

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYDER TRUCK RENTAL, INC.

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA ex rel. THE
COUNTY OF CLARK, AND THE
HONORABLE JUDGE NANCY ALLF,

Respondent.

NICOLE LIMON, an individual,

Real Party In Interest.

Electronically Filed
Nov. 29, 2021 04:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 83480
District Court Case No.
A-19-794326-C

REAL PARTY IN INTEREST NICOLE LIMON'S ANSWERING BRIEF
ON BEHALF OF RESPONDENTS

Joshua L. Benson, Esq.
Nevada Bar No. 10514
BENSON ALLRED INJURY LAW
6250 N. Durango Drive
Las Vegas, Nevada 89149
(702) 820-0000

Attorneys for Nicole Limon

TABLE OF CONTENTS

I.	SUMMARY OF THE ARGUMENT.	1
A.	Defendant Ryder has an adequate and speedy remedy at law.	1
B.	The Graves Amendment allows a negligence action against Ryder. . .	2
C.	Defendant Ryder never sought summary judgment on the merits.	2
II.	STATEMENT OF RELEVANT FACTS.	3
A.	The July 19, 2017 Crash.	3
B.	Load 1 Trucking Ryder Rental Agreement.	3
III.	REASONS TO DENY THE WRIT OF MANDAMUS.	4
A.	Ryder has a plain, adequate, and speedy remedy at law.	4
B.	The Graves Amendment does not bar a direct action against Ryder.	5
C.	Ryder Never Moved for Summary Judgment on the merits of the negligent entrustment claim.	7
IV.	CONCLUSION.	12
	CERTIFICATE OF COMPLIANCE.	13

TABLE OF AUTHORITIES

CASES

<i>Carton v. General Motors Acceptance Corp.</i> , 611 F.3d 451 (8th Cir. 2010).....	6
<i>Fitz Hansen a/s v. Dist. Ct.</i> , 6 P.3d 982 (Nev. 2000).....	1, 4
<i>Fuller v. Biggs</i> , Case No. 20-cv-2146 (N.D. Tex. April 2, 2021).....	7
<i>Guinn v. Great West Casualty Co.</i> , No. CIV-09-1198-D (W.D. Okla. Nov. 19, 2010).....	7
<i>International Game Technology v. Dist. Ct.</i> , 179 P.3d 556 (Nev. 2008).....	1, 4
<i>Knect v. Balanescu</i> , Case No. 4:16-cv-00549 (M.D. Penn., Oct. 13, 2017).....	7, 8
<i>Persike v. Lochner</i> , 460 P.3d 25 (Nev. 2020).....	2, 7
<i>Roebuck v. Bensing</i> , No. 97-cv-5285, 97-cv-7244, 1999 WL 124462 (E.D. Pa. Feb. 8, 1999).....	9
<i>Zugel by Zugel v. Miller</i> , 688 P.2d 310 (Nev. 1984).....	8, 9

STATUTES

49 U.S.C. § 30106(a).....	2, 5
---------------------------	------

I. SUMMARY OF THE ARGUMENT.

In this personal injury case, Defendant Ryder Truck Rental is being sued for its own negligence and not for vicarious liability. Following the close of discovery, Defendant Ryder moved for summary judgment on a narrow issue of law: that suit against it was precluded under the Graves Amendment. The district court denied this narrow motion for summary judgment, finding that the Graves Amendment permits independent negligence actions against Ryder. Now, Ryder's Writ Petition should be denied on procedural grounds, as Ryder has an adequate and speedy remedy at law, and on the merits, as the Graves Amendment's plain language allows an independent cause of action against Ryder:

A. Defendant Ryder has an adequate and speedy remedy at law: It is the fundamental law of this Court not to consider a writ when there is an adequate and speedy legal remedy.¹ Accordingly, because an appeal from the final judgment typically constitutes an adequate and speedy legal remedy, this Court generally declines to consider writ petitions that challenge interlocutory district court orders denying motions for summary judgment.² This Court went even further, noting that even when writ relief is available because an appeal from the final judgment is not an adequate speedy legal remedy, this Court's general policy is to decline writ petitions because "such petitions rarely have merit, often disrupt district court case processing, and consume an enormous amount of court resources."³ Here, there is no harm in proceeding to trial after the denial of its Motion for Summary Judgment—the only purported harm is the cost and time of a trial. This Court has already held that time and money do not constitute irreparable or serious harm.⁴ The district court, in following the majority of courts, denied Defendant Ryder's

¹ International Game Technology v. Dist. Ct., 179 P.3d 556, 558 (Nev. 2008).

