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Alabama

Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

There are no real advantages of a motor carrier's admission that it is vicariously liable for the fault of its driver in a direct negligence claim. An admission that a driver was acting in the course and scope of employment would, however, satisfy one of the elements necessary to establish *respondeat superior* liability under Alabama law. *See Jessup v. Shaddix*, 154 So. 2d 39, 41 (Ala. 1963) ("[I]t is incumbent upon the plaintiff to show that the act was done within the scope of the servant's employment and was committed in the accomplishment of objects within the line of his duties, or in or about the business or duties assigned to him by his employer."). Accordingly, such an admission would assist a plaintiff in seeking to establish liability against the employer under a direct negligence theory.

Furthermore, such an admission would likely not preclude the plaintiff from proceeding against the carrier in an action for negligent or wanton hiring, training, and supervision. Alabama courts have not taken a position on whether a negligent hiring/supervision/training claim is precluded where the employer admits that the alleged tortfeasor was acting within the line and scope of his employment. However, the Middle District of Alabama predicted in *Poplin v. Bestway Express*, 286 F. Supp. 2d 1316 (M.D. Ala. 2003) that Alabama would follow the minority rule allowing such a claim to proceed against an employer. *Id*. at 1319. Accordingly, unlike in some states, a claim for negligent hiring/supervision/training could likely co-exist with a claim of direct negligence based on a theory of *respondeat superior* even where an employer admits that the employee was acting within the scope of his employment.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Under Arkansas law, if a defendant employer or principal admits vicarious liability for the negligence of the employee or agent, the plaintiff may not pursue a claim for negligent entrustment, hiring, or retention against such a defendant. *See Elrod v. G&R Constr. Co.*, 275 Ark. 151, 154, 628 S.W.2d 17, 19 (1982). Plaintiff may proceed on only one theory of recovery in cases where liability has been admitted as to one theory of recovery, such as *respondeat superior*. However, the plaintiff retains the right of action against an employer for any independent acts of negligence. There also are some limited exceptions to the *Elrod* rule. [*Regions Bank v. White, 2009 WL 3148732; Wheeler v Carlton,* WL 30261; *McLane v. Rich Transport, Inc.*, WL 3257658] A potential disadvantage to admitting *respondeat superior* is that if punitive damages are imposed, the employer is responsible for those damages.

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California

Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

The California Supreme Court held that when an employer admits that its driver was acting within the course and scope of his employment, the employer may only be held vicariously liable for the driver's actions. The employer may not be held liable for its own negligence in hiring, training, or retaining the driver. (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148).

ADVANTAGES

On the one hand, the advantages are: (1) causes of action against the employer individually are limited; (2) the employee's personnel file becomes inadmissible at the time of trial; and (3) the trial itself can then be limited to only damages, possibly preventing the introduction of certain evidence related to the subject incident.

DISADVANTAGES

On the other hand, the disadvantage is the employer waives any right to assert the driver was outside the course and scope of his or her employment. If punitive damages are alleged by the plaintiff regarding the driver's conduct, the *Diaz* rule will not apply, and the driver's personnel file can be admissible at trial, and plaintiff's counsel can argue negligent hiring or negligent supervision against the employer trucking company.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Pursuant to recent statutory amendment reversing *Ferrer v. Okbamicael*,[xx] an employer's admission of vicarious liability for any employee's or agent's alleged negligence does not preclude a plaintiff's direct negligence claims against the employer.[xxi] A plaintiff may bring direct negligence claims and conduct discovery related to such claims in addition to claims and discovery based on vicarious liability.[xxii] While the admission of vicarious liability may streamline litigation, such an admission establishes an element of many direct negligence claims against an employer – the existence of an employer-employee relationship.[xxiii]

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

If an agency is the only relation between the motor carrier and operator, and agency is admitted, an argument can be made that the carrier is not a necessary party. A claim would continue in the setting of faulty equipment or training allegations.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

There is not a benefit for admitting vicarious liability in Delaware. When a defendant has admitted to vicarious liability, Delaware courts have allowed for independent negligence claims to move forward (e.g., negligent supervision/hiring) despite the fact that the defendant had admitted to vicarious liability. *Smith v. Williams*, 2007 WL 2677131 at *6 (Del. Super. Sept. 11, 2007).

