VIRGINIA

VICARIOUS IMMUNITY

THE MASTER'S LIABILITY WHEN THE SERVANT IS IMMUNE

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One of the most common questions in litigation is whether one party can be legally liable for another party's actions. If a driver negligently rear-ends another vehicle, the driver's liability is simple and straightforward. The driver's responsibility for his own actions is primary liability. Primary liability, while it may be contested, is generally not a complicated legal question. Secondary liability presents far trickier legal questions.

Secondary liability, as the name suggests, arises where one person or entity is liable for the actions of another. For example, if the same driver rear-ended the plaintiff's vehicle while the driver was on the job, the plaintiff might file suit against both the driver and the driver's employer. Under Virginia law, the employer is liable for the employee's actions if the employee is on the job and acting within the scope of employment at the time of the accident. This form of secondary liability, which is known as respondeat superior, is the most common form of secondary liability in personal injury litigation.

Where respondeat superior applies, a verdict against the employee will bind the employer. If the jury finds the employee liable, the employer will be liable for damages caused by the employee's actions. The opposite is not always true, however. The employer may be liable in certain cases even though the plaintiff cannot recover against the employee.

In Stoots v. Marion Life Saving Crew, Inc., the Virginia Supreme Court discussed where an employer can be secondarily liable for an employee's actions even though the employee is not directly liable. 300 Va. 354 (2021). In Stoots, the plaintiff alleged that two EMTs caused the death of a patient through grossly negligent medical transportation. The plaintiff named the EMTs and the volunteer rescue service as defendants in a wrongful death action. All defendants argued that they could not be liable under Virginia's Good Samaritan Statute, Virginia Code § 8.01-225, which protects people who render aid in emergency situations from liability for their good faith actions in those scenarios. The trial court dismissed the actions against all three defendants and the plaintiff appealed.

The Virginia Supreme Court first found that the EMTs themselves were protected by the statute and affirmed the dismissal on that basis. The Court reached a different result as to the rescue squad, however. Although the Court acknowledged that verdicts finding an employee not liable will exonerate the employer, the Court found that rule inapplicable. The Court limited that rule to situations where the employee is found "not negligent." The Good Samaritan Statute protected the EMTs as long as they acted in good faith, even if the EMTs were negligent. The judgment in the EMTs favor did not protect the rescue squad, because the EMTs had not been shown to be without negligence. The rescue squad could be liable for the EMTs actions, even though the EMTs could not be liable themselves.

The Good Samaritan Statute, and other similar protections for individuals, provide great protection for employees, but may have little value for employers. Indeed, the rule discussed in Stoot may actually expand the employer's liability beyond the common law rule. At common law, the employer could seek indemnity from the employee responsible for the accident, but Stoot would seem to preclude such an indemnity claim.

This potential for asymmetric liability between the employee and employer must be considered when a plaintiff files a claim against both an immune employee and the employer. Obtaining dismissal against the employee can open up new arguments, such as potentially removing the case to federal court. However, the employer must be aware that removing the employee from the case will not be sufficient to resolve the case against the employer as well, even when the claim against the employer is based solely on the employee's actions.

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