee was hired for a brief specialized purpose and that there did not exist an employer-employee relationship. In addition, if the person is paid by receiving favors or other noncash methods, the relationship may be seen as personal and not an employer-employee relationship. Finally, if the employer and the employee believe there is no employer-employee relationship, it may be difficult for the court to find one. Each of these factors does not, in itself, prove a relationship, but all must be taken together in determining whether an employer-employee relationship exists.

There are two situations where proving a negligent hiring action becomes very difficult. These include when the employee is an independent contractor or the employee is a volunteer. Generally, one who hires an independent contractor is not responsible for that person's negligence [24]. However, exceptions have been made where the contract requires the performance of intrinsically dangerous acts, so that liability may not be delegated to an independent contractor [23, p. 385]. Basically, there are three scenarios where an employer who hires an independent contractor may still be held liable for negligent hiring:

1. If the person who hires the independent contractor retains control (right to exercise control, or actual interference with the contractor's work) over some part of the employee's work;
2. If injury to the independent contractor's employee is caused or contributed to by an act or omission of the contractor pursuant to negligent orders or directions given by the hirer;
3. If the hirer does not exercise reasonable care in hiring a competent and careful contractor in circumstances that will involve a risk of injury unless it is skillfully and carefully done [25, p. 422].

The second situation where proving negligent hiring may be difficult is where the employee is a volunteer. In these situations, if the person would be an employee according to the factors stated above, but for the fact that s/he does not get paid, s/he would still be an employee for the purposes of a negligent hiring action.

Once it has been proven that the employer had a duty to the plaintiff and there was an employer-employee relationship, the next factor to be proven is that the employee was "unfit" for the position. A plaintiff must prove the employee was unfit for the job and posed an unreasonable risk to those with whom the employee might come in contact. Defining what is "unfit" may be very difficult. Factors that contribute to an employee's incompetence include prior history of inappropriate behavior, prior criminal convictions, prior mental incompetence, and any other factors deemed relevant. None of these factors alone automatically renders an employee "incompetent." These components are balanced against the time and expense of the employer to discover this information, the potential prejudice against the employee who had been convicted, and the probative value of such information viewed in the totality of the circumstances.

The next element is whether an employer knew or should have known that the employee was unfit for the position or had dangerous propensities. Unless the employer in question had either actual or constructive knowledge that the tortious employee is unfit or incompetent, a negligent hiring action will fail. Actual knowledge of an employee's dangerous propensities may be proven by showing that the employer possessed evidence of such propensities or that the employer witnessed such propensities. This type of information may be found in employment applications, employment interviews, the employee's criminal records,

employee's mental illness records, the employee's prior employment history, employee references, honesty tests/polygraph tests, etc. Constructive knowledge is found where a reasonable investigation would have alerted the employer to the dangerous propensities of the employee.

Through thorough investigations, a great deal of information can be discovered about the employee. The employer must, however, be careful to avoid possible claims by the applicant of discrimination and/or invasions of privacy. There are also situations where the employee lies in the application process or where the employer was not the actual person who hired the employee. Courts in these cases treat their decisions on a case-by-case basis. What is often the turning point in these cases is what is defined as "reasonable."

Once the plaintiff in a negligent hiring action has proven the duty and breach, s/he must then prove the employee negligently or intentionally caused the third party's injury. This is like a suit within a suit. The plaintiff must prove either that the employee intended to harm him/her or that the employee breached a duty the employee owed the plaintiff, which proximately caused the plaintiff harm.

Proving harm is not nearly as difficult as proving causation. Causation is concerned with "whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred" [26, at 502]. The jury must decide that the evidence presented "affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a substantial factor in bringing about the injury" [27, at 755]. Many jurisdictions require a showing of cause-in-fact and a showing of foreseeability [28]. Cause-in-fact is shown by using a "but for" test. "But for the [negligent] act [or omission] the injury would not have occurred" [28, at 1149]. To fulfill proximate cause the court requires proof to show that the injury to the plaintiff, as a result of the defendant's act, was foreseeable [25]. Some courts have abandoned the foreseeability requirement and held that "the test of what was the proximate cause of injury is whether, after the occurrence, the injury appears to be the reasonable and probable consequence of the act or omission of defendant, not whether a reasonable person could have foreseen the particular injury" [14, at 571-572]. Regardless of whether the particular jurisdiction requires that the injury be foreseeable, causation must still be proven. These elements are important because "they show that the employer was put on notice of the responsibility to evaluate the employee's qualifications" [1].

Each of the aforementioned elements must be proven to bring a successful claim for negligent hiring.

POLICY CONSIDERATIONS OF NEGLIGENT HIRING LITIGATION

The growing trend in negligent hiring cases yields important policy considerations. First, due to the increase in the stringency of preemployment investigation,

there is the potential effect that more qualified applicants will be hired, products will be made better, and services will be rendered in a safer, more efficient manner. However, along with this is the notion that truly qualified applicants will be denied employment based on something in their personal or employment record that may or may not have actually occurred as described.

