

IN THE
ARIZONA SUPREME COURT

SHEROLD D. ROAF,

Plaintiff/Appellee,

v.

STEPHEN S. REBUCK
CONSULTING, LLC, *et. al.*,

Defendants/Appellants.

Arizona Supreme Court
No. CV-23-0233-PR

Arizona Court of Appeals, Division 1
No. 1 CA-CV 22-0620

Maricopa County Superior Court
No. CV 2019-003654

Brief of Amicus Curiae Arizona Association for Justice

(Filed with written consent of the Parties. *See* Ariz. R. Civ. App. P. 16(b)(1)(A).)

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INTEREST OF AMICUS CURIAE

Since 1964, the Arizona Association for Justice (“AzAJ”) has worked to ensure that any person injured by the misconduct or negligence of others can obtain justice in Arizona’s courtrooms. This work includes holding employers responsible for their misconduct, even if they may be vicariously liable as well. The rule set forth in *McHaffie v. Bunch*, 891 S.W.2d 822 (Mo. 1995), prevents injured parties from holding employers accountable for their actions, and the AzAJ has an interest in this Court rejecting Medstar’s¹ invitation to adopt the *McHaffie* rule for Arizona. In an effort to persuade this Court to do so, this Brief provides information, perspective, and argument that can help the Court beyond what the Parties’ lawyers have provided. *See* Ariz. R. Civ. App. P. 16(b)(1)(C)(iii).

QUESTION PRESENTED

Did the Court of Appeals err by finding no prejudicial error in allowing Roaf to proceed against Medstar on separate claims of negligent hiring and vicarious liability when Medstar admitted it was vicariously liable for its employee’s negligence and when Roaf is not seeking punitive damages against Medstar?

¹ This Brief refers to the “Defendants/Appellants” collectively as “Medstar.”

SUMMARY OF THE ARGUMENT

The answer to the Question Presented is no, the Court of Appeals did not err by finding no prejudicial error because the Superior Court did not err at all. As masters of their complaints, plaintiffs choose what claims they bring against defendants. Defendants cannot usurp that role through strategic-admission gerrymandering. Vicarious liability and negligent hiring are different claims. They address different conduct and turn on different elements. Medstar argues it should be able to preclude one claim by admitting to another. This Court should reject that argument for four reasons.

First, Medstar fails under the test for which it advocates. *McHaffie*'s analysis applied to claims of "imputed liability." States that recognize negligent hiring as an independent source of liability generally reject *McHaffie*. Under Arizona law, negligent hiring is a direct and independent source of liability, not imputed liability. Accordingly, by its own terms, *McHaffie* would not apply to the negligent-hiring claim at issue.

Second, Medstar's argument misuses evidentiary standards to create a new legal rule. Normally, a plaintiff pleads claims, develops a record to support those claims, and then presents evidence of each claim to a factfinder to determine fault. Defendants can have a claim dismissed only if plaintiffs fail to meet their burden. But here, Medstar starts from evidentiary prejudice and work backwards. Medstar

acknowledges that Roaf has evidence to support his negligent-hiring claim but argues that the claim should fail as a matter of law because that evidence is too prejudicial to a different claim. That flips the normal rules of litigation on their heads.

Third, Arizona courts have rejected arguments similar to Medstar's in criminal cases. Criminal defendants have tried to use strategic admissions to keep unseemly evidence from juries, and these attempts have been rebuffed consistently. It would be odd—to say the least—to afford a company's speculative financial interest greater protection than an individual's constitutionally protected liberty interest.

Fourth, Medstar's argument allows companies to escape accountability for their own actions. Arizona's tort-law system does more than compensate the plaintiff in each case. It holds defendants, including employers, accountable for their wrongdoing and encourages responsible conduct. Medstar's position would allow it to escape this accountability by hiding its misconduct.

In short, Medstar's request for preferential treatment is unsupported by Arizona law and public policy. The AzAJ respectfully requests that this Court (1) clarify that vicarious liability and negligent hiring are independent claims, (2) reject *McHaffie* as inconsistent with Arizona law, and (3) reaffirm the basic rules underlying the Superior Court judgment.

ARGUMENT

I. Medstar fails under the *McHaffie* test for which it advocates.

Medstar’s primary argument is that this Court should adopt the *McHaffie* rule for Arizona. *McHaffie*, however, rests on the premise that vicarious liability and negligent hiring² are both theories of “imputed liability.” See *Coomer v. Kansas Cty. Royals Baseball Corp.*, 437 S.W.3d 184, 206 (Mo. 2014) (“The reasoning of *McHaffie* prohibits a plaintiff from going to the jury on multiple alternative theories of imputed liability.”). But—as the Restatement; the Court of Appeals; and U.S. District Court Judges Campbell, Teilborg, Tuchi, and Logan have recognized—negligent hiring is *not* a theory of imputed liability in Arizona. Nor should it be. Negligent hiring is an independent theory of direct liability. Accordingly, it falls outside the “imputed liability” reasoning on which *McHaffie* relies.

