No. 126666

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

FLETCHER McQUEEN, Plaintiff-Appellant, v. PAN-OCEANIC ENGINEERING CO., INC., a corporation, Defendant-Appellee.	)	On Appeal from the Appellate Court of Illinois, First District, No. 1-19-0202 Heard in that Court on Appeal from the Circuit Court of Cook County, Illinois, No. 14 L 1050 Honorable Bridget A. Mitchell, Judge Presiding

AMICUS CURIAE BRIEF OF ILLINOIS DEFENSE COUNSEL IN SUPPORT OF DEFENDANT-APPELLEE

Steve Grossi
Bruce Farrel Dorn & Associates
120 N. LaSalle St., Suite 1900
Chicago, Illinois 60602
(312) 683-3000
steve.grossi.dvop@statefarm.com
home.law-dorn@statefarm.com
Employees of the Law Department
State Farm Mutual Automobile Insurance Company

Illinois Defense Counsel, *Amicus Curiae*

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STATEMENT OF INTEREST OF THE *AMICUS CURIAE*

Illinois Defense Counsel is a bar association comprised of Illinois attorneys who devote a substantial portion of their practice to the representation of business, corporate, insurance, professional, governmental, and individual defendants in civil litigation. IDC is the largest state defense bar organization in Illinois. For more than 50 years, IDC has endeavored to ensure civil justice with integrity, civility, and professional competence.

IDC has a substantial interest in this case because the decision of the Illinois Supreme Court in this case is likely to have a direct impact on IDC members, many of whom represent employers, employees, principals, and agents. And the decision in this case will likely have a far-reaching impact on the potential liability of employers and principals in tort litigation, including the numerous persons, corporations, and entities that IDC members represent.

IDC is respectful of the fact that it is a privilege, not a right, to appear as an *amicus curiae* and respectfully requests permission to appear in this case. IDC submits that the experience of its members in this area of law will provide valuable insight as this Court considers the important issues presented.

SUMMARY OF ARGUMENT

An employer's liability in a general negligence automobile accident claim can be categorized by three, not two, possibilities. First, an employer can be held vicariously liable for employee driver negligence. Second, under certain facts, an employer can be directly liable even if the employee driver did not act negligently. Third, in other cases,

an employer can be directly liable only if both the employer and the employee driver acted negligently. In distinguishing between the second and third categories, courts in Illinois and across the nation look to whether the employer's direct negligence is causally connected to the employee's negligence for which *respondeat superior* is admitted.

In cases where *respondeat superior* is admitted, the Illinois Appellate Court has uniformly decided that an employer cannot additionally be held directly liable for acts that are dependent on the negligence of the employee. This line of cases goes back half a century and comports with the majority rule adopted by most jurisdictions that have considered the issue.

Negligent entrustment, hiring, retention, supervision, and training claims generally require that the employee entrusted, hired, retained, supervised, or trained has committed some negligent act or omission in order to establish liability against the employer. Otherwise, the employer's direct negligence cannot be considered a proximate cause of the subsequent injury, because the same risk of harm is analyzed through the external, objective reasonable person standard. In negligent driving cases, or any other direct dependent liability claims, the employer's liability should not extend beyond the liability of the employee driver. Additionally, an employer's alleged negligence in training or supervising an employee should not be considered a proximate cause when the employee was exercising ordinary care at the time of the accident.

The majority rule articulated in *Gant* aligns with the principles of proximate causation and prevents an unnecessary upheaval of a sound body of precedent. Thus, IDC submits that the majority rule should be adhered to by this Court and applied here, as the employer's liability depended on the employee's liability for the same risk of harm.

ARGUMENT

I. An Employer's Liability for the Acts of an Employee May Be Vicarious Liability, Direct Independent Liability, or Direct Dependent Liability.

Plaintiff presents a derivative-versus-direct liability dichotomy and argues that an employer's direct liability should not be extinguished by an admission of *respondeat superior*. But plaintiff oversimplifies the analysis. An employer's liability may be vicarious liability, which requires only employee liability (for negligence, willful and wanton conduct, intentional conduct, or otherwise). An employer's liability may too be direct and independent, which requires employer liability without requiring employee liability. But an employer's liability may also be direct and dependent, which requires both employer and employee liability. All three types of claims have been recognized in Illinois jurisprudence. A series of simple vehicle accident examples, described herein, serves to highlight the distinction between each of these types of claims.

