



Evidentiary Impact of Shared Corporate Initials and Employer Vicarious Liability

Among Issues Addressed by Texas Supreme Court

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In a unanimous opinion authored by Justice Johnson, the Texas Supreme Court recently tackled a number of evidentiary issues important to in-house counsel and trial lawyers, including:

- Whether evidence generically referring to an acronym ("SCI") common to a parent and subsidiary (SCI and SCI Texas) constituted any evidence that the *parent* was the alleged bad actor's employer;
- Whether allegations of vicarious liability render the actor's status as an employee an element of a negligence claim or an independent ground of recovery;
- Whether failure to object to an attorney's statements in *voir dire* about expected evidence waives objections when the evidence is later offered at trial;
- What level of evidence is required to establish a "connection" between other acts and the events at issue in order to allow admission of the "other acts" evidence; and
- Whether testimony is admissible with regard to a plaintiff's planned use for any punitive damages award (e.g., a public trust to benefit others).

Service Corp. Int'l v. Guerra, --- S.W.3d ---, No. 09-0941 (Tex. June 17, 2011). The Court also rejected the court of appeals' holding and Guerras' argument that some events are so disturbing as to absolve a plaintiff from proving the nature, duration, and severity of the alleged mental anguish. Slip op. at 12-13. These requirements apply universally to requests for mental anguish damages. *Id.*

Locke Lord Appellate Practice Group leader Mike Hatchell, joined by Skip Watson and Kirsten Castañeda, represented SCI and SCI Texas in the Texas Supreme Court, obtaining reversal of the trial court's adverse judgment.

Vicarious Liability Evidence Referring to Acronym Common to Both Corporate Defendants

The Texas Supreme Court first addressed the impact of evidence referring to an acronym ("SCI") shared by both defendants (parent SCI and subsidiary SCI Texas). The Guerras did not attempt to pierce the corporate veil, but instead sought to impose vicarious liability on parent SCI for negligence, relying on evidence referring to "SCI" as the alleged bad actor's employer. As a threshold issue, the Court clarified that an actor's status as a defendant's employee is an element of a vicarious liability negligence claim. Slip op. at 7. To the extent that this element is omitted from the jury charge, the defendant must object in order to prevent a deemed finding. *Id.* But even a deemed finding must be supported by some evidence. *Id.*



Witnesses and lawyers referred to both companies as “SCI” throughout the trial. Slip op. at 9. Evidence from a witness who testified about employment by “SCI” at deposition, but specified at trial that she was employed by “SCI Texas,” was no evidence that she or any other worker was employed by parent SCI. *Id.* Use of the “SCI” logo on the alleged bad actor’s personnel paperwork was no evidence of employment by the parent, due to testimony that all SCI-related businesses were authorized to use the logo, which created an equal-inference issue. *Id.* at 10. Overall, the evidence was insufficient to support any liability findings against the parent SCI, which were reversed and a take-nothing judgment rendered. *Id.* at 11.

“Connection” Required for Admissibility of “Other Acts” Evidence Mentioned in *Voir Dire* and Admitted at Trial

The Texas Supreme Court also addressed evidence introduced at trial about other lawsuits, verdicts, and judgments against SCI, SCI Texas, and other companies regarding alleged events at other cemeteries, some not owned by any SCI entity. Slip op. at 17. Texas Rule of Evidence 404 makes admissible for certain purposes evidence of other acts that are so connected with the transaction at issue that they may all be parts of a system, scheme, or plan. *Id.* at 19. The Guerras argued that the defendants waived any error by not objecting when the evidence was mentioned during *voir dire*. *Id.* at 17. The Court rejected this position, holding instead that the failure to object to an attorney’s *voir dire* statements, without more, does not waive later objections to evidence when offered during trial. *Id.* at 18.

The Court also enunciated the Rule 404 “connection” test as satisfied by “evidence of similar acts temporally relevant and of the same substantive basis.” Slip op. at 18. For most of the lawsuits, there was no evidence of the actual facts and circumstances involved, and so no “connection” had been shown. *Id.* at 21. As to testimony about another judgment, the underlying events occurred at different cemeteries more than a year apart, with no evidence that any of the same employees or circumstances were involved. *Id.* at 22. Accordingly, the evidence was not admissible. *Id.* The Court further concluded that the error was harmful, and thus, required remand for a new trial on Mrs. Guerra’s claims against SCI Texas. *Id.* at 23. Perhaps because the Court concluded that the “connection” test so clearly was not satisfied, the Court did not dig down further to address whether evidence of lawsuits or verdicts – as opposed to evidence of judgments – even rises to the level of “other acts” within the scope of Rule 404.

Admissibility of Testimony that Punitive Damages Would be Placed into a Public Trust

Finally, “in order to provide guidance” on remand, the Court addressed the admissibility of Mrs. Guerra’s testimony that she intended to place any punitive damages into a public trust to benefit others. Slip op. at 24. The Court concluded that evidence about Mrs. Guerra’s plans for any punitive damages was inadmissible, since it was not relevant to the statutory factors or to penalizing or punishing the defendant. Texas. *Id.* at 25.

The Court’s clarification of the tests, standards, and levels of proof required on a variety of evidentiary issues makes this opinion one to keep handy when preparing for depositions, drafting summary judgment motions, and making checklists for trial.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors:

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