



## I

According to the Amended Complaint, the present cause of action arose when a tractor trailer operated by defendant Ezzell Furgerson for his employer, defendant Star Transport, Inc., struck the plaintiff's decedents, who were in a vehicle stopped on the shoulder of an interstate highway during a heavy snow storm. The Amended Complaint seeks punitive damages against both defendants on the ground that Furgerson, a professional truck driver, acted wantonly by driving in a sleep-deprived condition at night over a snow- and ice-covered road at an excessive rate of speed, without a functioning collision avoidance system, thus causing the accident.

The defendants contend that the allegations of the Amended Complaint are insufficient to justify the request for punitive damages. I disagree. While the plaintiff may not ultimately have adequate proof of such damages, I find that the allegations of the Amended Complaint are sufficient to defeat a motion to dismiss. *See Alfonso v. Robinson*, 514 S.E.2d 615, 619 (Va. 1999).

## II

The defendant Star Transport also moves to dismiss that portion of Count IV of the Amended Complaint which is based on allegations of negligent hiring.<sup>2</sup> I agree with the defendant that this count fails to state such a claim.

The extent of the allegations related to the negligent hiring of Furgerson by Star Transport are that

- (a) Defendant Furgerson had been fired from his previous employ with CSX Transportation due to a violation of a company safety policy;
- (b) Defendant Ferguson had no experience operating a Class A commercial motor vehicle such as the type he would be operating on behalf of Star;
- (c) Defendant Furgerson's driver's licence had been suspended by more than thirty (30) days;
- (d) Defendant Ferguson had been convicted of speeding in excess of 15 mph over the posted speed limit.

(Am. Compl. ¶ 60.) It is also alleged that "Defendant Star has admitted that it should not have hired Defendant Furgerson." (*Id.* at ¶ 59.)

I agree with the defendant that these allegations are insufficiently precise to raise a plausible claim of negligent hiring. Even if the allegations are true, there is

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<sup>2</sup> Count IV also alleges that Star Transport negligently retained Furgerson, but Star Transport does not contest the sufficiency of those allegations.

no indication from them that a prudent hiring employer would have reasonably anticipated that Ferguson would have conducted himself in the manner alleged in this case. *See Interim Pers. of Cent. Va., Inc. v. Messer*, 559 S.E.2d 704, 708 (Va. 2002). Perhaps Ferguson was fired by a previous employer for unsafe loading of his truck; or that his license had been suspended at some time in the past for reasons unrelated to his driving; or that he had been convicted of speeding while driving his personal car; or that Star Transport wished it not hire him because he took excessive time off. None of these reasons would have sufficient causal connection to support a claim of negligent hiring in this case and it would be pure speculation that the allegations as made would do so. *See Jones v. C.H. Robinson Worldwide, Inc.*, 558 F. Supp. 2d 630, 648 (W.D. Va. 2008).

### III

For the reasons stated, it is **ORDERED** as follows:

1. The Motion to Dismiss by Ezzell Ferguson (ECF No. 32) is **DENIED**;
2. The Motion to Dismiss by Star Transport, Inc. (ECF No. 34) is **GRANTED IN PART AND DENIED IN PART**;
3. The negligent hiring claim asserted in Count IV of the Amended Complaint is **DISMISSED**; and

4. The Motion to Dismiss by Star Transport, Inc. is otherwise DENIED.

ENTER: September 1, 2010

/s/ JAMES P. JONES  
United States District Judge