In addition, there is the potential for employers to invade the privacy of the applicant. Should the employer have the right to know everything about the personal life of the applicant in the hope of discovering the single trait that might predispose the employer to a negligent hiring action in the future? Can the employer ever, even with the information s/he obtains, truly be able to predict potentially dangerous employees? Is obtaining the job worth such scrutiny to the applicant? How much will this increase the tendency to lie and withhold information from the prospective employer? How much will it cost the employer for the information about the applicant that is sufficient to protect him/herself with respect to negligent hiring actions? How much of this cost will be passed on to the customer? Each of these considerations may possibly be answered in time through further analysis of how courts are tending to rule on these issues. One thing that employers can now do is alter their hiring procedure so that potential negligent hiring litigation can be avoided.

HOW TO AVOID NEGLIGENT HIRING LITIGATION

There are three concerns that an employer should have with respect to negligent hiring litigation. First, the employer should consider whether his/her present hiring practices are discriminatory or violate an applicant's civil rights. Next, the employer must consider whether his/her present hiring practices invade the privacy of the applicant. Finally, the employer must consider whether s/he has protected the company from the risks of negligent hiring litigation. The following is a compilation of suggestions for employers on how to avoid hiring an unfit employee and how to avoid negligent litigation. The employer is free to pick and choose from the following situations as it is practical to the given situation:

1. The employer should identify all jobs that involve contact with third parties and evaluate whether a criminal records check should be done. Where employees will have unsupervised contact with third parties, especially if the employee will be going into the home of customers, a criminal records check is suggested.
2. There is no rule that requires an employer to investigate for past criminal convictions in all cases; however, the expense is minimal, and cases seem to be evolving toward broadening the employer's responsibility in this regard.
3. The employer should carefully review all information on the applicant's employment application or resume.

4. The employer should document all information received from prior employers and references, as well as his/her efforts to obtain such information if unsuccessful.
5. The employer should check state laws to determine if s/he is required and/or permitted to inquire into an applicant's past criminal record. Always obtain the applicant's consent prior to a criminal record investigation.
6. The employer should contact each prior employer to verify the dates of employment, positions held, and any information concerning the employee's reliability, or tendencies to engage in violent behavior, insubordination, dishonesty, or other potential problem areas.
7. If the employment application requests the applicant's consent to contact former employers and the applicant refuses, the employer should ask why. An employer may not wish to hire a person because of the potential that s/he is hiding something.
8. The employer should confirm the applicant has a valid license and/or certifications necessary for the job.
9. If hiring an applicant for a driving job, the employer should obtain a copy of his/her driving record from the Department of Motor Vehicles and request that the Department of Motor Vehicles notify the employer of any further violations during the employment.
10. The employer should inquire into the mental capacity of the applicant due to the event that it may affect job performance.
11. Employers should not offer employment until the screening process has been completed.
12. The employer should question the applicant about any gaps in employment, regardless of length.
13. The employer should obtain a release that protects the employer and those persons the employer contacts regarding references from invasions of privacy and defamation claims.
14. An employer should be more careful when hiring employees for certain jobs that appear with increased frequency in negligent hiring cases, including security guards; apartment managers; unsupervised night-shift employees; employees who visit customers' homes; employees who drive vehicles; and those with caregiving responsibilities (teachers, doctors, nurses, and those charged with the care of children). A criminal records check should be strongly considered.
15. The employer should always follow its established procedures in screening new employees. A failure to do so may result in an appearance of negligence.
16. The screening process should be evaluated and documented by company executives. Legal evaluation is also suggested.

CONCLUSION

An important theme running through today's society is compensation. People are suing others more now than ever before. However, many times the person actually doing the harm to others does not have the financial capabilities of providing compensation. A response to this problem of unrecovered compensation is the negligent hiring doctrine. Through this doctrine, the injured party may go after employers who usually have vast resources compared to the employee offender.

Employers have thus been made aware of their increasing responsibility to investigate applicants, so as to protect the safety of customers with whom an employee might come into contact. This investigation must be performed carefully so as not to infringe on the personal, privacy, and civil rights of the applicant. These hiring procedure adjustments should be written, reevaluated over time, and followed to protect the employer from potential negligent hiring litigation. Through time, the negligent hiring doctrine may result in better products, better workforces, better company-customer relations, and a safer environment for everyone.

* * *

Jeffrey Bennett Cohen is a third year law student at Widener University School of Law, Harrisburg, Pennsylvania, with a M.S. in Dispute Resolution from Nova Southeastern University, Fort Lauderdale, Florida.