As a preliminary matter, the AzAJ disagrees with the characterization of vicarious liability and negligent hiring as “alternative tort theories of liability.” [Resp. to PR at 5] Calling claims alternative suggests that they are inconsistent. See *Pleading*, Black’s Law Dictionary (11th ed. 2019) (defining “alternative pleading” as “[a] form of pleading whereby the pleader alleges two or more independent claims or defenses that are not necessarily consistent with each other,

² This Brief uses “negligent hiring” as a catch-all term that includes negligent hiring, retention, training, supervision, and entrustment.

such as alleging both intentional infliction of emotional distress and negligent infliction of emotional distress based on the same conduct”). Vicarious liability and negligent hiring are independent theories, and proof of one does not conflict with the other in any way.

Vicarious liability is a claim of imputed liability that turns on the *employee’s* conduct. The employer becomes liable by virtue of the employment relationship. *Engler v. Gulf Interstate Eng’g, Inc.*, 230 Ariz. 55, 57 (2012). Negligent hiring is a direct negligence claim that turns instead on the *employer’s* conduct. The relevant inquiry is whether the employer created a harm to the plaintiff by employing a dangerous person. *Pruitt v. Pavelin*, 141 Ariz. 195, 201–02 (App. 1984).

States that recognize this distinction generally reject *McHaffie*.³ The Supreme Court of Alabama put it well:

The liability which attaches to the entrustor for injuries proximately caused by the incompetence of the driver to whom a motor vehicle has been entrusted does not arise out of the relationship of the parties but rather is an independent tort resting upon the negligence of the entrustor in entrusting the vehicle to an incompetent driver.

Bruck v. Jim Walter Corp., 470 So. 2d 1141, 1143 (Ala. 1985).

³ In lieu of a long, unwieldy string citation, attached as an **Appendix** to this Brief is a table showing different States’ positions regarding direct-liability claims in instances of *admitted* vicarious liability, including state and federal trial court decisions where state appellate precedent was absent. Although States are split pretty evenly on the *McHaffie* rule, the modern trend favors allowing both claims.

Arizona courts have applied this understanding of negligent hiring for half a century. In negligent-hiring cases, the Court of Appeals has followed the Restatement (Second) of Agency § 213 (1958), which provides that “[a] person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless . . . in the employment of improper persons or instrumentalities in work involving risk of harm to others.” See, e.g., *Kassman v. Busfield Enters., Inc.*, 131 Ariz. 163, 166 (App. 1981); *Olson v. Staggs-Bilt Homes, Inc.*, 23 Ariz. App. 574, 577 (1975). Plaintiffs do not need to pick one claim or another. “In a given case the employer may be liable both on the ground that he was personally negligent and on the ground that the conduct was within the scope of employment.” Restatement (Second) of Agency § 213 cmt. h.

Although this Court said in *Lewis* that “the failure of an employer to hire only competent and experienced employees does not of itself constitute an independent ground of actionable negligence,” *Lewis v. S. Pac. Co.*, 102 Ariz. 108, 109 (1967), lower courts have always understood that statement in light of the *Lewis*’s facts and have not read *Lewis* to mean that negligent-hiring claims do not exist at all. If that were the rule, then a medical transport company would have no direct liability to a plaintiff even if it knowingly hired a driver with no license and a history of elder abuse. Not even Medstar goes that far. Medstar suggests that vicarious liability and negligent-hiring claims can both proceed if a plaintiff seeks punitive damages

against the employer. [PR at 8, 10, 14; Pet. Sup. Br. at 2, 3, 9, 13, 14] But if *Lewis* really means that negligent hiring is not an independent claim, then punitive damages would make no difference. Claims either exist or they don't; they do not spring into existence for punitive damages only.

U.S. District Courts analyzing the issue have followed the Court of Appeals and applied the Restatement Rule. *See Contreras v. Brown*, No. CV-17-08217-PCT-JAT, 2019 WL 1980837, at *2 (D. Ariz. May 3, 2019) (Teilborg, J.); *Salazar v. Flores*, No. CV-16-08201-PCT-SPL, 2019 WL 1254661, at *2 (D. Ariz. Mar. 18, 2019) (Logan, J.); *Brill v. Lawrence Transp. Co.*, No. CV-17-01766-PHX-JJT, 2018 WL 6696815, at *2 (D. Ariz. Dec. 20, 2018) (Tuchi, J.); *Ford v. Barnas*, No. CV17-2688-PHX DGC, 2018 WL 5312912, at *7 (D. Ariz. Oct. 26, 2018) (Campbell, J.). Those courts chose to follow the Court of Appeals' reading of *Lewis*⁴ and noted that the Legislature passed A.R.S. § 12-2501 after *Lewis* and adopted new theories liability and comparative negligence. *See J. J. Burns, Respondent Superior as an Affirmative Defense: How Employers Immunize Themselves from Direct Negligence Claims*, 109 MICH. L. REV. 657 (2011) (arguing that *McHaffie*'s "reasoning breaks down when it is applied in comparative negligence regimes").

⁴Federal courts are not bound by opinions of state intermediate appellate courts. *Fix v. Union Pac. R.R. Co.*, 982 F. Supp. 2d 1052, 1055 (D. Ariz. 2013).

This Court should now clarify that the Restatement Rule applies and disapprove any unduly broad interpretation of *Lewis*. *Lewis*'s statement that negligent hiring is not an independent claim was based only on out-of-state cases that have largely been rejected since then. *See Ponticas v. K.M.S. Invs.*, 331 N.W.2d 907, 911 n.4 (Minn. 1983). And to the extent reliance interests are at issue in this case, they favor the Restatement Rule. No published Arizona opinions have cited *Lewis* since the 1980s, and it appears that defendants' renewed reliance on *Lewis* reemerged in the last few years and has not prevailed even once.