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

There are benefits and drawbacks to admitting vicarious liability for a driver in Florida. Admitting vicarious liability for a driver under respondeat superior may extinguish the plaintiff's ability to maintain other derivative causes of action against the motor carrier. For example, it is generally accepted in Florida that if a motor carrier admits that a driver was acting within the course and scope of her employment at the time of the alleged wrongdoing, the plaintiff may not continue pursuing claims against the motor carrier for negligent hiring, supervision, and retention because "these theories impose no additional liability in a motor vehicle accident case". *Clooney v. Getting*, 352 So. 2d 1216, 1220 (Fla. 2d DCA 1977). Consequently, the plaintiff may be limited in pursuing intrusive and potentially harmful discovery against the motor carrier because "the negligence of the [motor carrier] is immaterial since the Court is committed to the rule that if the employee is not liable, the employer is not liable." *Mallory v. O'Neil*, 69 So. 2d 313, 315 (Fla. 1954); see Garcia v. Duffy, 492 So. 2d 435, 438 (Fla. 2d DCA 1986). On the other hand, admitting vicarious liability for a driver's conduct will subject the motor carrier to joint and several liability for the percentage of fault assigned to her by the jury.

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Georgia

Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Georgia no longer recognizes the "Resondeat Superior Rule" and, thus, claims that a motor carrier-employer is negligent in the hiring, retention, training and supervision of its employee are divisible from claims that its employee was negligent and are capable of being assigned percentages of fault. *Quynn v. Hulsey*, 310 Ga. 473, 479 (2020). Thus, those claims may be brought independently.

Prior to the Georgia Supreme Court's decision in *Quynn*, Georgia applied the "Respondeat Superior Rule", which was first adopted in *Willis v. Hill*, 116 Ga. App. 848, 853-868 (1967), reversed on other grounds, 224 Ga. 263 (1968). Under that decisional law rule, when "a defendant employer concedes that it will be vicariously liable under the doctrine of respondeat superior if its employee is found negligent, the employer is entitled to summary judgment on the plaintiff's claims for negligent entrustment, hiring, training, supervision, and retention, unless the plaintiff has also brought a valid claim for punitive damages against the employer for its own independent negligence." *Hosp. Auth. of Valdosta/Lowndes County v. Fender*, 342 Ga. App. 13, 21 (2017).

However, in *Quynn*, the Georgia Supreme Court found that the Respondeat Superior Rule had been abrogated by Georgia's Apportionment Statute. *Quynn*, 310 Ga. at 475. Under Georgia's Apportionment Statute, where "an action is brought against more than one person for injury to person or property," the jury must apportion its damage award among persons who are liable according to the percentage of their fault. O.C.G.A. § 51-12-33(b). For the purposes of that statute, the term "fault" refers to "a breach of a legal duty that a defendant owes with respect to a plaintiff that is a proximate cause of the injury for which the plaintiff now seeks to recover damages." *Zaldivar v. Prickett*, 297 Ga. 589, 595 (2015).

The *Quynn* Court explained that claims for negligent hiring, training, supervision, and retention are based on the alleged negligent acts of the employer. *Quynn*, 310 Ga. at 477. Thus, the "claims encompassed by the Respondeat Superior Rule are claims that the employer is at 'fault' within the meaning of the apportionment statute. Adherence to the Respondeat Superior Rule would preclude the jury from apportioning fault to the employer for negligent entrustment, hiring, training, supervision, and retention. Any allocation of relative fault among those persons at fault, which may include the plaintiff, could differ if one person's fault was excluded from consideration." *Id*. Therefore, the Court held that "the Respondeat Superior Rule is inconsistent with the plain language of the apportionment statute." *Id*.

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Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Yes, under O.C.G.A. § 24-7-703 a medical expert may testify about case specific facts used to form his or her opinions so long as they are of a type reasonably relied upon by experts in their field in forming opinions or inferences, even if the facts are not admissible evidence. For example, a medical expert may testify that he or she relied upon case facts obtained from uncertified medical records in reaching his or her opinion. *See Fields v. Taylor*, 340 Ga. App. 706, 710-711 (2017). However, the medical expert cannot testify as to the truth or accuracy of the statements within the records.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Until very recently, it was generally advantageous for a motor carrier to admit that it was vicariously liable for its driver's fault because doing so precluded plaintiffs from also pursuing direct liability theories against the motor carrier such as negligent hiring, negligent supervision, or negligent entrustment. However, in *McQueen v. Green*, 2022 IL 126666, the Illinois Supreme Court overturned longstanding precedent. Under *McQueen*, a plaintiff may now proceed on such "direct negligence" theories against a motor carrier along with a claim for vicarious liability if the admitted employee driver is found negligent.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Benefits:
The strategic benefit of admitting that a motor carrier is vicariously liable for the fault of its driver is to establish, early in the case, a unified, cooperative defense between the employer and the driver. An employer's and attorney's relationship with a driver may be irreparably harmed if the driver views the employer and attorney as 'abandoning' the driver, particularly if the driver's conduct was in the 'gray area' between operating within and outside the scope of employment. *See Martin v. Tovar*, 991 N.W.2d 760, 763 (Iowa 2023).

