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APPELLATE COURT RULES EMPLOYEE'S CAR MAY HAVE BEEN 'NORMAL' PLACE OF EMPLOYMENT

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The Michigan Court of Appeals recently held that an employer may be liable for an employee's car accident because the employee's personal vehicle may have been her "normal" place of business.

The court's ruling in *Daniels v Petrosky-Clark*, unpublished opinion *per curiam* of the Michigan Court of Appeals, issued Dec. 15, 2009 (Docket No. 288403), could extend liability for employers with sales professionals and other employees who drive personal vehicles on company business.

The defendant, a sales employee of Consumer Source, Inc. (CSI), was driving near her home when she struck a vehicle from behind. At issue was whether she was acting within the scope of her employment at the time of the accident. If so, CSI could be vicariously liable for the accident.

The trial court granted CSI's motion for dismissal because it found that there was "no evidence of any sales work done on the date of the collision" before it took place. The court reasoned that the defendant was driving to work when the accident occurred and, therefore, had not yet started her workday. But the plaintiff appealed and the lower court's ruling was reversed by the Michigan Court of Appeals.

The appellate court began its analysis by recognizing that an employer cannot be held liable for the acts of employees operating outside the scope of employment because the employee is not under the control of the employer. "For example, it is well established that an employee's negligence committed while on a frolic or detour, or after hours, is not imputed to the employer."

However, Michigan recognizes the "dual purpose rule," which imposes liability on the employer for torts committed by employees going to or from work if the "trip involved a service of benefit to the employer." For example, an employer can be held liable "when the employee is driving their own vehicle on a business trip, ... to a required business meeting, or ... to deliver the end-of-the-day receipts to an employer at the conclusion of work."

In *Daniels*, the evidence showed that the defendant lived near the accident scene and was headed toward CSI at the time of impact. However, she could not recall her schedule on that day, and it was unclear whether she had made a sales call before heading to the office.

While there was contradictory evidence concerning whether the defendant had been required to attend daily or weekly sales meetings at the start of the day, “[a] performance review conducted after the accident required her, ‘until further notice,’ to ‘start her day in the office and end her day in the office to follow up with her work.’” Therefore, it could be inferred that, prior to the performance review, the defendant was not required to do so.

The court also noted that “most” of her job duties (approximately 60 percent) required driving to various locations and, prior to her being hired, she was required to submit proof of a valid driver’s license and insurance. In addition, CSI paid her an annual car allowance. Finally, the defendant admitted that, at the time of the accident, it was likely she had CSI material in her briefcase from a meeting the day before.

Based on the evidence above, the appellate court concluded that a jury could find that the defendant’s “normal place of employment was her car and that driving ‘to work’ had a different meaning for her than for an employee who works primarily at one location.” Since it was not clear that the employee was acting to accomplish some purpose of her own at the time of the accident, the question of whether she was acting within the scope of her employment had to be submitted to the jury.

This ruling makes clear the importance of employees maintaining detailed records of time spent driving on business. Had the defendant produced evidence that she had not started the business day at an offsite meeting and was merely driving to the office, the employer may have been able to escape liability.

However, the court’s ruling that the “normal” place of employment may be an employee’s car when he or she drives a significant amount of time on company business is troubling and may result in an increase of vicarious liability for employers.

Should you have any questions about the appellate court’s ruling in *Daniels v Petrosky-Clark*, please feel free to contact any member of Plunkett Cooney’s Labor and Employment Practice Group. To review a practice group directory click [here](#) or call Labor and Employment Practice Group Leader Theresa Smith Lloyd at (248) 901-4005.