² See id.

³ Id.

⁴ Fitz Hansen a/s v. Dist. Ct., 6 P.3d 982, 986-97 (Nev. 2000).

motion because the Graves Amendment expressly allows an independent cause of action against Ryder. Now, the jury must hear the evidence and determine if Ryder negligently entrusted the vehicle to Load 1 Trucking and Tony Stephens. Thus, because Ryder has an adequate remedy at law, Defendant Ryder's writ petition should be denied.

B. The Graves Amendment allows a negligence action against Ryder:

In turning to the legal basis of the petition, the Graves Amendment expressly permits an independent negligence claim against Defendant Ryder. The Graves Amendment's plain language only bars *vicarious* liability against the lessor of a motor vehicle.⁵ Now, Ryder's writ petition asks this Court to ignore the statute's plain language and further limit the Grave's Amendment to only allow a negligent maintenance claim. The majority of courts, including the only Circuit court to address this issue, has expressly rejected limiting the plain language of the Graves Amendment and have found that a negligent entrustment claim is a distinct legal concept from vicarious liability—Nevada, not in the context of the Graves Amendment, has held the same.⁶ To be clear, Plaintiff does not claim Ryder is *vicariously* liable for the collision as the owner of the vehicle. Instead, Ryder is directly liable for negligently entrusting the vehicle to Defendant Stephens while it “knew, or by the exercise of reasonable care, should have known that Defendant was incompetent, inexperienced, or by the reckless in the operation of motor vehicles.” Thus, Defendant Ryder's writ should be denied.

C. Defendant Ryder never sought summary judgment on the merits:

Lastly, Defendant Ryder's writ petition asks this Court to review the merits of Plaintiff Limon's negligent entrustment claim. The problem, however, is that Defendant Ryder never moved for summary judgment on the merits of the claim—

⁵ 49 U.S.C. § 30106(a).

⁶ Persike v. Lochner, 460 P.3d 25 (Nev. 2020).

instead, Defendant Ryder's motion for summary judgment was narrowly tailored in asking for dismissal on one ground: that Plaintiff Limon's claim against Ryder was precluded by the Graves Amendment.⁷ In turning to the merits of the claim, a writ is not a proper vehicle to challenge the sufficiency of the evidence. Here, Plaintiff Limon has sufficient evidence to create an issue of material fact that Defendant Ryder negligently entrusted the vehicle to the Defendants. Thus, Defendant Ryder's writ petition should be denied.

II. STATEMENT OF RELEVANT FACTS.

A. The July 19, 2017 Crash.

On July 19, 2017, Defendant Stephens was operating a large Semi Truck on behalf of his employer Defendant Load 1 Trucking.⁸ Defendant Stephens had only had his CDL license for a few months prior to the crash.⁹ Defendant Stephens was traveling south and turned in front of Plaintiff Nicole Limon.¹⁰ Simply, Defendant Stephens failed to yield the right of way to the Plaintiff.

Following the crash, Defendant Stephens failed a federally mandated post-crash drug test when he tested positive for cocaine.¹¹ In his few months with a CDL license, Defendant Ryder never performed the required safety check on Defendant Stephens.¹²

B. Load 1 Trucking Ryder Rental Agreement.

On June 30, 2017, Ryder entered into a rental agreement with Load 1 Trucking.¹³ The rental was for three months, and the listed driver was "Kenneth Ricks."¹⁴ Under the terms of the rental agreement,

⁷ Petitioners Appendix (PA) Vol. 3 at Exhibit G.