Admitting vicarious liability can also streamline the legal process and potentially reduce litigation costs. By acknowledging liability, the motor carrier may avoid prolonged legal battles and the associated expenses.

Relatedly, the Iowa Legislature recently adopted Iowa Code Sections 668.12A and 668.15A, which address limits on liability and damages for accidents involving commercial motor vehicles. *See* Iowa Code §§ 668.12A, 668.15A. Iowa Code Section 668.12A provides that "there shall not be civil liability for damages for an employer's negligent hiring of any employee" if:

(1) The employee's actions that caused the claimant damage are within the course and scope of the employee's employment;

(2) The employer stipulates that at the time of the event that caused the damages alleged in the civil action all of the following are true:

(a) The person whose negligence is alleged to have caused damages was the employer's employee; and

(b) The person whose negligence is alleged to have caused the damages was acting within the course and scope of employment with the employer.

Iowa Code § 668.12A.

Finally, Iowa Code Section 668.15A provides that the total amount a plaintiff may recover "against the owner or operator of a commercial motor vehicle for noneconomic damages for personal injury or death in a civil action involving the operation of a commercial motor vehicle requiring a commercial driver's license, whether in tort or otherwise, is five million dollars." Iowa Code § 668.15A. This

limitation on damages applies "regardless of the number of derivative claims or theories of liability in the civil action." *Id.*

Consequences:

The detriment to admitting that a motor carrier is vicariously liable for the fault of its driver is that, by doing so, Iowa's doctrine of *respondeat superior* will make the employer "liable for the negligence of an employee committed while the employee is acting in the scope of his employment." *Jones v. Blair*, 387 N.W.2d 349, 355 (Iowa 1986). An employee's actions are within the course and scope of employment "when the employer has the right to direct the means and manner of doing work, and has the right of control over the employee." *Id.* Stated another way, "a claim of vicarious liability under the doctrine of *respondeat superior* rests of two elements: proof of an employer/employee relationship, and proof that the injury occurred within the scope of that employment." *Biddle v. Sartori Mem'l Hosp.*, 518 N.W.2d 795 (Iowa 1994).

Admitting that a motor carrier is vicariously liable for the fault of its driver also creates the potential for accompanying claims of negligent hiring, retention, supervision, or training. In order to successfully prove these theories, a claimant must establish:

(1) [T]hat the employer knew, or in the exercise of ordinary care should have known, of its employee's unfitness at the time of [hiring/retention/engaging in wrongful or tortious conduct/training];
(2) that through the negligent [hiring/retention/supervision/training] of the employee, the employee's incompetence, unfitness, or dangerous characteristics proximately caused the resulting injuries; and
(3) that there is some employment or agency relationship between the tortfeasor and the defendant employer.

Godar v. Edwards, 588 N.W.2d 701, 708-09 (Iowa 1999). However, see the above discussion of Iowa Code Section 668.12A, which can eliminate liability for negligent hiring if the conditions of such limitation are met. *See* Iowa Code § 668.12A.

The Iowa Supreme Court has also held that punitive damages may be recovered against an employer who recklessly hires or retains an employee. *See Briner v. Hyslop*, 337 N.W.2d 858, 867 (Iowa 1983).

Additionally, there are certain nuances to the defense of an employer and employee that must be considered even after admitting that a motor carrier is vicariously liable for the fault of its driver. For example, "a defense personal to the agent, such as immunity, will not ordinarily extend to bar a claim against the principal for the agent's negligence unless the rationale for the immunity also applies to the principal." *Hook v. Trevino*, 839 N.W.2d 434, 441 (Iowa 2013).

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Kansas follows the minority view on this issue, and thus, it is not beneficial for a defendant to admit its employee driver was acting in the course and scope of employment. In *Marquis v. State Farm Fire & Cas. Co.*, an employee acting in the course and scope of his employment was involved in a car accident injuring plaintiff. 265 Kan. 317, 318–19, 961 P.2d 1213 (1998). The defendant argued that plaintiffs were barred from asserting direct negligence claims such as negligent hiring, retention, and supervision because the defendant had already admitted that the driver was an employee acting within the scope of his employment. *Id.* at 333. However, the court ultimately held that an admission that an employee was acting in the course and scope of his employment at the time of an accident does not preclude an action for direct negligence claims, including negligent entrustment or negligent hiring, retention, or supervision. *Id.* at 334–35 (citing *Kansas State Bank & Tr. Co. v. Specialized Transp. Servs., Inc.*, 249 Kan. 348, 362, 819 P.2d 587 (1991)). The court reasoned that "the torts of negligent hiring, retention, or supervision are recognized in Kansas as separate torts that are not derivative of the employee's negligence…." *Id.*