A. Vicarious Liability Requires Employee Liability.

In vicarious liability claims, known also as *respondeat superior* claims, employee liability results in employer vicarious liability, even if the employer committed no wrong. *Vancura v. Katris*, 238 Ill. 2d 352, 375 (2010). Vicarious liability is entirely dependent on employee liability. *Moy v. County of Cook*, 159 Ill. 2d 519, 524 (1994) ("When an action is brought against a master based on allegedly negligent acts of the servant and no independent wrong is charged on behalf of the master, liability is entirely derivative, being founded upon the doctrine of *respondeat superior*.").

Example 1: Driver A, employed by Employer B and within the scope of employment, disregards a stop sign and strikes another vehicle traveling on a thru street. Driver A is found liable for negligence. Employer B properly entrusted, hired, retained,

supervised, and trained Driver A. Nevertheless, Employer B is vicariously liable for the negligence of Driver A, even though Employer B committed no wrong.

Vicarious liability claims are far more common than direct liability claims. *Hills v. Bridgeview Little League Ass'n*, 195 Ill. 2d 210, 232 (2000) quoting *Lancaster v. Norfolk & Western Ry. Co.*, 773 F.2d 807, 818, 820 (7th Cir. 1985). Examples abound in Illinois case law. See, *e.g.*, *Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 123-24 (1978) (in *respondeat superior* claims, the acts of master and servant are unified such that if one is found not liable for acts predicated entirely on servant negligence, then the other must be found not liable); *McHale v. W.D. Trucking, Inc.*, 2015 IL App (1st) 132625, ¶ 70 (jury found principal liable for acts of agent based on doctrine of *respondeat superior*); *Ledesma by Ledesma v. Cannonball, Inc.*, 182 Ill. App. 3d 718, 728 (1st Dist. 1989) (employer who admitted that employee was acting within scope of employment would be liable under *respondeat superior* for any negligence of the employee).

B. Direct Independent Liability Requires Employer Liability.

Some direct liability claims against an employer are independent of employee liability. Negligent maintenance claims are a prime example of this category of cases.

Example 2: Driver C is employed by Employer D and driving a vehicle that is maintained by other employees of Employer D. While driving on the highway, the brakes fail suddenly and without warning, and Driver C is involved in an accident. Driver C is found to have used ordinary care and not liable. However, Employer D may still be directly liable for negligently maintaining the vehicle because the risk presented by faulty brakes existed independently of any negligence of the employee driver.

The Illinois Appellate Court has recognized that direct independent liability

claims do not preclude a separate action against an employer. *Levitt v. Hammonds*, 256 Ill. App. 3d 62, 65-66 (1st Dist. 1993) (issue of fact precluded summary judgment as to whether principal negligently maintained vehicle brakes, even where agent was not liable, as alleged negligence did not depend on agent's actions); *Bunyan v. American Glycerin Co.*, 230 Ill. App. 351, 356 (4th Dist. 1923) (verdict against employer and in favor of individual employee upheld because the evidence established that a different employee may have left explosive material in unsafe location). And jurisdictions that follow the majority rule articulated in *McHaffie* have recognized direct independent liability, described in one form as an unknowing employee exception, whereby the employer who admits *respondeat superior* may still be held liable if "the employer's negligence is *** unconnected to any negligent act of the employee." *Ferrer v. Okbamicael*, 2017 CO 14M, ¶34 (citations omitted).

C. Direct Dependent Liability Requires Both Employer and Employee Liability.

Most direct liability claims against an employer depend on employee liability. This can be referred to as either direct dependent liability or direct derivative liability. *McHaffie By and Through McHaffie v. Bunch*, 891 S.W. 2d 822, 825 (Mo. 1995) ("Derivative or dependent liability means that one element of imposing liability on the employer is a finding of some level of culpability by the employee in causing injury to a third party."). Since the term derivative liability has multiple meanings, dependent liability is used herein. See Black's Law Dictionary, Liability, derivative liability (11th ed. 2019) (defining derivative liability as "[l]iability for a wrong that a person other than the one wronged has a right to redress."). In a direct dependent liability claim, a finding that the employee is not liable cannot be reconciled with a finding of employer liability.

Example 3: Driver E is employed by Employer F. While acting within the scope of employment, Driver E's vehicle is rear-ended while stopped for one minute at a red light. Driver E is found not liable. Even if Employer F negligently entrusted, hired, retained, supervised, and trained Driver E, Employer F is not liable for any of those direct tort claims because Employer F's direct negligence cannot be considered a proximate cause. Driver E exercised ordinary care in stopping at a red light for one minute, irrespective of whether Employer F trained Driver E properly or not. And an employer should not be held liable for the acts of an employee who exercised ordinary care.

