

HOOD LAW FIRM, LLC  
172 Meeting Street  
P.O. Box 1508  
Charleston, SC 29402

*Ryan A. Earhart*  
Robert H. Hood  
Robert H. Hood, Jr.  
Ryan A. Earhart

August 11, 2000

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 14<sup>th</sup> day of August, 2000.  
*Jaime A. Zollo*

STATE OF SOUTH CAROLINA )  
COUNTY OF JASPER )

) IN THE COURT OF COMMON PLEAS  
)  
) A JURY MATTER  
)

Starr Gadson, By Her Guardian  
Ad Litem Kathy Gadson,  
ECO Services of South,

)  
)  
) ECO Services of South  
) Carolina, Inc.'s  
) Memorandum in Support of  
) Its Motion for Summary  
) Judgment

Plaintiff,

v.

ECO Services of South Carolina, Inc.,  
Joseph Jenkins, and John Jenkins,

)  
)  
) CASE NO.: 98-CP-27-66  
)

Defendants.)

TO: Daniel E. Henderson, Esquire:

Facts

This suit is the result of a single vehicle accident on August 7, 1997. The Plaintiff(s) or their wards were passengers on a garbage truck owned by ECO. The driver of the truck at the time of the accident is in dispute. None of the Plaintiffs were the alleged drivers. All of the Plaintiffs allege they were thrown from the truck after the driver lost control of the vehicle and allegedly suffered injuries from this accident.

Law and Legal Argument

The Plaintiff has alleged two general liability theories against ECO: respondeat superior and negligent entrustment.

### A. Respondeat Superior

Under the doctrine of respondeat superior an employer may be liable for the torts of an employee if the tort was committed within the scope of the employee's employment. *See generally*, F. Patrick Hubbard and Robert I. Felix, *The South Carolina Law of Torts* 2<sup>nd</sup> ed., p. 635- 646 (1997). There is no dispute that Joseph Jenkins was acting outside the scope of his employment. He took ECO's truck to the gymnasium to play basketball. He then "cruised" several apartment projects at night picking up passengers and driving them to a fast food restaurant. He later took these teenagers to a boat landing where they recreated.

ECO operates a waste disposal business. It is clear that Mr. Jenkins was using the truck on a "frolic" not connected in any manner to his employment. The Court of Appeals explained the law of South Carolina as follows, "If the servant is doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment, although he may exceed his authority. On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with his master's business, his conduct falls outside the scope of his employment." *Crittendon v. Thompson-Walker Co.*, 288 S.C. 112, 341 S.E.2d 385(Ct. App. 1986). It is inconceivable how Mr. Jenkin's conduct could have been for the benefit of ECO. Therefore, no cause of actions exists for the Plaintiff under the doctrine of respondeat superior.

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### B. Negligent Entrustment

There is an arguable factual controversy regarding whether the Defendant Joseph Jenkins or the Defendant John Jenkins was driving the truck at the time of the accident. However, the resolution of this controversy is not germane to a determination of ECO's liability under a negligent entrustment theory. Rather, the Court must first determine if there was any negligence in the entrustment of truck to Joseph Jenkins. If there was no negligence in the entrustment of the vehicle, and if Joseph Jenkins was acting outside the scope of his employment, the law of South Carolina is clear that ECO is not responsible for the injuries the Plaintiff(s) sustained. *See e.g. McAllister v. Graham*, 287 S.C. 455, 339 S.E.2d 154 (Ct. App. 1986) (employer not liable for injuries when employee drives truck out side of scope of permission and no evidence of negligent entrustment). Further, if Joseph Jenkins was negligent in entrusting the vehicle to John Jenkins, this negligence can not be imputed to ECO because it is clear the Joseph Jenkins was acting outside the course of his employment.

The elements required to establish negligent entrustment are:

1. Knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking;
2. Knowledge of or knowledge imputable to the owner that the driver was likely to drive intoxicated; and
3. Under these circumstances, the owner entrusts a vehicle to such a driver.

*McAllister v. Graham*, 287 S. C. 455, 339 S. E. 2d 154 (Ct. App. 1986). The reported cases in South Carolina focus on two types of negligent entrustment:

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entrustments to alcoholics and entrustments to incompetent drivers. The *McAllister* case makes clear that the entrusting party must have actual knowledge, or knowledge imputable to them, of the dangerous propensities of the driver. ECO had no knowledge that Joseph Jenkins was a dangerous driver. See Affidavit of Lou Diaz at ¶ 7. Further, ECO conducted a check of Joseph Jenkins driving record, prior to the accident, and discovered no traffic violations. Affidavit of Diaz at ¶ 6.

In order to establish negligent entrustment of an automobile a Plaintiff must show more than an employee was permitted to drive a vehicle and an accident ensued. See *McAllister*. A Plaintiff must show some evidence that the employer knew of the employee's dangerous propensities. Unless, the Plaintiff(s) can establish some evidence that ECO knew of the dangerous propensities of Joseph Jenkin's driving, the Court must grant ECO summary judgment and force the Plaintiff(s) to proceed against the at-fault parties, Joseph and John Jenkins.

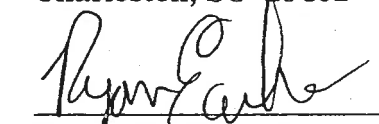
Conclusion

It is undisputed that Joseph Jenkins was acting outside the scope of his employment with ECO when this accident occurred. Therefore, ECO can not, as a matter of law, be liable for Joseph Jenkin's conduct under the doctrine of respondeat superior. Additionally, the evidence is clear that Joseph Jenkins did not have permission to use the ECO vehicle for personal business and ECO had no knowledge that Joseph Jenkins had any dangerous driving

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propensities. Therefore, the court must grant ECO's Motion for Summary Judgement.

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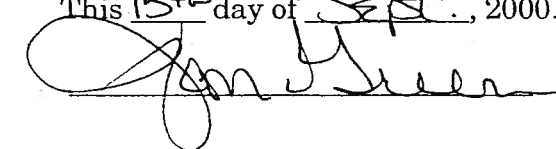
  
Robert H. Hood, Jr.  
Ryan A. Earhart

September, 2000  
260401

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 15<sup>th</sup> day of Sept., 2000.



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