It should be noted that in *Reardon for Estate of Parsons v. King*, 310 Kan. 897, 452 P.3d 849 (2019), the Kansas Supreme Court held that the theories of negligent hiring, training, retention, and supervision are not independent torts, but that there remains an independent tort of negligence on the part of the employer who fails to exercise reasonable care under the circumstances, which can be establish by its failure to properly hire, train, retain, and/or supervise. *Id.* at 904-05.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Admitting that a motor carrier is vicariously liable in the state of Kentucky will not have the effect of preventing the admission of unfavorable facts supporting direct claims against the motor carrier, such as negligent entrustment, hiring, retention, supervision or training. *MV Transp. Inc. v. Allgeier*, 433 S.W.3d 324, 336-37 (Ky. 2014). The Kentucky Supreme Court in *Allgeier* held that "a plaintiff may assert and pursue in the same action a claim against an employer based upon respondeat superior upon the agent's negligence, and a separate claim based upon the employer's own direct negligence in hiring, retention, supervision, or training." *Id.* at 337. The court went on to state that an "employer's admission to the existence of an agency relationship from which vicarious liability may arise does not supplant the claim that the employer's own negligence, independent of the negligence of the employee, may have caused or contributed to the injury." *Id.*

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

As of June of 2022, the Louisiana Supreme Court held that a plaintiff could maintain claims of vicarious liability as well as claims of independent negligence against an employer even if the employer stipulated that the employee was within the course and scope of employment. *Martin v. Thomas*, No. 2021-01490 (La. 6/29/22).

In light of *Martin*, there are little to no advantages to immediately admitting that the driver was in the course and scope of his/her employment. We recommend that all factors be considered before admitting that an employee was in the course and scope of his/her employment. There is no direct or indirect consequence for declining to admit vicarious liability in this post-*Martin* era.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Once vicarious liability has been admitted, a plaintiff cannot proceed on their negligent entrustment, hiring or other similar direct negligence claims in Maryland.[xxx]

This preclusion is based on the evidentiary complication of allowing both vicarious liability and negligent entrustment claims to proceed.[xxxi]

The federal district court for Maryland has similarly made clear that when an owner has admitted their vicarious liability for a driver, the injured party cannot then make a negligent entrustment claim against that owner.[xxxii]

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

In Massachusetts, if a motor carrier admits that a driver was in the course and scope of employment, a judge may exclude evidence concerning negligent hiring and supervision, or it may not. It is judge and case dependent.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Michigan is a Comparative Negligence state. In admitting liability, the carrier would lose the benefit in a reduction of liability. In instances where the facts and circumstances are egregious, admitting liability may prevent the at-fault driver from testifying. In instances of drunk or distracted driving, particularly with a death or serious injury, it may be advisable to prevent the jury from hearing about "reckless driving" of the defendant(s).

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Minnesota

Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Minnesota does not follow the majority view that once an employer has admitted to an agency relationship with an employee, it is no longer proper to allow a plaintiff to pursue other theories of derivative or dependent liability. In Minnesota, courts will allow an injured party to proceed under other theories of liability beyond vicarious liability. *Lim v. Interstate Sys, Steel Div Inc.*, 435 N.W.2d 830, 832-33 (Minn. Ct. App. 1989) (holding evidence of negligent entrustment was admissible even though vicarious liability was conceded); *See also, Jones v. Fleischhaker*, 325 N.W.2d 633, 640 (Minn. 1982) (entrustor found both causally negligent and vicariously liable for entrustee's negligence). Thus, admitting to vicarious liability of a driver does not provide the typical benefit of eliminating direct negligence claims.

In Minnesota, an employer is vicariously liable for the acts of an employee committed within the scope of employment. Further, Minnesota has a permissive use statute stating that anyone who permits another to drive their vehicle is responsible for the loss as the driver is deemed the agent of the owner. Minn. Stat. § 169.09, subd. 5a. Therefore, vicarious liability is admitted in the majority of circumstances.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Admission that a driver was in the "course and scope" of employment and vicarious liability prevents a negligent hiring/supervision/training claim against the employer. *Hood v. Dealer's Transport Co*., 459 F. Supp. 684 (N.D. Miss. 1978). Multiple Mississippi federal courts have addressed the issue and reached the same result. There is no such definitive holding from Mississippi state courts, but we anticipate the holding would be the same.

