

Cases as Retained Expert By Thomas C. Lawson

Employment/Negligent Hiring/Negligent Retention/Negligent Supervision/Negligent Training:

Allie v. LA Fitness Orange County Superior Court 70-18-08(California). This was a case where an unscreened applicant was negligently hired by a health club, and was provided keys to the club in order to reside in the club until his apartment was ready to occupy. The day he was hired, he went to a local bar, befriended a just turned 18 year old female, invited she and her girlfriend to the club to go into the Jacuzzi. They went to the club willingly, and the Defendant escorted the Plaintiff to an upstairs locker room where he sexually assaulted her. The case settled after less than 2 hours of the expert's deposition testimony (stopped in progress by Defense Counsel) when the tendered settlement offer of \$30,000 was increased to \$180,000. Employed by Plaintiff's Counsel, Kevin Gallagher, Esq.

Wishum v. RiteAid Los Angeles Superior Court BC 209910 (California). Case involved the negligent hiring of an autonomous, uniformed Security Guard with a conviction history for Sexual Assault. The Defendant was hired to act as a uniformed Security guard in a satellite Drug Store, without the benefit of a competent background check, even though the company had a policy in place to screen its applicants. Willful non-compliance with the company policy was evidenced by the Company's failure to simply validate a California "Guard Card" which was tendered by the applicant during the job interview, and, if researched, would have been determined to have been "revoked" because of prior sexual assault and Arson convictions. Within two weeks of hire, the Defendant sexually assaulted a 13 year old girl. He was administratively "suspended" but continued to remain in his position as autonomous Security Guard, in light of the suspension, at the instruction of his supervisors, while the sexual assault complaint was "investigated". Shortly after the first assault, the Defendant identified the Plaintiff, a 14 year old girl as a shoplifter, as a ruse to intimidate her. He escorted her to a sequestered, locked interview room, handcuffed her, and sexually assaulted her. Upon arrest and conviction, and after the matter was brought before the Court, an offer in the hundreds of thousands of dollars was tendered by the co-Defendant. After 7 hours of the expert's deposition testimony, the co-Defendant increased their settlement offer to an amount in the neighborhood of \$2.4 Million (sealed). Employed by Plaintiff's Counsel, Brian Panish, Esq. of Greene, Broillet Taylor, Wheeler and Panish

Mycom v. Persona Alameda Superior Court CO8024943 (California) This case involved the placement of a temporary worker by the Defendant, into the Plaintiff's firm, without the benefit of a background check. The temporary employee embezzled money from the Plaintiff's firm, after being placed by a Temporary Agency as an Assistant Controller. Had the Defendant conducted even the most rudimentary background check, which would have included a reference check with a prior employer, it would have learned that the temporary employee had a history of theft.

The case settled after the expert's opinion was rendered through Declaration, primarily because of the fact that the Defendant touted that it's "temps" were "thoroughly referenced and screened". Employed by Plaintiff's Counsel, William P. Davis, Esq.

O'Malley v. Camelview Domestic Placement Service/ Carol Hasher (etal) Maricopa County Superior Court CV 2001-004644 (Arizona). This case involved the placement of a male Nanny to care for two male children. The Nanny molested both of the boys, and is currently incarcerated. The Defendant failed to conduct thorough reference checking and background screening, since one of the Nanny's listed references identified in a subsequent interview that the subject had molested her child. The subject had prior convictions for child molestation. The case settled shortly after expert's assessment for an amount between \$1 and \$2 Million. Employed by Plaintiff's Counsel, James R. Page, Esq.

Audra F. v. Camelot Park Kern County Superior Court 234190 RA (California). Case detail requested not to be divulged. – Negligent Hiring matter. Case settled after expert's Declaration. Employed by Defense Counsel, Jay Lloyd Rosenlieb, Esq.

