

“Respondeat Superior”: is the trucking carrier responsible for your traffic accident?

It's not always clear who's to blame after an accident, but if you're experiencing pain and suffering due to a commercial trucking collision caused by someone else's negligence—you have rights!

When it comes to your personal injury case, you'll frequently hear terms you're unfamiliar with being used in the context of your claim. An experienced board certified civil trial attorney can explain these terms to you and will have experience applying them on your behalf when necessary. The legal jargon that often comes up when an attorney pursues a trucking related accident is *Respondeat superior*.

The legal definition of **Respondeat Superior** (the English translation of the Latin 'make the master answer') is as follows:

“A legal doctrine, most commonly used in tort, that holds an employer or principal legally responsible for the wrongful acts of an employee or agent, if such acts occur within the scope of the employment or agency.”

Simply put, “Respondeat Superior” is being able to determine under the law, whether the company that employed the truck driver is responsible for the trucking-related accident caused by that employee. A personal injury case caused by a negligent truck driver cannot move forward until this is determined.

Applying “Respondeat Superior”

Applying this theory, the carrier would be liable for the negligent act committed by any of its employees (truck drivers in this case), given the acts are able to be deemed unintentional and were executed within the “scope of employment”.

It's confusing outside of a law firm, but this simply means that an employee holds liability to his or her employer, creating the liability of the employer as if they, themselves [the employer] had committed the negligent act.

“The scope of employment” and your right to compensation

The “scope of employment” is defined as:

“Actions of an employee which further the business of the employer and are not personal business, which becomes the test as to whether an employer is liable for damages due to such actions under the doctrine of respondeat superior.”

Now that we've defined the meaning of this term, let's look at how it's applied in practice. In order to successfully obtain compensation for your pain and suffering, your attorney must determine what constitutes an act being committed within the "scope of employment".

This can be a lengthy process and only an experienced attorney will be up to the difficult task in this step of the legal process.

Laws differ by state, but the most common acts that determine these necessary factors are:

- Employee intent
- Time and place of negligent conduct
- Job the employee was hired to perform
- Incidents which the employer can reasonably expect of the employee
- How much freedom is enacted upon the employee when performing his or her assigned job

To cite an example scenario:

If a truck driver rear ends another driver while out on an assigned task, such as a delivery or pickup, the employer is liable for the ensuing pain and suffering of the rear-ended driver because the employee was acting within the scope of his or her employment.

This is just one example, and there are many things that factor into liability. Your attorney will look at everything and determine who to pursue in your specific personal injury claim.

Employee vs. independent contractor: there's a difference in liability!

The first thing an attorney and their client must determine to proceed with their personal injury claim is whether the truck driver is an employee of a company or an independent contractor. The difference lies in who determines how the work the employee is hired to perform is allowed to be carried out.

It's important to note that a company is not usually the one liable for acts perpetrated by an independent contractor. The independent contractor is given more autonomy than a truck driver employed by a specific carrier.

Emphasis lies in the specific relationship

In most states, emphasis is usually placed on whether the carrier has any right to control the manner in which the work their employee is hired for is performed. If the employer has control over the end result, but not how the work required to achieve the end result is performed, this establishes an independent contractor relationship between the carrier and the driver.

If, however, a driver is employed by a carrier that requires FMCSA standards be enforced while performing the work (specific steps to securing cargo, log book specifications) this would not fall under an independent contractor relationship and would make the driver an employee.

Intent in trucking liability: intentional tort and applying the theory of “Respondeat”

There is an exception to the general practice that a carrier is responsible (liable) for accidents incurred by its employed drivers. Under normal circumstances, an employer will not be liable for intentional tort (kidnapping, assault) committed by a driver they employ.

How does this factor in? The principle of “Respondeat Superior” will not be considered as being met when the acts of an employee are not related to the company at which they are employed.

Contact us today to schedule your complimentary consultation. There’s never any obligation. Take the first step to the compensation you deserve today. Call us: (877) 529-0080

We never settle for less. Why should you?

© Sagi Shaker, Esq.