ENDNOTES

1. K. H. Decker, *The Individual Employment Rights Primer*, p. 71 (1991). Baywood Publishing Co. Inc., Amityville, New York.
2. RESTATEMENT (SECOND) OF AGENCY § 216 (1958).
3. *See Curley v. General Valet Services, Inc.*, 311 A.2d 231 (Md. 1973) (Maryland Court of Appeals ruled the evidence presented that showed the employer knew of the employee driver's ten motor vehicle violations at the time the employee was hired justified submitting the case to a jury on the issue of negligent entrustment.); *Guillermo v. Brennan*, 691 F.Supp. 1151 (N.D.Ill. 1988); *Talbott v. Csakany*, 245 Cal. Rptr. 136 (Cal. Ct. App. 1988); *Rosenberg v. Packerland Packing Co.*, 370 N.E.2d 1235, 1239 (Ill. App. Ct. 1977); *Cameron v. Downs*, 650 P.2d 260 (Wash. Ct. App. 1982).
4. *See Wilbanks v. Brazil*, 425 So. 2d 1123 (Ala. 1983) (regarding the entrustment of a golf club to an eight-year-old who used it to fracture another child's skill); *Teter v. Clemens*, 492 N.E.2d 1340 (Ill. 1986); *Vance v. Thomas*, 716 P.2d 710 (Okla. Ct. App. 1986) (holding that even though a BB gun may not be inherently dangerous, a parent could be liable if s/he entrusted the gun to an immature child).
5. *See Trahan-Laroche v. Lockheed Sanders, Inc.*, 657 A.2d 417 (N.H. 1995); RESTATEMENT (SECOND) OF TORTS § 317 (1977).
6. *See Garcia v. Duffy*, 492 So. 2d 435, 440 (Fla. Dist. Ct. App. 1986) (court stated there must be a connection between the employment and the plaintiff sufficient to establish

a legal duty on the part of the employer to the plaintiff or establish that the plaintiff was within the zone of foreseeable risk created by the employment).

7. *See Di Cosala v. Kay*, 450 A.2d 508, 515 (N.J. 1982).
8. *See Murray v. Modoc State Bank*, 313 P.2d 304 (Kan. 1957).
9. *Woodward v. Mettille*, 400 N.E.2d 934, 946-47 (Ill. Ct. App. 1980).
10. *Estate of Arrington v. Fields*, 578 S.W.2d 173 (Tex. Ct. App. 1979).
11. *North Houston Pole Line Corp. v. McCllister*, 667 S.W.2d 829 (Tex. Ct. App. 1983).
12. *Stevens v. A-Able Rents Co.*, 654 N.E.2d 1315 (Ohio App. 1995).
13. *Welsh Manufacturing, Div. of Textron, Inc. v. Pinkerton's, Inc.*, 474 A.2d 436 (R.I. 1984).
14. *Gaines v. Monsanto Co.*, 655 S.W.2d 568 (Mo. Ct. App. 1983).
15. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts*, § 30, (5th Ed. 1984). West Publishing Co., St. Paul, Minnesota.
16. *Ponticas v. K.M.S. Invs.*, 331 N.W.2d 907, 911 (Minn. 1983).
17. *See, e.g., Williams v. Feather Sound, Inc.*, 386 So. 2d 1238 (Fla. Dist. Ct. App. 1980) (maintenance man in condominium complex); *D.R.R. v. English Enters*, 356 N.W.2d 580 (Iowa Ct. App. 1984) (cable TV installer).
18. Michael Silver, *Negligent Hiring Claims Take Off*, 73 A.B.A.J., May 1987, pp. 72-78.
19. *See Schalk v. Gallemore*, 906 F.2d 491 (10th Cir. 1990).
20. *See Malorey v. B & L Motorfreight, Inc.*, 496 N.E.2d 1086 (Ill. Ct. App. 1986) (a truck company hired an over-the-road driver who had previously been convicted of sexual assaults while driving for another company and the second employer was held responsible for failing to check into the driver's criminal record when the driver later raped a hitchhiker in the sleeping compartment of his truck).
21. *Green v. Missouri Pac. R.R.*, 549 F.2d 1158, 1159 (8th Cir. 1977).
22. Peter A. Sussen & David H. Sett, *Negligent Hiring: What You Don't Know Can Hurt You*, Employee Rel. Today, Fall 1987, pp. 279, 282.
23. *Santiago v. Phoenix Newspapers, Inc.*, 794 P.2d 138, 141-42 (Ariz. 1990).
24. *See, e.g., Johns v. New York Blower Co.*, 442 N.E.2d 382, 384 (Ind. Ct. App. 1982).
25. Donald J. Petersen & Douglas Massengill, *The Negligent Hiring Doctrine—A Growing Dilemma for Employers*, 15 Employee Rel. L.J. (1989-90), pp. 419-437.
26. *McCain v. Florida Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992).
27. *Tallahassee Furniture Co. v. Harrison*, 583 So. 2d 744, 755 (1st Fla. Dist. Ct. App. 1991).
28. *See Watson v. City of Hialeah*, 552 So. 2d 1146, 1149 (3d Fla. Dist. Ct. App. 1989).

Direct reprint requests to:

Jeffrey Bennett Cohen
2820 Fairway Drive
Hollywood, FL 33021