Perez v. Fitness West Maricopa County Superior Court CV2001-014050 (Arizona). This Negligent Hiring/Negligent Retention case involved a Night Manager/Security Guard hired by the 24-Hour Health Club Defendant. The employee was discovered to have been residing in an abandoned Air Conditioning duct on the roof of the Health Club. Upon discovery of this, the Defendant admonished the employee for living in this manner and asked him to remove himself from the makeshift residence. As a retaliatory act, Plaintiff alleges that the employee sexually assaulted, and murdered (by bludgeoning) a female patron, in the Women's steam room, then wrapped her body in a rug, dragged the decedent into the alley, next to a dumpster and set the rug-wrapped corpse on fire. Upon interviewing the employee, the Phoenix Police Department took him into custody and charged him with the murder. Shortly after the arrest, additional charges for another, unrelated murder were filed against the employee. Plaintiff alleges that the Defendant failed to conduct a routine background check on the subject in the initial hire, and in a subsequent re-activation of his employment with the Health Club, as well as violated its own internal hiring policies which, if followed might have precluded the hiring of the employee, *imprimis*. The matter was settled after expert's deposition. Employed by Plaintiff's Counsel, Messrs. Herbert Ely and Burt Rosenblatt, Esq.

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Johnson v. Totally Secured, Inc. Los Angeles County Superior Court BC 239684 (California). Case involved a determination as to whether or not "reasonable care" was exercised by a Security Guard service "to the Stars" in the hiring and maintenance of their front line Security guard employees. It was alleged that two security guards were hired with extensive criminal backgrounds, which manifested in the physically aggressive handling of multiple routine security matters, resulting in injury and mistreatment to civilians and employees of client's of the Defendant. Two

of the co-Defendants had violent acts convictions in their records, which should not have been ignored, and would have been discovered prior to hiring, if a competent background check was undertaken by the Defendant. Case settled after Assessment rendered by Expert. Employed by Plaintiff's Counsel, Randy Renick, Esq.

Treick v. St. Jude's Ranch for Children Clark County, NV District Court, A493499. Case involves civil prosecution of the Defendant for Negligently Hiring Larry M. Wisenbaker, referred to by the Clark County District Attorney as "the most prolific serial sex offender we have ever prosecuted in the State". Wisenbaker is presently serving three consecutive life sentences for the sexual molestation of several boys while serving as a "cottage parent" in this home for disadvantaged children, Case Settled for \$5.4 million, Employed by Plaintiff's Counsel, G. Dallas Horton, Esq.

Perez v. Stanley Bostitch (etal) United States District Court, for the Western District of Texas, San Antonio Division, Civil Action # SV-06-CA-0144-FB. Case involves a failure to properly screen an autonomously based, vehicle-assigned employee with a history of drunk driving. The employee, while driving a company vehicle, on non-company business during non-regular business hours, was involved in an auto accident, while legally intoxicated which resulted in two deaths. Case Settled, Employed by Plaintiff's Counsel, Shiree Salinas, Esq.

Maria D. v. Comcast; KROLL Backgrounds America (etal) Sacramento County Superior Court 03AS05745 (California) Complex case involving the negligent hiring of an employee, a convicted sex offender, who, while employed by a Comcast subcontractor sexually assaulted the Plaintiff, a legally incompetent, partially blind, and partially disabled female. Expert was retained to assess the performance of the primary background screener, KROLL and it's subcontractor since it was alleged that, upon secondary review of the criminal records of the primary county researched, the KROLL

sub-contractor was determined to have missed a criminal record which could have precluded the employee from

being hired, *imprimis*. Case Settled, Employed by Defense counsel to KROLL Subcontractor,

CIC Employment Services, Inc.; Paul Clauss, Esq. of Lewis Brisbois, Bisgaard & Smith

Barajas v. Mental Health Systems San Bernardino County Superior Court (California) Case # SCVSS 107724. Case

involves the negligent hiring, retention and supervision of an employee, issued a vehicle to perform autonomous

job duties. While in said vehicle, employee was involved in an automobile accident which caused physical injury to the