Because the Restatement Rule applies, *McHaffie* should not. Unlike Missouri, negligent hiring in Arizona is not "derivative or dependent," it is direct and independent. *See McHaffie*, 891 S.W.2d at 825. "[E]ven though the damages for the claims might be identical, the elements of the respective torts are not." *Rojas v. Concrete Designs, Inc.*, 83 N.E.3d 339, 343, ¶ 10 (Ohio 2017). "The employer's admission to the existence of an agency relationship from which vicarious liability may arise does not supplant the claim that the employer's own negligence, independent of the negligence of the employee, may have caused or contributed to the injury." *MV Transp., Inc. v. Allgeier*, 433 S.W.3d 324, 337 (Ky. 2014).

Negligent hiring is a common-sense tort claim supported by the Restatement under which Arizona plaintiffs have recovered for decades. The Court should not take it away now.

II. Medstar improperly relies on evidentiary standards to dismiss a separate legal claim.

The flaw in Medstar's theory is illustrated by the means used to advance it. The issue of whether a company could foreclose a negligent-hiring claim by admitting to vicarious liability came before the Superior Court on a motion *in limine*. That should be a huge red flag.

Motions *in limine* are tools for resolving *evidentiary disputes*, not entire claims as a matter of law. *See* Comment to Ariz. R. Civ. P. 7.2; *State v. Rodriguez*, 126 Ariz. 28, 30 (1980). In the ordinary course of litigation, plaintiffs choose what claims to pursue against defendants. Ariz. R. Civ. P. 8(e). They are, after all, the masters of their complaint. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Plaintiffs then have the duty to support their chosen claims by developing an evidentiary record for each claim. *See Comerica Bank v. Mahmoodi*, 224 Ariz. 289, 292, ¶ 18 (App. 2010) (discussing plaintiffs' burden of production). If defendants believe that plaintiffs' claims fail as a matter of law, they can move for dismissal, judgment on the pleadings, or summary judgment. Ariz. R. Civ. P. 12(b)-(c), 56. And if defendants want to preclude evidence of their liability and focus on damages only at trial, they can admit liability for *each claim*. Otherwise, relevant evidence is presented to the factfinder to determine whether the plaintiffs meet their burden. Nothing in Arizona's Rules of Procedure or Evidence allows defendants to choose what claims plaintiffs pursue against them through weaponized admissions.

Because vicarious liability (“Claim 1”) and negligent hiring (“Claim 2”) are distinct and Roaf had evidence of both, Medstar could not have moved to dismiss either claim or for summary judgment. So instead of relying on legal standards, Medstar turned to evidentiary standards. Medstar argued that evidence of Claim 2 was so prejudicial to Claim 1, that Claim 2 should fail as a matter of law. But Rule 7.2 does not allow a party to start with evidentiary prejudice and work backwards to a legal conclusion.⁵ This tactic is even more troubling where the purported prejudice results from evidence of a *different claim*. So not only does Medstar want the tail to wag the dog, it wants a chihuahua’s tail to wag a poodle.

Superior Courts have tools at their disposal to mitigate any unfair prejudice. They can exclude evidence that is irrelevant or more prejudicial than probative. Ariz. R. Evid. 401, 403. They can also restrict the use of admissible evidence and instruct the jury on its limited purpose. Ariz. R. Evid. 105. As in every other context, “we presume jurors follow the court’s instructions.” *State v. Newell*, 212 Ariz. 389, 403, ¶ 69 (2006). But it defies reason to say that Medstar should avoid direct liability because Roaf’s evidence of direct liability is too strong.

⁵ This type of motion *in limine* misuse is so common that some trial court judges have made it a practice to explicitly “caution[] . . . parties that motions in limine are meant to deal with discrete evidentiary issues related to trial, and are not another excuse to file dispositive motions disguised as motions in limine.” *See Nomo Agroindustrial SA DECV v. Enza Zaden N. Am., Inc.*, No. CV 05-351TUCFRZ, 2007 WL 1077023, at *1 (D. Ariz. Apr. 9, 2007).

If parties believe the Superior Court erred in its evidentiary rulings, they can challenge those rulings on appeal. But here again, there is a dramatic mismatch between the applicable legal standard and Medstar's requested relief. Medstar's Supplemental Brief lists several pieces of evidence and arguments that it finds improper, and it argues that the Superior Court's rulings violated Arizona Rules of Evidence 402 and 404. [Pet. Sup. Br. at 4-7, 11-14] Normally, rulings on evidence and purportedly improper arguments are reviewed for an abuse of discretion. *See Shotwell v. Donahoe*, 207 Ariz. 287, 294, ¶ 27 (2004) (evidentiary rulings); *Waid v. Bergschneider*, 94 Ariz. 21, 24 (1963) (improper argument). If the Superior Court abused its discretion by admitting irrelevant evidence or allowing improper arguments, the remedy would be to preclude *particular* evidence and arguments in a new trial, not to preclude *all* evidence, *all* arguments, and an *entire claim*.