⁸ PA at Exhibits C and J.

⁹ PA at Exhibit K.

¹⁰ PA at Exhibit J.

¹¹ PA at Exhibit K.

¹² PA at Exhibit E.

¹³ PA at Exhibit B.

¹⁴ Id.

All drivers must be safety checked by Ryder before operating the Vehicle. If Customer changes drivers during rental period, the Customer must arrange for Ryder to safety check the new driver before the new driver is permitted to operate the Vehicle.¹⁵

Defendant Ryder did not perform the required safety check on Defendant Stephen's use of the Ryder vehicle.¹⁶

III. REASONS TO DENY THE WRIT OF MANDAMUS.

A. Ryder has a plain, adequate, and speedy remedy at law.

Defendant Ryder has the heavy burden of demonstrating that it does not have an adequate and speedy legal remedy.¹⁷ Accordingly, because an appeal from the final judgment typically constitutes an adequate and speedy legal remedy, this Court generally declines to consider writ petitions that challenge interlocutory district court orders denying motions for summary judgment.¹⁸ In fact, even when writ relief is available because an appeal from the final judgment is not an adequate speedy legal remedy, this Court's general policy is to decline writ petitions because "such petitions rarely have merit, often disrupt district court case processing, and consume an enormous amount of court resources."¹⁹ Importantly, this Court has held that time and money do not constitute irreparable or serious harm warranting a writ to the Supreme Court.²⁰

Ryder's only argument regarding any potential harm is that "an eventual appeal following trial will not afford an adequate remedy due to the time and expense required for Ryder to defend against these claims at trial."²¹ Without an identification of any other harm, this Court should summarily deny the writ because "time and money" do not constitute irreparable or serious harm. If

¹⁵ Id.

¹⁶ PA at Exhibit E.

¹⁷ International Game Technology v. Dist. Ct., 179 P.3d 556, 558 (Nev. 2008).

¹⁸ See id.

¹⁹ Id.

²⁰ Fitz Hansen a/s v. Dist. Ct., 6 P.3d 982, 986-97 (Nev. 2000).

²¹ Ryder Truck Rental, Inc.'s Petition for Writ of Mandamus at iv.

additional time and money satisfied the requirements for this Court to take up a writ, nearly every party who has a motion for summary judgment denied would rush to this Court seeking review. Fortunately, Defendant Ryder must demonstrate more than just additional time and money.

Also, the additional time and money is minimal as all Defendants—Load 1 Trucking, Tony Stephens, and Ryder—are all represented by the same counsel. This distinction is important because including Ryder in the trial with Load 1 Trucking and Tony Stephens will likely not increase the cost of trial. The same experts will need to be called at trial, the same witnesses will be called at trial, and virtually all the same evidence will be presented. In truth, the only additional information to be presented at trial is a couple contracts between Load 1 Trucking and Defendant Ryder. Thus, Defendant Ryder has failed to identify any irreparable harm and its writ should be denied.

B. The Graves Amendment does not bar a direct action against Ryder.

In turning to the merits of the writ, the plain language of the Graves Amendment authorizes an action against Ryder for its own negligence and only bars *vicarious* liability against Defendant Ryder. Plaintiff Limon brought a direct action against Defendant Ryder. The Graves Amendment states:

An owner of a motor vehicle that rents or leases the vehicle to a person...shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle...for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease if--

- (1) The owner...is engaged in the trade or business of renting or leasing motor vehicles; and
- (2) There is no negligence or criminal wrongdoing on the part of the owner or an affiliate of the owner.²²

²² 49 USC § 30106(a)

The Graves Amendment does not bar claims of direct negligence against a lessor—such as claims for negligent entrustment.²³ The leading circuit court decision interpreting the Graves Amendment is *Carton v. General Motor Acceptance Corporation*, 611 F.3d 451 (8th Cir. 2010). In *Carton*, the Eighth Circuit considered whether the Graves Amendment independently prohibited a claim for negligent entrustment.²⁴ The Eighth Circuit turned to the plaintiffs’ direct negligence claims and found that “the Graves Amendment contains a savings clause [referring to subsection 2] which allows an owner of a leased vehicle to be found directly liable for the owner’s negligence or criminal wrongdoing.”²⁵ The Court gave the term “negligence,” as used in subsection (2), a “broad” interpretation that included a claim for negligent entrustment.