Plaintiff. Case Settled. Employed by Defense Counsel Vivian I. Schwartz, Esq. Counsel to Safeco Insurance Company

E-FAB, Inc. v. Accountants, Inc. Santa Clara County Superior Court (California) Case # 1-05-CV-048045. Case involved the negligent hiring and placement of a temporary accounting person who later became a permanent employee, and, who, over a period of time embezzled in excess of \$1.5 Million from the Plaintiff. This was a significant case in that, through deposition, the temporary accounting industry was exposed as concerns the lack of an identifiable standard of care, as it relates to the conducting of background checks, versus simple referencing, and, further exemplifies that an implied background checks policy is created when a temporary agency recognizes the need to conduct background checks, including criminal records checks, when they create a consent form specifically designed to obtain consent from a candidate, for such a purpose., and then obtained said consent. In this case, the perpetrator was convicted of the embezzlement, and served prison time for the offense. Germane facts included a failure on the Defendant's part to conduct a criminal conviction check, which would have precluded the perpetrator from being assigned, since she had a conviction for Welfare Fraud discoverable within the consumer reporting agency and FCRA reporting limit of 7 years, which was 4 years prior to the applicant filling out the application form, and lying on the form as to the existence of the criminal record. Case settled, after Expert's Deposition, amount undisclosed, original damages sought were between \$1.8 and \$2 Million. Employed by Plaintiff's Counsel, Christian B. Nielsen, Esq. on behalf of defacto damaged employer E-FAB, Inc.

SMITH v. Wal-Mart Stores, Inc. Clark County District Court (Nevada) Case # A508273. Case involves Plaintiff's entering the Wal-Mart store, and promptly slipping and falling because of negligently managed produce which created a fluid hazard. Plain old "slip & fall" case is significant in that Negligent Supervision/Negligent Training is asserted, since management failed to properly respond to the incident, violating internal policies, and the First-Aid kit was empty! Case Settled. Employed by Plaintiff's Counsel, G. Dallas Horton, Esq.

Loughney v. Del Taco, Inc.(etal) Clark County District Court (Nevada) Case # A522818. Case involves a patron of this fast-food establishment, who, upon attempting to be a good citizen ,and intervene on other patrons, exhibiting vulgar behavior in front of his family, was vehicularly assaulted (run over) by the drunk & vulgar patrons, and, which an assertion of Negligent Supervision and Negligent Training was asserted because of Del Taco's failure to observe and

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respond, and provide first-aid treatment the victim, while on premises. A peculiar matter, which will test the theories of the extent of a proprietor's duty to adequately prepare its staff to respond to incidences of assault, resulting in injury, that occurs on a proprietor's premises. Case Settled. Employed by Plaintiff's Counsel, G. Dallas Horton, Esq.

Gallegos v. Nickels and Dimes Incorporated dba Tilt Family Entertainment Center (etal) 341st Judicial District Court of Webb, Texas, Cause # 2009VCQ001547 D3.

Negligent Hiring/Supervision/Training Case involves an 11-year old girl who was sexually assaulted by 19-year old Francisco Alvarado, an employee of Nickels and Dimes Incorporated who operates a shopping mall (Tilt) arcade in Laredo Texas. Had the arcade conducted any simple background checks on its entry level employees it would not have discovered that Mr. Alvarado impregnated a 15 year old girl in the same back office where he raped Leslie Gallegos about a month earlier, nor would it have discovered criminal sexual assaults on record prior to his age of emancipation, (18 years). What was discovered is that the arcade, part of a national enterprise that owns and operated 170 locations conducts no background checks on its entry-level employees, but recognizes the needs for background checks as the manager level, a seriously flawed policy. Essentially, had the arcade simply spent a little time to reference the prior employer, it would have learned the Mr. Alvarado was terminated for abandoning his job, and thus, his candidacy would likely have been eliminated. The primary assertion is against the flawed policy of not conducting background checks on entry-level employees which eliminates foreseeability as to any adverse act on the one hand, but established that any adverse act could be foreseeable on the other hand. The Human Resources Manager for the national enterprise, and thus responsible for the flawed policy is aware of numerous advisements as to the conducting of background checks at all levels, but ignored same. Case settled. Employed by Plaintiff's Counsel, Kelly Forester, Esq., and Matthews & Forester