Medstar's position requires a departure from the normal rules at every step, all so it can simultaneously deny direct liability and preclude evidence of direct liability. No good reason exists for this departure.

III. This Court has rejected similar arguments in criminal cases and should not afford a company's speculative financial interest preferential treatment.

This Court has already rejected arguments similar to Medstar's in criminal cases and should reject them here as well.

In *Galati*, the State charged a criminal defendant with two counts of aggravated DUI. *State ex rel. Romley v. Galati ex rel. Cnty. of Maricopa*, 195 Ariz. 9, 11, ¶ 7 (1999). To prevent the jury from hearing evidence of his prior DUIs, the defendant stipulated that he had prior DUI convictions and moved *in limine* to prevent the State from presenting his prior convictions to the jury. *Id.* at ¶ 8. The Superior Court denied the motion because the prior DUIs were elements of the charged offense. *Id.* The Court of Appeals reversed and held that the defendant’s “stipulation satisfied the aggravating elements of the offense charged and avoided the risk that the jury would convict [him] solely because he had committed the same offense on two previous occasions.” *Id.* Relying on its prior Opinion in *State v. Geschwind*, 136 Ariz. 360 (1983), this Court disagreed, recognized the “importance of submitting all elements of a crime to the jury for decision,” and affirmed the Superior Court. *Galati*, 195 Ariz. at 11, ¶ 13.

Since *Galati*, the Court of Appeals has applied *Galati*’s reasoning to domestic violence, sexual assault, and firearms cases. *See State v. Newnom*, 208 Ariz. 507 (App. 2004) (domestic violence); *State ex rel. Thomas v. Talamante*, 214 Ariz. 106 (App. 2006) (sexual assault); *State v. Lopez*, 209 Ariz. 58 (App. 2004) (firearms). In each case, regardless of the prejudice that may have resulted from the admission of other crimes, the courts have reaffirmed that juries could be trusted to apply the law and use the evidence only for its proper purpose.

The same goes for juries considering distinct but related charges. In *State v. Prince*, the State charged the defendant with first degree murder and attempted first degree murder after he shot his wife and her daughter, injuring his wife and killing her daughter. 204 Ariz. 156, 157, *supplemented*, 206 Ariz. 24 (2003). The State moved to introduce evidence of prior instances in which the defendant threatened and beat his wife, and the Superior Court ruled that this evidence was admissible regarding the attempt count but inadmissible regarding the murder count. *Id.* at 158, ¶ 5. The Superior Court allowed the jury to hear the evidence and instructed them as follows: “each count charges a separate and distinct offense. You must decide each count separately on the evidence with the law applicable to it, uninfluenced by your decision on any other count.” *Id.* at 158, ¶ 9 (alteration omitted). After the defendant’s conviction on both counts, an automatic capital appeal to this Court followed. *Id.* at 157, ¶ 1. On the issue of the prior-bad-act evidence, this Court relied on the presumption that juries follow their instructions to affirm the Superior Court’s admission of evidence. *Id.* at 158, ¶ 9.

Of course, civil and criminal cases are different, and there are certainly procedural grounds on which to distinguish those cases from this one. But the Question Presented here is about jury prejudice, and the underlying principles are the same. How can it be that we trust juries to follow instructions in capital-murder cases but not in negligent-hiring cases? Medstar advocates a state of the law where

we presume juries appropriately handle evidence that a man beat his wife, but evidence that an employer didn't conduct a background check is too dangerous.

Indeed, in this case, Medstar seeks even more than the defendants in *Galati*, *Newnom*, *Talamante*, *Lopez*, and *Prince*. Not only does Medstar want to prevent the jury from seeing evidence of its negligent hiring, it wants to *prevail* on the claim as a matter of law. And it wants to prevail based on its speculative assertions of prejudice alone. That rule would require this Court, for employers only, to presume that the jury disregarded its instructions and presume the existence of prejudice.

Nowhere else in Arizona law does such a rule exist, and for good reason. The Court should reject this bespoke rule of preferential treatment.

IV. Medstar's proposed rule allows negligent companies to escape accountability for their own actions.

“Tort law is about compensating losses.” [Pet. Sup. Br. at 1] But that's not all it's about. Tort law “further[s] concepts of personal responsibility and accountability by recognizing the obligation of each person to act reasonably.” *Law v. Superior Ct.*, 157 Ariz. 147, 161 (1988); *see also Nikolous v. Superior Ct.*, 157 Ariz. 256, 259 (1988) (recognizing the “overall tort goals of fairness and accountability”). Indeed, this Court has said that “all tort opinions” are “intended to encourage safe and responsible conduct.” *Law*, 157 Ariz. at 161. Medstar's rule undermines these important goals by allowing companies to hide their misconduct.

Under Medstar's rule, companies will always have the option to avoid direct-liability judgments against them by admitting to vicarious liability. The outcome of this rule is as apparent as it is unfortunate. Companies that investigate negligent-hiring claims against them and discover their own failures will admit to the employee's negligence and move to dismiss the direct-liability claim against them. They will have no incentive to act responsibly or any accountability for their actions; they get to blame that rotten employee.

