

PUBLICATION

Texas Court Holds Employer Not Liable for Drunk Employee's Death

January 27, 2014

A state appellate court in Houston, Texas recently held that an employer had no duty to prevent an employee from injuring himself as a result of his own intoxication.

Robbie Lynn Clark, an employee of Vaquero, a contractor for EOG Resources, Inc., died after wrecking a company truck while intoxicated. Clark was leaving a job site to go to lunch when he ran the truck off the road. An autopsy revealed Clark's blood alcohol concentration to be .344, more than four times the legal limit in Texas.

Clark's wife and son, Plaintiffs, sued EOG alleging several negligence-based claims, including negligence, negligent hiring, negligent supervision, and negligent retention, as well as gross negligence and wrongful death. Plaintiffs argued that EOG ignored its own internal policy prohibiting alcohol use on the job and failed to investigate Clark's employment history.

Clark had a long history of driving while intoxicated. Two weeks after being released from prison for his fourth DWI conviction, he was hired by Vaquero to work for EOG after a recommendation from his half-brother who worked for Vaquero. A background check of Clark's driving record did not reveal the DWI convictions because his convictions were more than three years old. Vaquero hired Clark without verifying the job history or references listed on his application, which listed a continuous employment history with no apparent gaps in time despite his incarceration.

Unknown to Vaquero, Clark was again arrested for a DWI six months into his employment, and his license was suspended. Clark continued driving the company truck without a license, and the fatal accident occurred ten months later.

The First District Court of Appeals affirmed the trial court's summary judgment in favor of EOG. The court concluded that it was unnecessary to determine issues related to Clark's independent-contractor status because even if treated as an employer, EOG did not owe a duty to Clark.

Although the Texas Supreme Court held in *Otis Engineering Corp. v. Clark*, 668 S.W.2d 307 (Tex. 1984), that an employer has a duty in certain circumstances to prevent an intoxicated employee from causing an unreasonable risk of harm to third persons, several Texas courts have declined to extend *Otis* to create a duty that requires an employer to protect an intoxicated employee from injuring himself unless the employer exercised control over the employee.

Here, the court held that the alleged control fell short of what is required to demonstrate that EOG owed a duty to Clark to prevent him from injuring himself driving to lunch while intoxicated. Plaintiffs had no evidence that EOG knowingly assumed control over an intoxicated Clark or that the company encouraged or required Clark to drink alcohol at work.

A copy of the opinion is available here: <http://statecasefiles.justia.com/documents/texas/first-court-of-appeals/01-12-00262-cv.pdf?ts=1389090802>.

While Texas employers can take comfort that the courts will not extend liability to illogical extremes when their employees take it upon themselves to drive drunk, this case provides a cautionary tale for employers regarding the importance of updated background checks.