IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

THOMAS NEELY, Plaintiff, v. FOX OF OAK RIDGE, INC. and BENJAMIN H. CURD, Defendant.	))))))))))	No. 3:05-CV-304 (Guyton)

(SAMPLE) PROPOSED ORDER

This matter came before the Court on the Motion of Thomas Neely for Summary Adjudication on the Issue of Vicarious Liability of Fox of Oak Ridge, Inc. Having considered the moving and opposing papers and the argument of counsel, the Court rules as follows:

The Motion of Thomas Neely for Summary Adjudication on the Issue of Vicarious Liability of Fox of Oak Ridge, Inc. is **Granted**. Accordingly, Fox of Oak Ridge, Inc. shall be vicariously liable for any negligence of defendant Benjamin Curd relating to the accident that is the subject of this lawsuit.

The Court holds there is no genuine issue of material fact that at the time of the accident, Benjamin Curd was acting within the course and scope of his employment with Fox of Oak Ridge, Inc. ("Fox"), and therefore, Fox is vicariously liable for any negligence of Curd relating to the accident. Fed. R. Civ. P. 56(a); *Thurmon v. Sellers*, 62 S.W.3d 145, 152 (Tenn. Ct. App. 2001); *Tennessee Farmers Mut. Ins. Co. v. American Mut. Liab. Ins. Co.*, 840 S.W.2d 933, 938 (Tenn. Ct. App. 1992). "When an employee's job requires travel, an employer [will] be vicariously liable for the employee's negligence while traveling [where] the employment created

the necessity for travel." *Tennessee Farmers Mut.*, 840 S.W.2d at 938. Furthermore, "sections 55–10–311 and 55–10–312 of the Tennessee Code provide that proof of ownership and registration of a motor vehicle constitutes prima facie evidence that the vehicle was being operated for the vehicle owner's use and benefit and within the course and scope of employment." *Thurmon v. Sellers*, 62 S.W.3d at 152. This prima facie evidence of vicariously liability can be overcome only "by uncontradicted evidence to the contrary coming from witnesses whose credibility is not in issue." *Id.* Here, Fox has admitted that when the accident occurred, it was the registered owner of the van Curd was driving (Declaration of Ethan Fogle, Ex. A, ¶ 12). which is prima facie evidence of Fox's vicarious liability. *Thurmon v. Sellers*, 62 S.W.3d at 152. Fox has presented no evidence to the contrary. *Id.* Rather, Fox has admitted that on the date of the accident Curd was employed by Fox as a "Driver/Porter" and had picked up a Fox owned van from a repair shop to return the van to Fox. (Fogle Decl. Ex. A, ¶¶ 10, 13). Moreover, Benjamin Curd's uncontroverted deposition testimony was that at the time of the accident he was driving the van back to Fox, having pick it up at the repair shop. (Fogle Decl. Ex. B). Thus, there is no dispute of fact that Curd's job with Fox required travel, indeed, he was employed as a "Driver/Porter" and that Curd's employment with Fox created the necessity for travel at the time of the accident – he had picked up a company van that had been repaired and was driving it back to Fox.

IT IS SO ORDERED.

ENTERED:

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H. Bruce Guyton
United States Magistrate Judge