Medstar suggests that a punitive-damages allegation would keep the direct claim alive, but it is unclear how a plaintiff would discover evidence to support a punitive-damages allegation. For example, repeated acts of misconduct can support punitive damages. *Sec. Title Agency, Inc. v. Pope*, 219 Ariz. 480, 501, ¶ 95 (App. 2008) (quoting *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 409 (2003)). But if a company can preclude direct claims by admitting vicarious liability, discovery related to the direct claim such as prior incidents, hiring practices, and warnings may also be precluded as no longer relevant to the negligence claim against the driver. At the very least, those are the types of arguments that will become a regular feature of every case. As with most discovery disputes, different divisions of the Superior Court will likely reach different outcomes in different cases. And if the companies prevail, then wrongdoers could avoid any punitive-damages allegations indefinitely, to the disservice of the public and interests of justice.

That outcome is particularly jarring in cases like this one, where the defendant is a medical transport company responsible for transporting Arizona's ill and infirm. The public has an interest in knowing if a jury determines that such a company negligently hires its drivers. The punitives-or-nothing dichotomy that runs through Medstar's briefing is a false one. Accountability is not punishment. Medical transport companies, as well as others, should know that they will be held accountable for their own negligence rather than knowing they can hire anyone—however dangerous—so long as they're willing to pay the judgment for the harm they cause.

CONCLUSION

At bottom, the appeal of Medstar's argument is practical: Roaf did not *need* to bring both claims, so why should he? The answer, however, is legal.

In Arizona, vicarious liability and negligent hiring are separate claims, and under our Rules, plaintiffs may pursue as many claims as they can support with evidence. Absent an admission of direct liability, juries determine defendants' liability, not the defendants themselves.

We trust Superior Courts to act as gatekeepers of evidence and instruct juries, and we trust juries to follow instructions and consider evidence properly. We should not depart from these basic principles now for one class of defendants only.

This Court should affirm.

RESPECTFULLY SUBMITTED this 27th day of February, 2024.

By: */s/ Daniel Rubinov* _____

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Appendix

Survey of State Law Re: Direct Liability Where Vicarious Liability is Admitted

* Indicates U.S. District Court decisions.

** Indicates State trial court decisions.

State	Direct Liability Allowed?	Citation
Alabama	Yes.	<i>Bruck v. Jim Walter Corp.</i> , 470 So. 2d 1141, 1143 (Ala. 1985) (“The liability which attaches to the entrustor for injuries proximately caused by the incompetence of the driver to whom a motor vehicle has been entrusted does not arise out of the relationship of the parties but rather is an independent tort resting upon the negligence of the entrustor in entrusting the vehicle to an incompetent driver.”).
Alaska	Unknown.	
Arkansas	No.	<i>Kyser v. Porter</i> , 548 S.W.2d 128, 132 (Ark. 1977) (“Our cases hold that a negligent entrustor, though guilty of a separate tort, is only liable to a third party for his trustee’s negligence, if any.”).
California	No.	<i>Armenta v. Churchill</i> , 267 P.2d 303, 309 (Cal. 1954) (“Plaintiffs’ allegations in the two counts with respect to Alece Churchill merely represented alternative theories under which plaintiffs sought to impose upon her the same liability as might be imposed upon her husband.”).
Colorado	Yes, by statute.	<i>Brown v. Long Romero</i> , 495 P.3d 955, 957 (Colo. 2021) (“At the conclusion of the most recent legislative session, and shortly before oral arguments in this case, the General Assembly added language to section 13-21-111.5, C.R.S. (2020), to ‘reverse the holding in <i>Ferrer v. Okbamicael</i> , 390 P.3d 836 (Colo. 2017), that an employer’s admission of vicarious liability for any negligence of its employees bars a plaintiff’s direct negligence claims against the employer.’ Ch. 147, sec. 1, § 13-21-111.5(1.5)(c), 2021 Colo. Sess. Laws 863.”).

Connecticut	No.	<i>Prosser v. Richman</i> , 50 A.2d 85, 87 (Conn. 1946) (“The parents’ liability for any negligence of Harold was admitted, and his negligence must be proven before they can be held liable. . . . It follows that the questions asked of an instructor as to the number and character of driving lessons necessary were irrelevant and should have been excluded.”).
Delaware	Yes.**	<i>Smith v. Williams</i> , No. CIV.A. 05C-10-307PLA, 2007 WL 2677131, at *7 (Del. Super. Ct. Sept. 11, 2007) (“The evidence of Yellow’s negligent hiring and supervision, if proved and accepted by the jury, would establish a separate basis for Smith to recover, independent of Williams’s accident for which Yellow may be liable. Specifically, under a respondeat superior theory, Yellow would be liable for any negligence related to Williams’s accident with Smith. Under a direct negligence theory, Yellow would be liable for any negligence of its employees in monitoring Williams, which would be wholly unrelated to Williams’s accident. Moreover, because these are separate claims, permitting Smith to assert both would not waste judicial resources or allow irrelevant evidence to be presented at trial. As noted by Smith, a direct negligence claim, if successful, would hold Yellow accountable in its hiring and retention of drivers.”).
District of Columbia	No.*	<i>Greene v. Grams</i> , 384 F. Supp. 3d 100, 103 (D.D.C. 2019) (“Given USA Truck’s admission that it would be vicariously liable for Mr. Grams’ negligence, Mr. Greene’s claims for negligent hiring and negligent entrustment would be prejudicial and unnecessary and should be dismissed.” (citation omitted)).