Direct dependent liability claims may arise in a variety of different contexts. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (verdict in favor of individual officers upon finding that they did not inflict a constitutional injury barred an action against the city and police commission, even if departmental regulations improperly authorized use of constitutionally excessive force); *Thompson v. Northeast Illinois Regional Commuter R.R. Corp.*, 367 Ill. App. 3d 373, 376 (1st Dist. 2006) (negligent entrustment and negligent retention are duplicative when *respondeat superior* liability is admitted); *Boston v. Lake Shore Mutual Insurance Co.*, 10 Ill. App. 3d 137, 139 (1st Dist. 1973) (when employer and employee were both sued for malicious prosecution based on same facts, jury verdict against employer but for employee was inconsistent).

II. Direct Dependent Liability Claims, Like This One, Require Employee Negligence to Hold an Employer Liable.

This Court has observed that direct liability claims are generally useful only when *respondeat superior* liability is denied, such as when the employee is not acting within

the scope of employment. *Hills*, 195 Ill. 2d at 232 quoting *Lancaster*, 773 F.2d at 818, 820. This makes sense. If *respondeat superior* is admitted, then why would a plaintiff add the additional element of establishing direct liability against the employer rather than the simpler course of establishing only employee liability? But this conclusion—that direct liability claims are used infrequently and generally when scope of employment is at issue—only follows because most direct liability claims depend on employee liability.

A close look at the elements validates that the appellate court here properly applied the majority rule articulated in *Gant* to the negligence allegations against Pan-Oceanic, all of which depended on Lavonta Green either negligently accepting the load or negligently driving the vehicle.

A. The External, Objective Reasonable Person Standard Applies to Both the Employer and Employee for the Same Risk of Harm.

In Illinois, the standard of care in ordinary negligence cases is the external, objective reasonable person. *Advincula v. United Blood Services*, 176 Ill. 2d 1, 22 (1996) (ordinary careful person or reasonably prudent person standard of care "reflects the community's demand for a standard that is external and objective."). All vehicle operators on the roadway owe the same duty with respect to placing others in potential danger. Illinois Pattern Jury Instruction, Civil, No. 70.01.

It is also true that the external, objective reasonable person standard can incorporate certain subjective characteristics. For example, professionals are held to a higher duty of care, and minors are held to a different duty of care. See *Advincula*, 176 Ill. 2d at 22-23 (professionals are judged in accordance with a reasonable professional standard of care); *Diederich v. Walters*, 65 Ill. 2d 95, 103 (1976) (minor's contributory negligence is judged in accordance with minor of the same age). But when the risk of

harm arises from vehicle operation, the duty of care is the same. *Tipsword v. Melrose*, 13 Ill. App. 3d 1009, 1013 (3d Dist. 1973) (applying same duty of care to all vehicle operators is fair to all parties concerned). Even a minor operating a vehicle is held to the same standard of care as an objective reasonable adult. *Conway v. Tamborini*, 68 Ill. App. 2d 190, 197 (3d Dist. 1966).

Negligence involves only an action, not a state of mind. Prosser and Keeton on the Law of Torts § 31, at 169 (W. Page Keeton et al. eds., 5th ed. 1984); see also *Beck v. Dobrowski*, 559 F.3d 680, 682 (7th Cir. 2009). A failure to exercise ordinary care is negligence "even if it is due to clumsiness, stupidity, forgetfulness, an excitable temperament, or even sheer ignorance." Prosser on Torts § 31, at 169 (W. Page Keeton et al. eds., 5th ed. 1984). So in analyzing whether a duty was breached, courts look to the acts taken as compared to what acts would have been taken by an objective reasonable person. The law does not splice between employer and employee when the injury arises from a vehicle accident; both are treated equally under the law and compared to the objective reasonable person. Prosser on Torts § 32, at 174 (W. Page Keeton et al. eds., 5th ed. 1984) (reasonable person standard must be the same for all persons, not based on the judgment of an individual, as "the law can have no favorites").