Novak v. Pizza Hut (etal) Superior Court of the State of California, San Diego County, Case # 37-2009-00085596-CU-PA-CTL. Case involves the hiring of Nicole Fisk, a Pizza Hut Pizza Delivery Driver, Fisk had a history of blackouts and marijuana use. While on a Pizza delivery, Fisk blacked out crossed over the center line and collided with the Plaintiff's head-on causing several and permanent injuries to both mother and daughter. Expert was retained to assert a Negligent Hiring claim component insofar as it was determined that Pizza Hut had a zero-tolerance drug use policy, but had no drug testing procedure in place to enforce the policy, and failed to conduct a reference check on Fisk, who, was determined ex-post facto to have been terminated from her prior job for the effects of off-hours marijuana use. Jury verdict was in favor of the Plaintiff in the amount of \$10.8 million. Employed by Plaintiff's Counsel, John Gomez, Esq.

Harrell/Johnson v. Budget Lodge 201st Judicial District Court, Travis County, TX, Case # D-1-GN-08-003398. Case involves the hiring the Douglas Wayne Ward as a hotel manager. Ward sexually assaulted a 10 year old boy and criminally threatened the boy's friend with death. Ward was convicted of multiple crimes and is serving a 25 year prison sentence. Case centers on the hiring of a convicted sex offender by the hotel 9 years prior to the hiring of Ward. The 9-year, convicted sex offender was the person responsible for hiring Ward. The Hotel is part of a small national chain and ignored the need to conduct background checks, or follow any reasonable standard of care in the hiring, retention, training and supervision of hotel employees in such a manner as to be unable to assure the safety and security of the hotels and

their patrons. Case settled. Employed by Plaintiff's Counsel, Stephen W. Stewart, Esq.

Dean v. Pike Electric UNITED STATES DISTRICT COURT WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE Civil Action File No. 3:10-CV-652-H. Case centers on Pike Electric Company, a Public Utility who originally hired and retained Gary Burgess in multiple capacities as a field employee. Burgess was a confirmed Alcoholic. Pike Electric had retained Burgess and allowed Burgess to drive company trucks while Burgess and the equipment were on loan to another utility company even though Burgess had been involved in an incident where he recklessly drove a company truck which led to Burgess' placement by Pike in an Alcohol rehabilitation program. Subsequent to completion of the program, and as a result a relaxed alcohol testing and monitoring, Burgess was again authorized to drive a company vehicle, even though Pike originally did not allow him to operate company equipment, and had other employees drive him to job assignments in the field. During work hours, and while on the job, Burgess consumed large quantities of alcohol, drove a company truck in a severely drunken state and caused a multi-vehicle accident resulting in injuries to the Plaintiffs. Case Pending. Employed by Plaintiff Counsel, Donald K. Brown, Esq. Krauser & Brown Law Firm

Butler v. Blaine Burnett Hodge, Superstition Mountain Mental Health Center (SMMHC, Inc.) & Healing Hands Health Care et al Superior Court of the State of Arizona, for Pinal County, Case # CV-209-03584. Case Centers on the egregious sexual assault of Plaintiff Butler by a presently incarcerated Blaine Burnett Hodge. Hodge had a prior felony record, was inadequately screened and was hired as an Independent Contractor by Nursing Registry Helping Hands then placed in a residential mental health facility owned by SMMHC, Inc. where Plaintiff Butler was a residential patient. During the graveyard shift and while completely unsupervised Hodge intimidated Butler using the threat of evicting Butler from the facility to force the assault, after Butler, who had a history of prior sexual abuse commencing when a young girl had no other place to live.