Florida	Unclear.	<p><i>See Clooney v. Geeting</i>, 352 So. 2d 1216, 1220 (Fla. Dist. Ct. App. 1977) (“Justice requires, however, that a caveat be imposed on the use of any of the theories we have mentioned. Where these theories impose no additional liability in a motor vehicle accident case, a trial court should not allow them to be presented to the jury. The reason for this is a very practical one: Under these theories the past driving record of the driver will of necessity be before the jury, so the culpability of the entrusting party can be determined.”); <i>but see Trevino v. Mobley</i>, 63 So. 3d 865, 868 (Fla. Dist. Ct. App. 2011) (Sawaya, J., concurring) (“This case demonstrates why the decision in [<i>Clooney</i>] should be abandoned and no longer followed by the courts in this state.”); <i>Jones v. Vasilius</i>, 359 So. 3d 10, 13 (Fla. Dist. Ct. App. 2023) (declining to follow <i>Clooney</i> to claims against supervisor).</p>
Georgia	Yes, by statute.	<p><i>Quynn v. Hulsey</i>, 850 S.E.2d 725, 732 (Ga. 2020) (“For the foregoing reasons, we conclude that the Respondeat Superior Rule has been abrogated by OCGA § 51-12-33.”).</p>
Hawaii	Unknown.	
Idaho	No.	<p><i>Wise v. Fiberglass Sys., Inc.</i>, 718 P.2d 1178, 1182 (Idaho 1986) (“Here, however, Wise has only alleged that Fiberglass negligently hired and trained Walker, and then negligently entrusted Walker with the vehicle. There are no allegations, nor was any proof offered at trial, that Fiberglass provided Walker with defective equipment and thereby was independently responsible for the accident.”).</p>

Illinois	Yes.	<i>McQueen v. Green</i> , 202 N.E.3d 268, 280, ¶ 45 (Ill. 2022) (“We see no reason why a plaintiff should be precluded from seeking to hold an employer vicariously liable for its employee’s negligence, as well as directly liable for its own negligence, separate and apart from its employee’s conduct. A potentially meritorious cause of action should not be barred simply because the employer acknowledges vicarious liability for its employee’s misconduct in a separate cause of action.”).
Indiana	No.	<i>Sedam v. 2JR Pizza Enterprises, LLC</i> , 84 N.E.3d 1174, 1178 (Ind. 2017) (“This outcome recognizes that a respondeat superior claim necessarily involves an act within the scope of employment, whereas negligent hiring claims require an act outside the scope of employment. Under each claim, the plaintiff seeks the same result—employer liability—and recovery is based on the same negligent act—the employee’s.”).
Iowa	Unknown.	
Kansas	Yes.	<i>Marquis v. State Farm Fire & Cas. Co.</i> , 961 P.2d 1213, 1225 (Kan. 1998) (“Because the torts of negligent hiring, retention, or supervision are recognized in Kansas as separate torts that are not derivative of the employee’s negligence, an admission that the employee was acting within the scope of his or her employment does not preclude an action for both respondeat superior and negligent entrustment or negligent hiring, retention, or supervision.”).
Kentucky	Yes.	<i>MV Transp., Inc. v. Allgeier</i> , 433 S.W.3d 324, 337 (Ky. 2014) (“The employer’s admission to the existence of an agency relationship from which vicarious liability may arise does not supplant the claim that the employer’s own negligence, independent of the negligence of the employee, may have caused or contributed to the injury.”).

Louisiana	Yes.	<i>Martin v. Thomas</i> , 346 So. 3d 238, 240 (La. 2022) (“We hold that a plaintiff can maintain both claims even if the employer has stipulated to the course and scope of employment.”).
Maine	Unknown.	
Maryland	No.	<i>Houlihan v. McCall</i> , 78 A.2d 661, 665 (Md. 1951) (“But in the instant case when agency had been admitted it was quite unnecessary to pursue the alternative theory in order to hold the corporate defendant. It was only necessary to prove negligence on the part of the driver.”).
Massachusetts	Unknown.	
Michigan	Yes.	<i>Perin v. Peuler</i> , 130 N.W.2d 4, 8 (Mich. 1964) (“In such circumstances, the owner’s liability is also in part vicarious for it cannot arise unless the person entrusted with the automobile uses it negligently; but, the primary basis for the owner’s liability is said to be his own negligence in permitting its use by an incompetent or inexperienced person with knowledge of the probable consequences.”), <i>overruled on other grounds by McDougall v. Schanz</i> , 461 Mich. 15, 597 N.W.2d 148 (Mich. 1999).

Minnesota	Yes.	<i>Lim v. Interstate System Steel Div., Inc.</i> , 435 N.W.2d 830 (Minn. Ct. App. 1989) (“In order to hold an entrustor liable to an injured third party, the entrustor’s negligence must be accompanied by negligence on the part of the trustee, but the entrustor’s duty runs directly to those who might be put at risk as a result of the negligent entrustment.”).
Mississippi	No.*	<i>Welch v. Loftus</i> , 776 F. Supp. 2d 222, 225 (S.D. Miss. 2011) (“Although the Mississippi Supreme Court has not answered the legal question at hand, this Court is satisfied that where a defendant declines to protect himself against a claim of vicarious liability, he voluntarily enters the arena to entertain a claim of negligence. Proof of negligent entrustment or the like, then, is unnecessary and duplicitous at best, and at worst could provide unduly prejudicial evidence that is ultimately irrelevant.”).
Missouri	No.	<i>McHaffie By & Through McHaffie v. Bunch</i> , 891 S.W.2d 822, 826 (Mo. 1995) (“The majority view is that once an employer has admitted respondeat superior liability for a driver’s negligence, it is improper to allow a plaintiff to proceed against the employer on any other theory of imputed liability. . . . This appears to be the better reasoned view.”).

