



# From The Bench

*legal news of interest*

July 2004

## Recent Louisiana Supreme Court Case on Vicarious Liability

*by Gary J. Delahoussaye*

In *Richard v. Hall*,<sup>1</sup> the Louisiana Supreme Court considered a wrongful death case involving a duck hunter who was accidentally shot and killed by one of his hunting companions. The widow and child of John Richard filed suit against Screening Systems International (SSI), Michael Hall, the vice president and general manager of the Louisiana division of SSI, and their insurance companies. In the suit, plaintiffs alleged Hall was in the course and scope of his employment with SSI at the time of the accident and, accordingly, SSI was vicariously liable for the negligence of Hall resulting in the death of Richard. The District Court granted summary judgment in favor of SSI on the issue of vicarious liability, as well as on the separate issue of the application of Louisiana's recreational use immunity statutes. The First Circuit Court of Appeal affirmed the entry of summary judgment. The Supreme Court upheld the entry of summary judgment in favor of the defendants.

At the time of the accident, Michael Hall was duck hunting on a lease held by SSI for use of three upper level management executives. Hall was one of the executives allowed to entertain clients at the duck lease. On the morning of the accident, John Richard was also hunting at the same lease as a guest of a separate leaseholder. While Richard was also an employee of SSI, it was merely coincidental he was hunting on the same lease, on the same day as Michael Hall. The hunting trips of Hall and Richard were not related in any manner.

Michael Hall, John Richard and Henry Watson, the president of SSI, were occupying one of the duck blinds with Richard seated in the middle. During the hunt, Hall accidentally and fatally shot Mr. Richard.

The Louisiana Supreme Court granted plaintiffs' application for a writ of certiorari to consider the correctness of the summary judgment in favor of the defendants. The Supreme Court devoted a great deal of attention to the basic principles of the law of vicarious liability. The Court also carefully considered the evidence presented on the issue of whether Hall was in the course and scope of his employment with SSI on the date of the accident. In determining whether a particular accident may be associated with an employer's enterprise, the Court stated a determination must be made as to whether the particular accident is "a part of the more or less inevitable toll of a lawful enterprise."<sup>2</sup>

The Court concluded the plaintiffs failed to produce factual support sufficient to establish they would be able to carry their evidentiary burden of proof at trial, specifically that Mr. Hall's general activities at the time of the accident were within the scope of his employment. In fact, the only factual support offered by the plaintiffs to support the course and scope allegation was the testimony of Hall and another SSI employee who testified SSI intended the lease to be used for business purposes and treated it as a business expense. SSI's intent to utilize the duck lease for business purposes was insufficient to transform the activities of Hall on the date in

question from being merely personal to one directly attributable to his employer. The Court found “where there is no evidence that any business related entertaining was ever done at the lease, that the servant had ever generated any business by his use of the lease, or that the servant was required to participate in the recreational activity, we cannot say his recreational activities were within the course and scope of his employment.”<sup>3</sup> The Court determined SSI had not established the practice of using the duck lease for the purpose of furthering its business interests.

The Court was careful to point out its focus was on whether Hall’s actions at the time of the accident were within the scope of his employment and whether his actions involved risks fairly attributable to and contemplated by his employer. Simply put, the Court concluded when a tort, such as the one in this case, becomes uncharacteristic or unexpected of the business of the employer, liability is not imposed.

<sup>1</sup> 2003-1488 (La. 4/23/04), 874 So.2d 131.

<sup>2</sup> *Id.*, citing *Ermert v. Hartford Insurance Company*, 559 So.2d 467, 476 (La. 1990).

<sup>3</sup> *Id.*



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## Update on UM Rejection Forms

In *Doung v. Salas*,<sup>1</sup> the Louisiana Second Circuit Court of Appeal considered a case involving a waiver of uninsured motorist coverage. Doung, who is Vietnamese, signed a form rejecting UM coverage and later testified he did not speak or understand English. The trial court determined Doung had no capacity to read or understand English and the waiver of uninsured motorist coverage was invalid. The Second Circuit affirmed, concluding Doung’s inability to read, write or speak the English language, and therefore understand the document he signed, was sufficient to invalidate the rejection form.

<sup>1</sup>38,613 (La.App. 2 Cir. 6/23/04), 2004 WL 1396615.

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