When the same risk of harm is at issue, such as when an injury occurs due to allegedly negligent vehicle driving, liability of the employer and employee is intertwined. Even if the employer is sued for negligently training the employee driver, the risk presented by that lack of training—whether it be negligent braking, speeding, or turning—is the same risk presented by the employee driver's act of braking, speeding, or turning. In other words, the employer's direct negligence is connected to the employee's

negligence. The risk of harm is not that an employee will use ordinary care; it is that an employee will not use ordinary care. That is why the employer's liability depends on employee negligence. And the two results must be consistent because the objective reasonable person would act no differently if an employer or an employee faced the same risk of potential harm created by negligent driving. In short, as the appellate court held, the employer and employee rise and fall together under these circumstances.

B. In a Direct Dependent Liability Claim, the Proximate Cause Requirement for the Employer Encompasses Employee Liability Under an External, Objective Reasonable Person Standard.

Claims for negligent entrustment, negligent hiring, negligent retention, negligent supervision, and negligent training generally include a proximate causal connection that requires the employee entrusted, hired, retained, or supervised to have acted wrongfully. *Evans v. Shannon*, 201 Ill. 2d 424, 434 (2002) (incompetency of driver must be a proximate cause of injury in a negligent entrustment action); *Van Horne v. Muller*, 185 Ill. 2d 299, 311 (1998) (in a negligent hiring or retention claim, the employee's particular unfitness must have proximately caused the injury); *Oakley Transport, Inc. v. Zurich Insurance Co.*, 271 Ill. App. 3d 716, 726-27 (1st Dist. 1995) ("negligent supervision is derivative of, and dependent upon, the underlying negligent use of the vehicle. [An employer's] negligent supervision simply cannot be divorced from its employee's negligent driving."); *McQueen v. Green*, 2020 IL App (1st) 190202, ¶ 44 (negligent training cases should be analyzed similarly to other direct negligence claims).

Although it has been said that direct employer liability does not require that the employee also be held liable in tort, this statement must be read in context. For example, the appellate court held that a negligent training claim against an employer was not

barred by a special relationship that precluded the employee from being held legally liable. *National Railroad Passenger Corp. v. Terracon Consultants, Inc.*, 2014 IL App (5th) 130257, ¶ 16. Similarly, the appellate court held that a Rule 103(b) dismissal as to an employee did not preclude a subsequent action for negligent hiring or negligent supervision against an employer because the dismissal for lack of diligence in serving process did not decide facts. *Young v. Lemons*, 266 Ill. App. 3d 49, 52 (1st Dist. 1994). But these cases did not decide whether an employer can be liable for a direct dependent liability claim when a jury decided that the employee did not act negligently. Rather, the appellate court only held that a dismissal for reasons unrelated to an employee's negligence does not preclude an employer's liability under a direct negligence theory.

Notably, in deciding *Young*, the appellate court pointed to only one case in the nation that found that an employee need not be liable in tort to prove negligent hiring. That unreported Missouri Court of Appeals decision was appealed, and months later, the Missouri Supreme Court reversed the appellate court and adopted the majority rule. *McHaffie By and Through McHaffie v. Bunch*, 1994 WL 72430, *8 (Mo. Ct. App. Mar. 10, 1994), *rev'd by McHaffie*, 891 S.W. 2d 822. The majority rule incorporates an exception when the facts establish direct independent liability that is unconnected to employee negligence. *Ferrer*, 2017 CO 14M, ¶34. But those are not the facts here.

A direct dependent liability negligence claim based on vehicle driving requires a showing of negligent driving by the employee in order to establish a proximate causal connection between the employer's direct negligence and an injury. Otherwise, the risk of harm presented does not causally connect to the employer's direct negligence. The same conclusion follows in any direct dependent liability claim where the employer's direct

negligence is causally connected to the employee's negligence.

C. The Claim at Issue Is Both a Vicarious Liability and a Direct Dependent Liability Claim.

It is undisputed that Pan-Oceanic was not liable under a *respondeat superior* theory based on the jury verdict. As such, the vicarious liability aspect of the claim is not an issue on appeal. But under the facts of this case and any direct dependent liability case, a verdict in favor of the employee precludes an employer's direct liability that is dependent on a finding of liability against the employee. This encompasses all allegations against Pan-Oceanic, as all allegations depended on a finding of liability against Green.

The allegations here against both employer and employee related to two acts: accepting an unsafe load and negligent driving. Accepting an unsafe load was alleged against Green in allegations (a), (b), (c), and (g) and against Pan-Oceanic in allegations (a), (b), (c), (d), (e), and (f). *McQueen*, 2020 IL App (1st) 190202, ¶ 25. Negligent driving was alleged against Green in allegations (d), (e), (f), and (h) and against Pan-Oceanic in allegation (g). *Id*.