Montana	No.*	<p><i>Parrick v. FedEx Grounds Package Sys., Inc.</i>, No. CV 09-95-M-DWM-JCL, 2010 WL 1981451, at *3 (D. Mont. Apr. 21, 2010) (“Because the logic underlying the majority rule is persuasive, this Court has previously concluded the Montana Supreme Court would follow that approach and hold that where, as here, an employer has admitted respondeat superior liability for an employee’s allegedly wrongful conduct, evidence of negligent hiring and retention generally becomes both unnecessary and prejudicial.”), <i>report and recommendation adopted</i>, No. CV09-95-M-DWM-JCL, 2010 WL 1981422 (D. Mont. May 14, 2010).</p>
Nebraska	Unclear*	<p><i>See Gibson v. Jensen</i>, No. 8:16-CV-296, 2017 WL 5067497, at *4 (D. Neb. July 17, 2017) (“Indeed, while a claim for negligent hiring is undeniably different from a claim for respondeat superior, both are dependent on, and derivative of, the employee’s underlying negligence.”); <i>but see Kozlov v. Associated Wholesale Grocers, Inc.</i>, No. 4:10CV3211, 2014 WL 1572440, at *5 (D. Neb. Apr. 18, 2014) (“The Court is not persuaded that the Nebraska Supreme Court would prohibit a plaintiff from pursuing independent claims for negligent hiring, training, supervision, or entrustment, once an employer’s responsibility under respondeat superior has been established. The Court declines to expand the law in Nebraska in ways not foreshadowed by state precedent by applying <i>McHaffie</i>.”).</p>
Nevada	Yes.*	<p><i>Terrell v. Cent. Washington Asphalt, Inc.</i>, 168 F. Supp. 3d 1302, 1313 (D. Nev. 2016) (“[N]egligent entrustment is not just a means to hold the employer liable for the employee’s negligence. Rather, it is a separate tort that addresses the employer’s own negligent conduct.”)</p>

New Hampshire	Unknown.	
New Jersey	No.*	<i>Lee ex rel. Est. of Lee v. J.B. Hunt Transp., Inc.</i> , 308 F. Supp. 2d 310, 315 (S.D.N.Y. 2004) (“As a result, this Court concludes that, like New York and the majority of jurisdictions that have considered this issue, New Jersey would not permit Plaintiff to proceed on her claim of negligent hiring, training, supervision, and retention in light of Defendants’ admission that Jackson was acting within the course and scope of his employment at the time of the accident.”).
New Mexico	Unknown.	
New York	No.	<i>Karoon v. New York City Transit Auth.</i> , 241 A.D.2d 323, 324 (N.Y. App. Div. 1997) (“Generally, where an employee is acting within the scope of his or her employment, thereby rendering the employer liable for any damages caused by the employee’s negligence under a theory of respondeat superior, no claim may proceed against the employer for negligent hiring or retention. This is because if the employee was not negligent, there is no basis for imposing liability on the employer, and if the employee was negligent, the employer must pay the judgment regardless of the reasonableness of the hiring or retention or the adequacy of the training.”).

North Carolina	No.	<i>Heath v. Kirkman</i> , 82 S.E.2d 104, 107 (N.C. 1954) (“We recognize the principle that the owner of a motor vehicle who intrusts its operation to a person whom he knows, or by the exercise of due care should have known, to be an incompetent or reckless driver, thereby becomes liable for such person’s negligence in the operation thereof; and in such case the liability of the owner is predicated upon his own negligence in intrusting the operation of the motor vehicle to such a person. This principle is applicable only when the plaintiff undertakes to cast liability on an owner not otherwise responsible for the conduct of the driver of the vehicle.”).
North Dakota	Unknown.	
Ohio	Yes.	<i>Rojas v. Concrete Designs, Inc.</i> , 83 N.E.3d 339, 343, ¶ 10 (Ohio 2017) (“[E]ven though the damages for the claims might be identical, the elements of the respective torts are not. To prevail on a negligent entrustment action, the plaintiff must show that the defendant breached a duty to supervise a person, to not entrust that person with a dangerous instrument, and that these breaches proximately caused the plaintiff’s injuries. The additional elements of entrusting and supervising make negligent entrustment a different cause of action from simple negligence. The plaintiff is entitled to offer evidence on both causes of action.” (internal citations omitted)).