The *Carton* Court noted that “[t]he rules of statutory construction mandate, when ‘statute’s language is plain, the sole function of the courts is to enforce it according to its terms.’”²⁶ Likewise, “[w]here the plain meaning of a statute is clear, ‘we are not free to replace it with an unenacted legislative intent.’”²⁷ In applying the rules of statutory construction to the Graves Amendment, the Eighth Circuit concluded that, “we find no statutory basis for narrowing the definition of the broad term ‘negligence’ or giving it any definition other than its ordinary meaning.”²⁸ Therefore, the Graves Amendment did not bar a claim against the lessor for negligent entrustment.

In affirming that the Graves Amendment permits an independent negligent entrustment claim, the Eighth Circuit also addressed the *Dubose v. Transp. Enter.*

²³ See *Carton v. General Motors Acceptance Corp.*, 611 F.3d 451, 458 (8th Cir. 2010).

²⁴ *Id.* at 458.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Leasing, LLC decision that Ryder relies upon. In rejecting the *Dubose* holding, the Circuit Court criticized the *Dubose* court’s narrow interpretation of the term “negligence” and held “the term ‘negligence’ as used in the Graves Amendment savings clause is a broad term, and nothing indicates the ‘negligence’ term should be construed narrowly to exclude only claims for negligent maintenance.”²⁹ As a matter of statutory interpretation, negligence encompasses a claim for negligent entrustment.³⁰

The majority of cases throughout the country—and the one Court of Appeals decision addressing the issue—agree that the Graves Amendment cannot be read to exclude claims of negligent entrustment.³¹ Nevada would likely follow the majority’s interpretation because, as this Court previously held, “the tort of negligent entrustment is a distinct legal concept from the vicarious liability established in NRS 41.440.”³² As a matter of statutory interpretation, Plaintiff Limon’s negligent entrustment is distinct from a vicarious liability claim and falls within the savings clause set forth in Section 30106(a)(2). Plaintiff Limon asks this Court to follow the statute’s plain language and the majority of courts that have found that a negligent entrustment claim is not barred by the Graves Amendment. Thus, the district court correctly denied the Defendant’s motion to dismiss. Likewise, this Court should hold that the Graves Amendment does not bar a claim for negligent entrustment.

C. Ryder Never Moved for Summary Judgment on the Merits of the Negligent Entrustment Claim.

²⁹ *Id.* at 457.

³⁰ *Id.*

³¹ *Knect v. Balanescu*, Case No. 4:16-cv-00549 (M.D. Penn., Oct. 13, 2017) (“This Court agrees that the Graves Amendment cannot be read to exclude claims of negligent entrustment, when the facts giving rise to negligent acts of the lessor pose an unreasonable risk of harm to others.”); *Fuller v. Biggs*, Case No. 20-cv-2146 (N.D. Tex. April 2, 2021); *Guinn v. Great West Casualty Co.*, No. CIV-09-1198-D (W.D. Okla. Nov. 19, 2010).

³² *Persike*, 460 P.3d at 25.

Next, Defendant Ryder asks this Court to address the merits of the claim—again, a writ petition should not be used to address whether there are genuine issues of material fact. In the district court, Ryder’s motion for summary judgment was limited to its contention that Plaintiff’s claims were precluded by the Graves Amendment.³³ Ryder never asked the district court to assess the merits of Plaintiff’s negligent entrustment claim—thus, the following arguments were not fully briefed for the district court. On that basis alone, the writ petition asking this Court to review the sufficiency of Plaintiff’s evidence should be denied.

