

PUNITIVE DAMAGES OF A CORPORATION

by Ted Babbitt

In Schropp v Crown Eurocars, Inc., 654 So.2d 1158 (Fla. 1995), the Supreme Court explained how a corporation could be held liable for punitive damages. That case established two different methods. A corporation can be held responsible vicariously for the conduct of its employees if the employee was guilty of a willful and malicious act and there is an independent finding of negligent conduct on the part of a corporation. This follows the reasoning of Mercury Motors Express, Inc. v Smith, 393 So.2d 545 (Fla. 1981).

On the other hand, direct liability on the part of a corporation for punitive damages can only be shown if there is evidence of a willful and malicious act on the part of a managing agent of the corporation. This follows the reasoning of Bankers Multiple Line Ins. Co. v Farish, 464 So.2d 530 (Fla. 1985).

There is some confusion as to the nature of the independent negligence on the part of the corporation which must be shown to establish vicarious liability. The Courts sometimes confuse the requirement for a managing agent's actions necessary under direct liability for the independent act required for vicarious responsibility. Such was the case at the trial level in Partington v Metallic Engineering Co., Inc., 26 F.L.W. D854 (Fla. 4th DCA, March 28, 2001). In that case, the plaintiff was injured when his vehicle was struck by a truck driven by an employee of the defendant. The driver's alcohol level far exceeded the minimum

required for DWI. There was evidence that the driver had consumed the alcohol in front of fellow employees, including a job foreman. The trial court concluded that the corporate defendant could not be held responsible vicariously for the malicious and willful acts of its employee because the foreman, who witnessed the drinking, was not a managing agent within the meaning of the case law relating to the direct liability of a corporate defendant. The Fourth District reversed, holding that there is no requirement that the independent negligence of a corporation be attributed to a managing agent under the theory of vicarious liability. This requirement only exists with respect to the direct liability of a corporation.

In *Schropp v Crown Eurocars, Inc.*, 654 So.2d 1158 (Fla. 1995), the supreme court reviewed the law concerning corporate liability for punitive damages, and established a clear distinction between vicarious and direct liability. In order to hold a corporation liable for vicarious liability for punitive damages, there must be a willful and malicious act on the part of an employee as well as a finding of independent negligent conduct by the corporation. *Id.* at 1159; see also *Mercury Motors Express, Inc. v Smith*, 393 So.2d 545 (Fla. 1981). In order to impose direct liability for punitive damages on a corporation, there must be a showing of willful and malicious action on the part of a managing agent of the corporation. *Id.*; see also *Bankers Multiple Line Ins. Co. v Farish*, 464 So.2d 530 (Fla. 1985). Under the vicarious liability theory, there is no requirement that the independent negligent conduct by the corporation be attributed to a managing agent. *Id.* at 1160-61.

In virtually every case involving punitive damages, the key issue is whether the punitive damages can be awarded against the corporate defendant. Almost invariably, the individual defendant has little or no assets and the responsibility of the corporate defendant is, therefore, the paramount issue. This case clarifies that a corporate defendant can be held liable vicariously for its employees if its negligence, as shown through any other employee, establishes the necessary independent requisite for vicarious liability.

NOTE: BECAUSE A NUMBER OF PEOPLE HAVE REQUESTED COPIES OF PAST ARTICLES, A COMPILATION OF THESE ARTICLES IS NOW AVAILABLE TO MEMBERS OF THE PALM BEACH COUNTY BAR ASSOCIATION, FREE OF CHARGE, BY CALLING (561) 684-2500.