Although several allegations against Pan-Oceanic are couched in terms of negligent training, the actual risk of harm was through either Green accepting an unsafe load or Green driving negligently. The duty to train Green, if any, would not extend beyond training him to use ordinary care when accepting a load or driving a vehicle. And if Green used ordinary care in both of those acts—as judged by an external, objective reasonable person standard—then a direct negligence claim against Pan-Oceanic predicated on those same two acts could not be considered a proximate cause.

In this case, the dissenting justice concluded that the following two allegations against Pan-Oceanic did not depend on Green's negligence: failure to implement proper

procedures regarding placement of a load and decision to permit Green to drive an unsafe load. *Id*. ¶ 72. The dissent further explained this conclusion by clarifying that these bases of liability "rested entirely on the company's own negligence." *Id*. But the dissent did not address proximate cause.

The jury decided that Green acted as a reasonably careful person would when accepting the load and driving the load. Pursuant to the two-issue rule, the jury found both that Green exercised ordinary care and that no negligent act was a proximate cause of the plaintiff's injuries. *Lazenby v. Mark's Const., Inc.*, 236 Ill. 2d 83, 101 (2010) citing *Strino v. Premier Healthcare Associates, P.C.*, 365 Ill. App. 3d 895, 904 (1st Dist. 2006). This finding encompasses every allegedly negligent act against Green. The jury viewed those acts through the lens of an external, objective reasonable person standard. This means that Green's use of ordinary care is analogous to Driver E in Example 3, above at Section I.C, who was rear-ended while stopped for one minute at a red light. The same external, objective reasonable standard applied to Pan-Oceanic, and the risk of harm presented by accepting and driving the load applied to both Green and Pan-Oceanic.

Accordingly, when the jury decided that Green exercised ordinary care in accepting the load and driving the load, this verdict precluded a finding that Pan-Oceanic was liable for negligent training related to accepting the load and driving the load. Pan-Oceanic and Green could only be expected to have employees meet the standard of care owed by an objective reasonable person in our society, which was adhered to by Green. For that reason, any alleged direct negligence against Pan-Oceanic in supervising or training Green could not be a proximate cause of injuries causally connected to Green accepting and driving the load. Likewise, any alleged willful and wanton conduct against

Pan-Oceanic could not be a proximate cause. *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 30 ("Willful and wanton conduct requires plaintiffs to plead and prove the elements of negligence ***.").

In a similar context, when a conductor was sued for negligently driving a train, the Illinois Appellate Court held that negligent entrustment and negligent retention claims were duplicative and properly precluded after the employer admitted *respondeat superior* liability for any negligence of the employee. *Thompson*, 367 Ill. App. 3d at 376. The appellate court looked to the allegation of direct negligence, which related to the employee's history of unsafe operation of trains. *Id*. Although that was a different negligence allegation than the one against the employee for negligently operating a train, it was clear that the risk presented by a history of unsafe operation of trains was, in fact, the same negligence alleged against the employee. For that reason, the direct liability claims against the employer were dependent on the employee's negligence.

Similarly, in a negligent training case, the risk is that an employee will fail to use ordinary care for the safety of others. For if a negligently-trained employee is rear-ended while stopped for one minute at a red light, then the negligent training was no proximate cause. And if a negligently-trained employee exercises ordinary care in accepting a load and driving that load, then any direct liability training or supervision claim that is causally connected to accepting or driving the load must also fail. This conclusion does not depend on the subjective knowledge or ignorance of the driver. Contrary to plaintiff's position, here, Green's liability did not depend on his subjective knowledge or whether he was trained. The same, external objective reasonable person standard applied either way. As Green used ordinary care, Pan-Oceanic cannot be liable based on the same acts.

III. Illinois Should Adhere to the Rule that an Admission of *Respondeat Superior* Liability Extinguishes a Direct Dependent Liability Claim.

First, a sound body of Illinois precedent spanning decades has uniformly followed the majority rule. In 1971, the Third District Illinois Appellate Court considered an issue of first impression: whether an admission of liability under *respondeat superior* in an automobile negligence lawsuit precludes a second finding of liability against the principal in a direct negligence claim. *Neff v. Davenport Packing Co.*, 131 Ill. App. 2d 791, 792 (3d Dist. 1971). Again in 1989, the appellate court affirmed dismissal of a negligent entrustment claim because *respondeat superior* was admitted, reasoning that evidence regarding a negligent entrustment claim would "obscure the basic issue of driver-employee negligence" and improperly introduce irrelevant and inflammatory matters. *Ledesma by Ledesma v. Cannonball, Inc.*, 182 Ill. App. 3d 718, 728 (1st Dist. 1989).