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When a carrier admits it is vicariously liable for the acts or omissions of its driver, absent a claim for punitive damages, evidence of the carrier's purported negligent hiring, training, supervision, or entrustment of the driver should be excluded, and Plaintiff's only permissible theory of recovery is negligence based on the conduct of the driver. *State ex rel. McHaffie v. Bunch,* 891 S.W.2d 822 (Mo. 1995). The *McHaffie* Court stated:

> If all of the theories for attaching liability to one person for the negligence of another were recognized and all pleaded in one case where the imputation of negligence is admitted, the evidence laboriously submitted to establish the other theories serves no real purpose. The energy and time of the courts and litigants is unnecessarily expended. In addition, potential inflammatory evidence comes into the record which is irrelevant to any contested issue in the case.

Id. at 826 (citations omitted).

However, this does not mean a plaintiff will be precluded from seeking discovery of evidence relevant to a potential negligent hiring, training, supervision, or entrustment claim. Missouri allows for the discovery of anything that is reasonably likely to lead to the discovery of admissible evidence. Mo.R.Civ.P. 56.01. Until such time as a plaintiff is permitted an opportunity to seek discovery of such things as the DQ file, training, disciplinary actions, etc. - whether it may make a submissible claim for punitive damages is arguably unknown. Thus, while *McHaffie* may be useful at trial, it generally cannot be used as a shield in discovery.

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Montana

Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Yes, there are benefits. Once an employer admits *Respondeat Superior* liability for the driver's negligence, "it is improper to allow a plaintiff to proceed against the employer on any other theory of imputed liability." Parrick v. FedEx Grounds Package Sys., 2010 U.S. Dist. LEXIS 47729 (Dist. Mont.) *quoting* State ex rel. McHaffie v. Bunch, 891 S.W.2d 822.

The Montana Supreme Court has not addressed the issue.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

It has been our experience in the trial courts that when we admit a motor carrier is vicariously liable for the fault of its driver, judges generally do not allow evidence on the issue of negligent entrustment, negligent training, and negligent supervision. The Nebraska Supreme Court has not addressed the issue of whether a plaintiff may maintain a negligent hiring/retention/training claim where the employer has admitted scope and course of employment. However, Nebraska's Federal District Court has predicted that "the Nebraska Supreme Court would apply the majority rule to bar" a plaintiff's independent claims for "negligent hiring, retention, training and supervision. That rule is consistent with established Nebraska case law, and ensures that the jury receives relevant, non-prejudicial evidence in its ultimate determination of fault." *Gibson v. Jensen*, No. 8:16-CV-296, 2017 WL 5067497, at *4 (D. Neb. July 17, 2017).

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

"Under the doctrine of respondeat superior, an employer may be held vicariously responsible for the tortious acts of an employee committed incidental to or during the scope of employment." *Trahan-Laroche v. Lockheed Sanders, Inc.*, 139 N.H. 483, 485 (1995). Additionally, an employer may be liable for damages resulting from negligent supervision of its employees, *id*., and a plaintiff may maintain an independent action against a motor carrier, *Cutter v. Town of Farmington*, 126 N.H. 836 (1985). Accordingly, the primary detriment in admitting vicarious liability is the resulting exposure to the motor carrier. Another detriment may be the advantage gained by the plaintiff in avoiding the need to prove that a driver was acting in the scope of employment.

There may, however, be some benefit to making this admission. First, it could save the time and expense necessary to litigate this issue. Second, it may present the employer in a more favorable and credible image to the factfinder as an open, honest, and cooperative party. Finally, it may help to settle any potential dispute concerning insurance coverage for a driver acting in the scope of employment.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

NJ recognizes a cause of action for negligent entrustment based on the ownership and use of a vehicle. An owner of a vehicle who loans or rents a vehicle to another is not vicariously liable for the borrowee's negligence unless that individual is an agent or employee of the owner. An owner of a motor vehicle may be liable to a third-party only if there is an agency relationship between the owner and driver.

The New Jersey Supreme Court has previously explained the effect on a plaintiff's claims against an employer when an accident is deemed to have occurred in the course and scope of employment of its employee:

The doctrine of respondeat superior has traditionally been thought to render the employer liable for torts of one of its employees only when the latter was acting within the scope of his or her employment. *Gilborges v. Wallace*, 78 N.J. 342, 351 (1978); *Wright v. Globe Porcelain Co*., 72 N.J. Super. 414, 418 (App.Div.1962); W. Prosser, Law of Torts, 460-61 (4th ed. 1971). The scope of employment standard, concededly imprecise, is a formula designed to delineate generally which unauthorized acts of the servant can be charged to the master. *Id*. Furthermore, the standard refers to those acts which are so closely connected with what the servant is employed to do, and so fairly and reasonably incidental to it, that they may be regarded as methods, even though quite improper ones, of carrying out the objectives of the employment. [*Id*.]

