

# Litigating Negligent Hiring Cases

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# Theories of Employer Liability

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- **Respondeat Superior**
- **Negligent Entrustment**
- **Negligent Hiring**

# Advantages of the Doctrine of Negligent Hiring

- **Focus on Employer Conduct**
- **Insurance Coverage**
  - Negligence v. Intentional Acts
  - Duty to defend
    - Incident of ownership, maintenance
- **Prior bad acts admissible**
  - Prior criminal history
  - Employee's reputation

# Advantages of Negligent Hiring

- **Punitive Damages**
  - Failure to inquire into background of applicant
- **Defenses Limited**
  - Assumption of risk
- **Statute of Limitations**
  - Intentional acts v. negligence
  - Medical Malpractice claims

# More Advantages

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- **Workers Compensation**
- **Summary Judgment Adjudication**
- **Win ratio is 72 %**
- **Average settlement: \$1.2 million**

# Proving Negligent Hiring: Elements

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- **Employment Relationship**
- **Employee is Unfit, Dangerous or Incompetent**
- **Employer knew or should have known**
- **Employee's dangerous propensities proximately caused the injury**

# Employment Relationship

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- **Employees**

- **Selection and engagement**
- **Payment of wages**
- **Power of discharge**
- **Power to control conduct**
- **Work is part of regular business of employer**

# Employment Relationship, cont.

- **Independent Contractors**
- **Subcontractors**
  - **Holds out as authorized agent**
    - High level of public contact
    - Furthered by relationship with the employer
  - **Reasonable reliance on representation**
- **Service personnel, maintenance workers, home health care providers, security guards, real estate agents, rental apartment personnel, delivery drivers, child care providers**



# Relationship to Victim

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- **Victim had legal right to be there**
  - Employee with legal right
  - Employee illegally present
- **Employer provided means of access to Victim**
- **May not end with termination of employment relationship**

# Employee is Unfit

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- **Dangerous Nature**
- **Hindsight**

# Employer Knew or Should Have Known

- **Employer's Investigation**
- **Application Process**
- **Interview Process**
- **Reference and Background Checks**
- **Maintenance of Records**

# Employer's Investigation

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- **Work History**
- **Residence History**
- **Driver's History**
- **Criminal History**

# Scope of Investigation

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- **No uniform rule**
- **Proportionate to job duties**
  - **Personal information**
  - **Public contact**
  - **Access to homes**
  - **Indicia of authority**

# Heightened Duty

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- Health care employees
- Maintenance Workers
- Apartment Personnel
- Physicians
  - Licensing by state not enough

# Background Checks

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- **Review of application**
  - Gaps in employment
  - Frequent moves
  - Admissions of convictions
- **Employer on Notice**
  - Must make further inquiries

# Information Age

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- **Ready availability of information**
- **Internet searches**
- **Low cost alternative**
- **Quick and easy**
- **Check for**
  - **Address verification**
  - **Newspaper articles**



# References

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- **Personal references checked**
- **Professional references**
- **Educational claims**
- **Any gaps**

# Waiver in Application

- **“I authorize employer to make an investigation and authorize any other to provide any information they have regarding me. In consideration, I waive all providers of information from any liability as a result of furnishing and receiving this information.”**

# Waiver in Application

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- **KNOW that companies do not provide accurate information**
- **KNOW that companies have potentially relevant information**
- **Solicit affirmative statements**
- **Negligent Misrepresentation**

# Maintenance of Records

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- **Fair Credit Reporting Act**
- **No documents means no investigation**
- **No investigation can mean punitive**
- **Continuing duty**
  - **Monitor activity**
  - **Open channels of communication**
  - **Complaints documented**

# Proximate Cause

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- Failure to investigate may be irrelevant
- Must prove background checks would indicate propensity
- Harm stems from knowledge
- Must be related to bad conduct

# Conclusion

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- **Checklist for Negligent Hiring**
  - p. 95 of material
  - [amanda@mindspring.com](mailto:amanda@mindspring.com)
- **Read Victim Advocate**
- **Research cases on [victimbar.org](http://victimbar.org)**