Oklahoma	Yes.	<i>Fox v. Mize</i> , 428 P.3d 314, 323, ¶ 16 (Okla. 2018) (“Employers employing unfit and unqualified drivers cannot insulate themselves from a negligent entrustment claim simply by stipulating that the employee driver was acting in the course and scope of employment. The Plaintiff has the right to determine the facts she will allege and the claims she will pursue. Van Eaton does not get to make that choice for her by stipulating that its employee was in the course and scope of employment at the time of the accident.”), <i>as corrected</i> (Oct. 2, 2018).
Oregon	Unknown.	
Pennsylvania	Unclear.	<i>Miller v. M.H. Malueg Trucking, Co., LLC</i> , No. 2:20-CV-00413-RJC, 2021 WL 858456, at *2 (W.D. Pa. Mar. 8, 2021) (“Pennsylvania District Courts have held that where an employer admits vicarious liability, direct negligence claims against the employer are generally dismissed.”); <i>but see Keifer v. Reinhart Foodservices, LLC</i> , No. 2:09-CV-01187-JFC, 2012 WL 368047, at *15 (W.D. Pa. Feb. 1, 2012) (“Although an employer's vicarious liability for the torts committed by its employees may preclude a plaintiff from asserting a direct claim against the employer in some jurisdictions, that rule does not appear to be applicable in Pennsylvania.”)
Rhode Island	Unknown.	

South Carolina	Yes.	<i>James v. Kelly Trucking Co.</i> , 661 S.E.2d 329, 330 (S.C. 2008) (“Just as an employee can act to cause another’s injury in a tortious manner, so can an employer be independently liable in tort. In circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public.”).
South Dakota*	Yes.*	<i>Finkle v. Regency CSP Ventures Ltd. P’ship</i> , 27 F. Supp. 3d 996, 1000 (D.S.D. 2014) (“This Court finds the minority rule to be better reasoned. In addition, the South Dakota Supreme Court has previously allowed a case to proceed presenting both respondeat superior and negligent retention and supervision claims.” (citing <i>Kirlin v. Halverson</i> , 758 N.W.2d 436 (S.D. 2008))).
Tennessee	No.*	<i>Jackson v. Trendafilov</i> , No. 19-CV-02886-SHM-CGC, 2022 WL 1721210, at *3 (W.D. Tenn. May 27, 2022) (“Under Tennessee law, a direct negligence claim against a principal that cannot prevail without proof of the agent’s negligence is precluded once the principal admits its agent was acting in the course and scope of his agency and concedes liability for the alleged negligence under the doctrine of respondeat superior. . . . Jackson’s direct negligence claims cannot prevail without proof of Trendafilov’s negligence.”); <i>but see Jones v. Windham</i> , No. W201500973COAR10CV, 2016 WL 943722 (Tenn. Ct. App. Mar. 11, 2016), <i>appeal granted, judgment vacated</i> (Aug. 19, 2016).
Texas	No, by statute.	<i>Werner Enterprises, Inc. v. Blake</i> , 672 S.W.3d 554, 636 n.6 (Tex. App. 2023) (discussing Tex. Civ. Prac. & Rem. Code § 72.054).

Utah	Yes.	<i>Ramon v. Nebo Sch. Dist.</i> , 493 P.3d 613, 620, ¶ 26 (Utah 2021) (“Ramon has alleged that the accident was caused in part by Nebo’s own negligence in failing to properly screen, train, discipline, and supervise Ludlow. Utah law recognizes the tort of negligent employment and that provides a legal basis to allocate fault for the accident to the school district. That any fault attributable to Ludlow may pass through to Nebo under principles of respondeat superior does not alter the fact that there exists a factual and legal basis to allocate fault for the accident to both Nebo and Ludlow.” (internal citation omitted)).
Vermont	Unknown.	
Virginia	Yes.*	<i>Fairshter v. Am. Nat. Red Cross</i> , 322 F. Supp. 2d 646, 654 (E.D. Va. 2004) (noting that holdings of courts “tend to categorize Virginia as a jurisdiction favoring the minority rule” because “[t]he Supreme Court of Virginia has held that ‘negligent hiring is distinct from tort liability predicated upon the doctrine of respondeat superior’” (quoting <i>Interim Personnel of Cent. Va., Inc. v. Messer</i> , 559 S.E.2d 704, 707 (Va. 2002))).
Washington	No.	<i>LaPlant v. Snohomish Cnty.</i> , 271 P.3d 254, 256–57 (Wash. Ct. App. 2011) (“In Washington, a cause of action for negligent supervision requires a plaintiff to show that an employee acted outside the scope of his or her employment. But when an employee commits negligence within the scope of employment, a different theory of liability—vicarious liability—applies. Under Washington law, therefore, a claim for negligent hiring, training, and supervision is generally improper when the employer concedes the employee’s actions occurred within the course and scope of employment.”).

West Virginia	Unclear.	Although the Supreme Court of Appeals of West Virginia did not consider a case of admitted vicarious liability, it has considered a case where both claims were presented, acknowledged the importance of the limiting instruction, and suggested that in some cases, a bifurcated trial may be appropriate. <i>See Andrews v. Reynolds Mem'l Hosp., Inc.</i> , 499 S.E.2d 846, 856–57 (W. Va. 1997).
Wisconsin	Unknown.	
Wyoming	No.	<i>Bogdanski v. Budzik</i> , 408 P.3d 1156, 1163, ¶ 23 (Wyo. 2018) (“The majority rule is consistent with our comparative fault scheme. Both FedEx and Budzik would have to be listed on the form for allocation of fault if the direct negligence claim against FedEx was tried, which could lead to a double allocation.”).