"[T]he concept of negligent training, supervision, and retention generally has no significance where, as here, the injury is alleged to have been caused by an employee's negligence in the performance of his or her duties. That is so because an employer is vicariously responsible for the negligent acts of an employee acting within the scope of his or her employment 'under standard agency principles' even if the employer was diligent in hiring, training, supervising and retaining the employees." *Wilson ex rel. Manzano v. City of Jersey City*, 1 A.3d 723, 741 (N.J. Super. Ct. App. Div. 2010) (internal citations omitted) (reversed on other grounds).

Admitting vicarious liability of a driver by a motor carrier may serve as an aid to dismiss any duplicative claims against the motor carrier by the third-party, including negligent entrustment and/or negligent hiring.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

There is no statutory or rule-related advantage in New Mexico when a carrier admits it is vicariously liable for the actions of its driver. Rather, the advantages and disadvantages are practical. By admitting that a driver was in the course and scope of employment, liability may be imputed to the employer under the doctrine of *respondeat superior*, as function of New Mexico law. The obvious advantage is the carrier gains credibility with the jury by admitting facts that are not reasonably in dispute. This admission is also beneficial in terms of cohesion between the driver and the carrier. The disadvantage in admitting same arises when the admission is made too soon in the litigation, when all relevant facts have not yet been reasonably established.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Admitting agency by a motor carrier has a primary benefit: it can eliminate independent negligence claims arising from actions of negligent or grossly negligent conduct against the carrier. North Carolina courts have consistently viewed independent negligence claims as redundant and prejudicial once an agency relationship is admitted (but see punitive damage exception below). This admission may also narrow the scope of discovery in certain aspects.

However, independent negligence claims such as negligent hiring, retention, training, and/or entrustment remain viable if the plaintiff seeks punitive damages. Even when vicarious liability is admitted in response to punitive damages claims, it does not negate the possibility of independent negligence claims being pursued.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

A benefit to a motor carrier admitting vicarious liability of a driver is presenting a unified defense of the motor carrier and driver throughout the case.

A consequence of a motor carrier admitting vicarious liability of a driver is that it will trigger North Dakota's doctrine of *respondeat superior* and the motor carrier will be liable for any negligent acts of the driver. Under North Dakota's doctrine of *respondeat superior*, motor carriers, and all employers, are vicariously liable for the negligence of their employees while the employees are acting within the scope of their employment. *See* N.D.C.C. § 3-03-09*; see also Am. Nat. Fire Ins. Co. v. Hughes*, 2003 ND 43, ¶ 7, 658 N.W.2d 330. The underlying rationale for the doctrine is the employer's right to control its employee's conduct, and the employer's vicarious liability extends only to an employee's acts done on the employer's behalf and within the scope of the employee's employment. *Id.* Notably, an employer is not responsible for: injuries or death to passengers or damage to properties resulting from operation or use of a motor vehicle, not owned, leased, or contracted for by the employer in a ridesharing arrangement. *See* N.D.C.C. § 3-03-09(2).

Admitting vicarious liability could also expose the motor carrier to a claim for negligent hiring, training, retention, or supervision. Although negligent supervision derives from the doctrine of *respondeat superior*, it is distinct from the doctrine of *respondeat superior* in that negligent supervision takes an employer's fault into consideration whereas *respondeat superior* does not. *Doe YZ v. Shattuck-St. Mary's School*, 214 F. Supp. 3d 763, 785 (D. Minn. 2016). Negligent employment imposes direct liability on the employer only where the claimant's injuries are the result of the employer's failure to take reasonable precautions to protect the claimant from the misconduct of its employees. *Id.* In order to prove a cause of action for either negligent hiring, supervision or retention, the plaintiff must establish that the injury was caused by the tortious conduct of a employee, that the employer knew or should have known by the exercise of diligence and reasonable care that the employee was capable of inflicting harm of some type, that the employer failed to use proper care in selecting, supervising or retaining that employee, and that the employer's breach of its duty was the proximate cause of the plaintiff's injuries. *See Bryant v. Better Bus. Bureau of Greater Maryland, Inc.*, 923 F. Supp. 720, 751 (D. Md. 1996)

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

The benefits and consequences of a motor carrier admitting vicarious liability for its driver's conduct are currently in flux.

Currently, it is ambiguous as to whether a carrier admitting vicarious liability prevents a plaintiff from asserting direct liability claims (other than negligent entrustment) against a carrier. Prior to 2018, the courts followed the holding in *Jordan v. Cates*, 1997 OK 9, which prevents a plaintiff from asserting both vicarious liability and direct negligence claims against an employer where the employer has stipulated that the employee was acting within the court and scope of employment.