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Claims for Negligent Hiring and Negligent Supervision form the underlayment for the claim against Hodge; the Registry (Helping Hands) and Negligent Supervision by the facility owner, SMMHC, Inc. Butler was cognizant enough to retain the clothing she wore during the assault which contained physical evidence of the assault and which led to Hodge's conviction and incarceration. Testimony from Helping Hands also evidenced an egregious violation of Arizona Health Care recordkeeping law in that upon closing its doors, it failed to maintain its employee and contractor records, prior to expiration of the 4-year statute. Case Pending. Employed by Plaintiff's Counsel Robert F. Clarke, Esq.

Credit/Privacy:

Howell v. Nissan Motor Acceptance Corp. United States District Court, for the District of Arizona, CIV 02-0962 PHX RCB. Case involved Plaintiff allegations that Defendant improperly reported information relative to an outstanding obligation owed by Plaintiff to credit bureaus, which resulted in the damaging of Plaintiff's ability to obtain new lines of credit. Status Pending, Employed by Defense Counsel William M. Auther, Esq. BOWMAN & BROOKE, LLP

Walters v. Bedell Los Angeles County Superior Court BC 243352 (California). Case involved Invasion of Privacy. Secrecy requested. Expert assessment expedited settlement in this matter. Employed by **Plaintiff/Cross-Defendant** Counsel: Christine Lyden, Esq.

Investigative Standard of Care – Jury Trial:

Caserta v State Farm Insurance/National Insurance Crime Bureau San Diego Superior Court GIC 739803 (California). Case involved retention of Expert to determine if the Standard of Care for field investigations was violated by Defendant, National Insurance Crime Bureau. Plaintiff tendered an allegedly fraudulent claim to State Farm, which was rejected because it failed to meet the legitimacy tests of the Special Investigations Unit of State Farm. State Farm referred the matter to co-Defendant NICB, an industry supported neutral investigative body for supplemental investigation concerning the claim. Plaintiff Caserta alleged the Defendant violated the Standard of Care for field investigations by alleging that the female field investigator “roughed-up” the Plaintiff and his family. The field investigator was, at all times accompanied by the San Diego Police Department when visiting the Plaintiff and his family. The matter was presented to the jury, which rendered an 11 to 1 verdict in favor of the Defendant. Polled jurors indicated strong belief in the Defendant’s position, and believed, unequivocally, the testimony of the Expert. Employed by **Defense Counsel, Messrs. Stanley Calvert and William Roberts, Esq.;** Wilson, Elser, Moskowitz, Edelman and Dicker, LLP.

“Textbook” Fraud/Internal Theft/Bank Procedures Malfeasance:

Eurobath & Tile Co., Inc. v. Zamborski Orange County Superior Court 534803 (California); & **Eurobath & Tile Co., Inc v. Home Federal Savings & Loan Assn, Zamborski (etal)** Orange County Superior Court 571799. Case involved a bookkeeper/”controller” for the Plaintiff who methodically “raised” the amount of his paycheck each two weeks in the amounts of \$5,000 and \$6,000 respectively, over a 39 month period of time, effectively “embezzling” over \$300,000. Additionally, the Defendant stole checks from the mail, and endorsed them with the company’s name, and then his own name and deposited them into his personal bank account at Home Federal Savings, through the automated teller machine. One of the items converted was a California State Tax Warrant which he signed and deposited in his personal account. The case was successfully prosecuted, confessions were obtained, assets recovered, and

liquidated, and the Plaintiff's made whole. A landmark case was decided against the receiving bank, Home Federal Savings, as they were held to a basic audit and review standard insofar as accepting 2-party checks without proper scrutiny of the items for "deposit applicability". Furthermore, the case exemplars, and experts reports in their entirety were later incorporated into the training manual for investigators with the California State Controller's office, by John Henry, Chief Investigator. Employed as Investigator/Auditor and Expert of Record by **Plaintiff's** Counsel, James Barone, Esq.