

The Non-Subscriber Case Law Update

A Bi-Monthly Publication Dedicated to Detailing Recent Cases Pertaining to Non-Subscription Issues.

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Recent Texas Supreme Court Case

The Texas Supreme Court recently addressed an employer's duty when an employee is driving home from work. In Nabors Drilling, U.S.A., Inc v. Escoto, 52 Tex. S. Ct. J. 885 (Tex. 2009), Robert Ambriz worked a 12 hour graveyard shift at drilling site. Prior to beginning the shift, a supervisor examined all the employees, including Mr. Ambriz. At the conclusion of the 12 hour shift, a co-worker, who did not believe Mr. Ambriz looked tired, told him he should stay in the company provided on-site sleeping quarters. Rather than stay in the company provided sleeping quarters, he chose instead to drive home. While driving home and not more than 20 minutes after leaving the worksite, he veered into the opposing lane of traffic hitting a vehicle occupied by Roberto Escoto. The occupants of both vehicles were killed. Escoto's surviving family members sued Nabors Drilling alleging that the accident was caused by Mr. Ambriz's fatigue and that Nabors Drilling had a duty to keep Ambriz from driving while fatigued. At trial, the jury found Ambriz 57% at fault and Nabors 43% at fault for the accident. However, the verdict was reversed by the trial judge as he found Nabors Drilling owed the plaintiffs no duty. The Court of Appeals overruled the trial court finding that Nabors Drilling had a duty to train Mr. Ambriz in the danger of driving while fatigued and to prevent him from driving while fatigued and rendered verdict in favor of the plaintiffs for a little less than \$6 million. The Supreme Court began by stating the general law of negligence which is a person or entity is responsible for damages which are the reasonably foreseeable consequence of his or its acts or omissions. That said, a person is under no duty to control the conduct of another even if that person has the ability to control their conduct. The general rule is that an employer has no duty to protect the public from the acts of its employees committed while off the job site or while not using the employer's property, such as while driving a person vehicle rather than a company owned vehicle. The Supreme Court then cited prior law that held an employer liable when they had knowledge of an employee's intoxication and negligently exercised control over him. Further, the employer must have more than just knowledge that the employee is fatigued but must have knowledge that the fatigue is sufficient to impair the employee. The Supreme Court found there was no evidence that Nabors Drilling had any knowledge of Mr. Ambriz's alleged fatigue. The court did not stop there but went on to state that the employer must not only have knowledge of intoxication or incapacitating fatigue but must then affirmatively exercise control over the employee for the employer to have a duty to prevent a subsequent accident. The only control exercised by Nabors Drilling was to set the shift schedule and supervise work conditions. The court declined to extend a duty to employers to prevent an accident even when the work conditions may have contributed to the cause of the accident.

Comment:

The opinion never states whether he was driving his employer's vehicle. The result likely would have been much different had he been driving a company vehicle. The court felt it significant that Nabors Drilling allowed their employees to make the decision at the end of the shift whether to drive home or not. It was suggested by the plaintiffs' attorneys that Nabors Drilling could have performed the same examination Nabors Drilling performs prior to allowing the employee to work at the conclusion of the shift to determine if the employee could drive home. However, if Nabors Drilling had inspected employees and either permitted or refused to allow them to drive home following a shift based upon their appearance and other factors, it is possible they could have been held responsible if they had been negligent in the manner in which they examined the employees. Surprisingly, sometimes it is better to not undertake a duty as you may expose your company to liability. Also, don't forget that this opinion has some limited application. Those of you governed by the Federal Motor Carrier Regulations cannot rely upon this opinion to escape liability for a driver's actions while off duty in a company owned or leased vehicle.

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