In 2018, the Oklahoma Supreme Court, in *Fox v. Mize*, 2018 OK 75, held that a plaintiff may maintain both a vicarious liability claim and a negligent entrustment claim. Since that time, certain courts have expanded on this holding to allow a plaintiff to maintain both vicarious and direct negligent claims against a carrier. Other courts have held that *Jordan v. Cates* is still controlling in regards to all direct negligence claims other than negligent entrustment.

A question that has been certified to the Oklahoma Supreme Court. Judge John D. Russell of the Northern District of Oklahoma certified the following question to the Oklahoma Supreme Court:

> Whether *Jordan v. Cates*, 935 P.2d 289 (Okla. 1997) prevents a plaintiff who asserts both vicarious liability claims and direct negligence claims against an employer—but does not assert an intentional tort claim—from maintaining claims against the employer for negligent hiring, training, retention, or supervision where the employer has stipulated that its employee was acting within the course and scope of employment?

Richardson v. Sibley, No. 23-CV-00059-JDR-MTS.

If the Oklahoma Supreme Court determines that *Jordan v. Cates* prevents a plaintiff from asserting both vicarious liability claims and claims for negligent hiring, training, retention, or supervision if the carrier has stipulated that its employee was acting within the course and scope of employment, a carrier can substantially limit the discovery which can be conducted and the claims that can be asserted at trial by admitting vicarious liability.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

There are no particular benefits to admitting vicarious liability of a driver in Oregon. A plaintiff may still bring a direct negligence claim against a motor carrier and seek discovery on a direct negligence claim. However, it is our experience that oftentimes plaintiffs do not pursue a pleaded direct negligence claim if vicarious liability is admitted of an at-fault driver. The consequence is that the motor carrier will be vicariously liable for the driver's negligence. *Stanfield v. Laccoarce*, 284 Or. 651, 654-55, 588 P.2d 1271 (1978). Determinations of whether an employee was acting within the "course and scope" of employment or as part of an agency relationship are very fact specific in Oregon. An admission of vicarious liability in one case does not, on its own, preclude denial of vicarious liability in another case.

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Pennsylvania

Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Federal district courts in Pennsylvania have refused to allow claims for negligent entrustment, supervision, monitoring, and hiring to proceed when (1) the supervisor/employer defendant admits that its employee was acting within the scope of his or her employment at the time of the accident, and (2) the plaintiff does not have a viable claim for punitive damages against the supervisor/employer defendant. Sterner v. Titus Transp., LP, 2013 WL 6506591. Courts have dismissed such claims, absent a punitive damages claim, because "nothing can be gained from it when the defendant employer has admitted the agency of the driver, and to permit the action to proceed on both counts would allow the introduction of evidence of prior accidents of the driver, highly prejudicial, irrelevant and inadmissible in the cause of action based on the imputed negligence of the driver." Id. Therefore, defendant supervisors/employers may object to engaging in corporate discovery that support corporate negligence claims.

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Rhode Island

Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Although it has not been addressed by a court in Rhode Island, an employer who admits the driver was in the course and scope of his employment for a direct negligence claim precludes any claim for negligent entrustment. As such, the benefit is that the employee's driving history becomes irrelevant and inadmissible. There really is no determinant aside from the fact that any defense based upon non-permissive use or acts outside the scope of employment will no longer be available.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Some states apply the "preemption rule" where an employer admits that it is vicariously liable for the actions of its employee. Under such circumstances, and absent a claim for punitive damages, the plaintiff is no longer permitted to pursue direct negligence claims against the Employer. However, the Tennessee Supreme Court has recently held that the preemption rule does not apply in Tennessee, as it stands "in conflict with the basic principles of Tennessee's system of modified comparative fault." *Binns v. Trader Joe's East, Inc.*, 690 S.W.3d 241, 252 (Tenn. 2024). The Court found that it could not support "the notion that the preemption rule is entirely consistent with Tennessee's system of modified comparative fault." *Id.*, at 249. The Court found that "permitting an employer to eliminate a plaintiff's direct negligence claims at the pleading stage simply by admitting to vicarious liability results in a potentially distorted allocation of fault, thereby forcing a jury to allocate fault between parties who were not wholly responsible" *Id.*, at 251-252 (citing *Carroll v. Whitney*, 29 S.W.3d 14 (Tenn. 2000). In addition, Rule 8.01 of the Tennessee Rules of Civil Procedure states that the Plaintiff may plead for relief "in the alternative or of several different types," and Rule 8.05(2) goes further in allowing a party to "state as many separate claims or defenses as he or she has, regardless of consistency." Even had vicarious liability been claimed by the employer, the plaintiff would have the ability to find alternative means to claim that the employer is liable. Unlike jurisdictions where the preemption rule applies, in Tennessee, a plaintiff "may proceed with a direct negligence claim against an employer even after the employer admits to being vicariously liable for the actions of its employees." *Binns*, at 253. In *Davis v. Sunrise Transportation Express, Inc.*, 2024 WL 2750943 (M.D. Tenn. May 29, 2024), a defendant motor carrier employer that filed a Motion to Dismiss, seeking application of the preemption rule, was forced to withdraw said motion following the Court's resolution of *Binns*.