In *Gant*, the appellate court adopted the reasoning of the majority rule, finding the rationale particularly applicable to a vehicle accident action where liability is predicated on negligent operation of a vehicle. *Gant v. L.U. Transport, Inc.*, 331 Ill. App. 3d 924, 928 (1st Dist. 2002). Most recently, in *McQueen*, the appellate court applied the majority rule to negligent training claims, which depend on a finding of employee negligence and should not be treated differently than other direct dependent liability claims. *McQueen*, 2020 IL App (1st) 190202, ¶ 44. These well-reasoned decisions should not be disturbed.

Second, the nature of a negligent training claim supports the majority rule. Almost any negligent act by an employee could arguably be tied to some training by an employer that did or allegedly should have occurred. This would allow plaintiff two bites at the apple for the same acts of driving, as well as potentially open the door to two separate

cases—one against the employer and one against the employee—for the same acts. And plaintiff's position, if adopted, would upend vicarious liability in Illinois by unjustly allowing an employer to be found liable even if all employees exercised ordinary care. Instead of a trial about two drivers in a vehicle accident, the jury would be flooded with extraneous issues about employment and training manuals, layers of supervision, employee background checks in the hiring process, and other similarly irrelevant and potentially prejudicial issues. *Neff*, 131 Ill. App. 2d at 792-93.

Third, the majority rule validly recognizes that an employer's liability should not be counted twice for the same act of negligently operating a vehicle. The appellate court acknowledged this practical reality in *Gant* and stated that "comparative fault as it applies to the plaintiff should end with the parties to the accident." *Gant*, 331 Ill. App. 3d at 928. For why should the comparative fault of the plaintiff for negligent driving vary based on whether the other driver was employed or not? While not an issue in this case, the Illinois Supreme Court decision here could operate to allow or prevent a double—or more—assessment of fault against a principal for the same acts.

Fourth, to allow employer liability to be counted twice for the same act, such as an employee driving, would introduce unnecessary potential conflicts into the relationship between employer, employee, and defense counsel. That relationship regularly depends on employee cooperation. But if the employee was instead incentivized to shift fault to the employer for negligent training, lack of employee cooperation would prejudice the employer's ability to defend actions that are predicated on the allegedly negligent acts of the employee for which the employer has *respondeat superior* liability.

CONCLUSION

An employer's direct liability is distinct from vicarious liability, but it does not follow that direct liability is independent of an employee's acts. Rather, to show proximate cause in a typical negligent entrustment, hiring, retention, supervision, or training claim, the facts must also establish employee liability because the risk of harm presented is that an employee will fail to exercise ordinary care for the safety of others if improperly entrusted, hired, retained, supervised, or trained.

The employee's acts are judged by an external, objective reasonable person standard, so liability does not depend on the employee's subjective knowledge or lack thereof. An employer, too, is judged by an external, objective reasonable person standard. When the same acts are at issue, as here with respect to Green's acts of accepting a load and driving a vehicle, a finding of employer liability is inconsistent with a finding that the employee exercised ordinary care. The sound rationale of the majority rule should be adhered to and applied equally to negligent training claims.

Respectfully submitted,

By: 

Steve Grossi
Bruce Farrel Dorn & Associates
120 N. LaSalle St., Suite 1900
Chicago, Illinois 60602
(312) 683-3000
steve.grossi.dvop@statefarm.com
home.law-dorn@statefarm.com
Employees of the Law Department
State Farm Mutual Automobile
Insurance Company

Illinois Defense Counsel, *Amicus Curiae*

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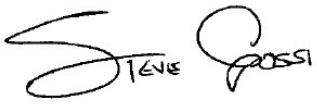
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 16 pages.



Steve Grossi
Bruce Farrel Dorn & Associates
120 N. LaSalle St., Suite 1900 Chicago, Illinois 60602
(312) 683-3000
steve.grossi.dvop@statefarm.com
home.law-dorn@statefarm.com
Employees of the Law Department State Farm Mutual Automobile Insurance Company

Illinois Defense Counsel, *Amicus Curiae*