Notwithstanding Defendant Ryder’s procedural deficiency, Defendant Ryder owed a duty to ensure all drivers were safe for driving. This duty is outlined in Nevada black letter law: under the doctrine of negligent entrustment, a person may be found liable for damages if the person entrusts a vehicle to an inexperienced or incompetent person.³⁴ Ryder outlined this duty in its lease agreement:

All drivers must be safety checked by Ryder before operating the Vehicle. If Customer changes drivers during rental period, the Customer must arrange for Ryder to safety check the new driver before the new driver is permitted to operate the Vehicle.³⁵

And Ryder was aware of Defendant Stephen’s operating the vehicle because the Truck Lease and Service Agreement required Defendant Load 1 Trucking to submit to Defendant Ryder all trip records and fuel tickets *on a weekly basis*.³⁶

Courts have imposed an independent duty to investigate a driver where the law and lease agreement impose an affirmative duty. Courts have found that the lessor has an affirmative duty to do safety checks of drivers where the lease continues to require the lessor to ensure proper entrustment.³⁷ In both *Knecht* and *Roebuck v. Bensing*, the courts turned to the language of the lease agreements to

³³ PA at Exhibit G.

³⁴ *Zugel by Zugel v. Miller*, 688 P.2d 310, 312 (Nev. 1984).

³⁵ PA at Exhibit B.

³⁶ *Id.*

³⁷ *Knecht v. Balanescu*, Case No. 4:16-cv-00549 (M.D. Penn., Oct. 13, 2017).

determine if the lessor continued to have a duty to perform safety checks on drivers that would drive the leased vehicles. For example, in *Roebuck v. Bensing*, the court granted summary judgment in favor of a tractor-trailer, where the employee of the lessee was involved in an accident resulting in the death of a third-party.³⁸ The Court reasoned that the lessor had no responsibility regarding the credentials of the lessee's drivers, "per the terms of the lease agreement between the parties." The specific lease provision read: "CUSTOMER agrees that all Vehicles shall be operated by safe, qualified, properly licensed drivers, who shall conclusively be presumed by CUSTOMER's agent, servant, or employee only, and subject to its exclusive direction and control."³⁹ Thus, the lease agreements become important in determining who has the duty to perform safety checks for proper entrustment.

In turning to Nevada law and the lease agreement between Ryder and Load 1 Trucking, Defendant Ryder had an affirmative duty to perform safety checks of drivers to ensure proper entrustment. Specifically, Defendant Ryder maintained an obligation that "[a]ll drivers must be safety checked *by Ryder* before operating the Vehicle."⁴⁰ Defendant Ryder never shifted this burden to Defendant Load 1 Trucking in the lease agreement—as others have done. Instead, Defendant Ryder continued to have a duty that all drivers placed into the driver's seat were experienced and that the company it leased the vehicle to was competent.

The requirement in the lease agreement to perform safety checks is echoed by Nevada law: under the doctrine of negligent entrustment, a person may be found liable for damages if the person entrusts a vehicle to an inexperienced or incompetent person.⁴¹ Now, the question of whether a Defendant Ryder was

³⁸ *Roebuck v. Bensing*, No. 97-cv-5285, 97-cv-7244, 1999 WL 124462 (E.D. Pa. Feb. 8, 1999).

³⁹ *Id.* at 1999 WL 124462, at *7.

⁴⁰ PA at Exhibit B.

⁴¹ *Zugel*, 688 P.2d at 312.

negligent in a particular situation is a question of fact for the jury to resolve.⁴² There are genuine issues of material fact on this central issue based solely upon Ryder's answer to Interrogatory No. 11 and No. 12:

INTERROGATORY NO. 11:

Identify all steps Defendant RYDER TRUCK RENTAL, INC. took to verify the Driver was fit for employment when hired.

ANSWER TO INTERROGATORY NO. 11:

Objection. Interrogatory No. 11 assumes facts not in evidence. Subject to and without waiving said objection, Defendant Tony Stephens was not employed by Ryder Truck Rental, Inc. at the time of the subject incident.