Simply put, the "preemption rule" does not apply in Tennessee. However, admitting "course and scope" at the time of the accident, if accurate, retains some benefit by avoiding discovery on the issue, and the potential argument to a jury that the employer denies responsibility, and the employer/employee relationship, even if the relationship is obvious.

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

In Vermont, a motor carrier that admits that it is vicariously liable for any fault or liability assigned to the driver can still be subject to an independent claim for negligence (including negligent hiring, retention, and training). The Vermont Supreme Court has established that "[a] principal may, in addition to being found vicariously liable for tortious conduct of its agents, be found directly liable for damages resulting from negligent supervision of its agents' activities. *Brueckner v. Norwich University*, 169 Vt. 118 (1999). According to the Court, "direct liability for negligent supervision of employees or agents constitutes an entirely separate and distinct type of liability from vicarious liability under respond eat superior. *Id*. Thus, if the motor carrier admits that it is vicariously liable for fault and/or liability of its agent, the driver, a plaintiff may still bring independent negligence claims against the motor carrier.

The benefit of admitting a driver was in the “course and scope” of employment lies largely in potentially avoiding extraneous discovery. Specifically, this admission can hamper a plaintiff’s attempts to use the “Reptile Theory” to obtain a wide expensive swathe of irrelevant discovery that might assist the plaintiff in putting the defendant on trial instead of litigating the circumstances of case. Plaintiffs hope that jurors will view the defendant corporation as a threat to public safety and act out of an emotional desire to protect themselves, and society at large.

However, note that if a defendant corporation admits the driver was in the course and scope of employment, it naturally waives any defenses based on the driver’s potential ultra vires actions (intoxication, frivolity, horseplay, etc.).

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Yes. Admitting vicarious liability precludes a plaintiff from filing a direct claim against the motor carrier based on negligence hiring, training, and supervision. *LaPlant v. Snohomish County*, 162 Wn. App. 476, 271 P. 3rd 254 "2011" This rule was recently reaffirmed in *LaBounty v. Mount Baker School District*, 2024 WL 692500 and *Lidstrom v. ScotLynn Commodities, Inc.*, 2024 WL 2886570. This is recent case in the Federal Court that addressed the issue re: vicarious liability. It would not preclude a separate claim for negligence based upon a special relationship or independent duty. *Harris v. Federal Way Public Schools*, 21 Wn. App. 2nd 144, 505 P. 3rd 140 "2022".

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

One of the benefits is that admitting vicarious liability can expedite the legal process and potentially reduce litigation costs. By acknowledging responsibility, the motor carrier may avoid an extensive legal battle and the associated expenses. This can also lead to quicker settlements, which might be beneficial for both the carrier and the injured parties. *See generally Jackson v. Donahue*, 193 W. Va. 587, 457 S.E.2d 524 (1995).

However, there can be consequences as well. Admitting vicarious liability means that the motor carrier will be held financially responsible for the actions of its driver. This can result in substantial financial liability, especially if the damage is significant. The motor carrier's insurance premiums may also increase because of the admission of liability, reflecting the higher risk associated with the carrier's operations. *Id.*

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Are there any benefits or consequences in your state for a motor carrier to admit vicarious liability of a driver?

Wyoming currently relies on the McHaffie rule for admitting vicarious liability of a driver. In *Bogdanski v. Budzik*, 2018 WY 7, 408 P.3d 1156 (Wyo. 2018), the Court held that a plaintiff is barred from pursuing claims of negligent retention, supervision, or training against an employer that admits vicarious liability for the acts of an employee for the fear of double collection. *Bogdanski*, however, will not protect an employer from allegations of negligence that are independent of any negligence by the employee. *JTL Group, Inc. v. Gray-Dockham*, 2022 WY 67, ¶ 32, 510 P.3d 1060, 1069 (Wyo. 2022). Moreover, a federal district court judge has predicted that the Wyoming Supreme Court would allow claims on negligent retention, supervision, and training against an employer if the plaintiff has a valid claim for punitive damages. *Thorbus v. H.H. Williams Trucking, LLC,* 2020 U.S. Dist. LEXIS 267148, *11 (D. Wyo. Mar. 10, 2020).