INTERROGATORY NO. 12:

Identify all steps Defendant RYDER TRUCK RENTAL, INC. took to verify the Driver was fit to operate a vehicle at the time of the crash.

ANSWER TO INTERROGATORY NO. 12:

Objection. Interrogatory No. 12 assumes facts not in evidence.

Defendant Ryder did not employ Defendant Stephens⁴³

In this case, Nevada law and the lease provision between Defendants Ryder and Load 1 Trucking created an affirmative duty for Ryder to verify the competency of anyone driving the truck and the competency of Load 1 Trucking. Defendant Ryder was obligated to safety check all drivers that operated the vehicle: but it never safety checked Defendant Stephens. Ryder is directly liable for putting an inexperienced, reckless, intoxicated driver behind the wheel. Defendant Ryder allowed a driver with no commercial driving experience to get behind the wheel of its vehicle without performing a safety check to ensure proper

⁴² Id. at 313.

⁴³ PA Vol. 2 at Exhibit E.

training and driving.⁴⁴ Defendant Ryder allowed a felon to get behind the wheel of its vehicle without performing any type of safety inspection on this driver. Then, less than three months after hire, the Defendant caused a serious crash and was terminated when his post-accident drug test demonstrated that he was positive for cocaine.⁴⁵

Defendant Ryder admitted during discovery that it did nothing to verify that Tony Stephens was fit to operate the vehicle that Defendant Ryder entrusted to him.⁴⁶ Defendant Ryder cannot claim it did not know about Defendant Stephens as the Truck Lease and Service Agreement between the parties required Load 1 Trucking to submit to Ryder all trip records and fuel tickets *on a weekly basis*.⁴⁷ Those documents—although never produced and alleged to have been destroyed—would certainly reveal who was driving, which would then trigger Ryder’s obligation to perform a safety check on Defendant Stephens.

Despite its obligations under Nevada law and affirmative duty under the Rental Agreement, Defendant Ryder merely stated that “Defendant Ryder did not employ Defendant Tony Stephens.”⁴⁸ In other words, Defendant Ryder did nothing. Under the law and under the contractual agreements, Defendant Ryder was obligated to verify that Defendant Stephens was fit to operate the vehicle. The evidence outlined above creates a genuine issue of material fact regarding whether Defendant Ryder negligently entrusted its vehicle to Defendant Stephens. Defendant Ryder’s failure to comply with its contracts and to comply with Nevada law precluded summary judgment as genuine issues of material fact existed. Now, Plaintiff Limon respectfully requests this Court to deny Defendant Ryder’s writ

⁴⁴ PA Vol. 5 at Exhibit K.

⁴⁵ PA Vol. 5 at Exhibit K.

⁴⁶ PA Vol. 2 at Exhibit E.

⁴⁷ PA Vol. 1 at Exhibit B.

⁴⁸ Id.

petition and allow the jury to determine whether the above referenced evidence demonstrates that Defendant Ryder was negligent.

IV. CONCLUSION.

For the reasons set forth above, Plaintiff Nicole Limon respectfully requests this Court to deny Defendant Ryder Truck Rental's Petition for Writ of Mandamus.

BENSON ALLRED INJURY LAW



Joshua L. Benson, Esq.
Nevada Bar No. 10514
6250 N. Durango Drive
Las Vegas, NV 89149

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32 (a)(7)(C), it does not exceed 15 pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

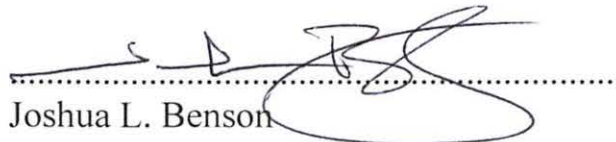
///

///

////

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 29th day of November, 2021

A handwritten signature in black ink, appearing to read 'J. Benson', is written over a horizontal dotted line.

Joshua L. Benson
Nevada Bar No. 10514
BENSON ALLRED INJURY LAW
6250 North Durango Dr.
Las Vegas, NV, 89149
Telephone No.: (702) 820-0000