

Rec'd 2-24-10

File

ENTERED  
FEB 22 2010  
ALLEN REED, CLERK  
BY: [Signature] D.C.

COMMONWEALTH OF KENTUCKY  
GREENUP CIRCUIT COURT  
Civil Action No. 08-CI-00394  
Honorable Robert Conley

ROSE M. AKERS, AS PERSONAL  
REPRESENTATIVE AND  
ADMINISTRATRIX OF THE ESTATE OF  
BURL D. AKERS,

PLAINTIFF

vs.

BRIAN W. PHILLIPS, WESTERN-  
SOUTHERN AGENCY, INC., A FOREIGN  
CORPORATION, AND JOE E. SHARP.

DEFENDANTS

---

ORDER GRANTING IN PART AND DENYING IN PART WESTERN & SOUTHERN  
LIFE INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT AND  
GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
AGAINST WESTERN & SOUTHERN LIFE INSURANCE COMPANY ON THE CLAIM  
OF *RESPONDEAT SUPERIOR*

---

This matter having come before the Court on the Motion of Defendant Western & Southern Life Insurance Company ("Western & Southern"), for Summary Judgment on all claims brought against it by Plaintiff, Rose Akers ("Plaintiff") in this action, and on Plaintiff's cross-motion for summary judgment on the sole issue of Western & Southern's liability under the doctrine of *respondeat superior*, and after hearing and for good cause shown, the Court hereby Orders the following:

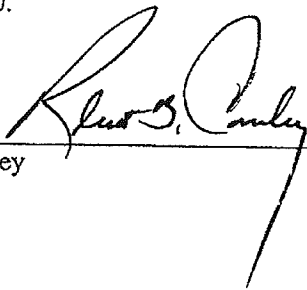
Plaintiff is entitled to judgment as a matter of law on her claim against Western & Southern relating to Western & Southern's liability for the negligent acts of Brian Phillips, if any, under the doctrine of *respondeat superior*, based upon the Court's finding that Brian Phillips was acting as an employee of Western & Southern at the time of the subject accident, and acting in the course and scope of his employment with Western & Southern at the time of the subject accident.

The Court also finds with regard to Plaintiff's claim for negligent hiring, that Western & Southern is not liable to Plaintiff on the basis of negligently hiring Brian Phillips as a matter of law. However, on the claim of negligent retention, the Court finds that there are genuine issues of material fact with regard to said claim, creating a jury question on said issue.

The Court further finds that there are no genuine issues of material fact for trial with regard to Plaintiff's claim for gross negligence against Western & Southern in the within matter and that Western & Southern is entitled to judgment as a matter of law in its favor on said claim. Likewise, there is no basis in law or fact for Plaintiff's claim for punitive damages against Western & Southern and Western & Southern is entitled to judgment as a matter of law in its favor relating thereto.

Accordingly, it is hereby Ordered that Western & Southern's Motion for Summary Judgment on Plaintiff's *respondeat superior* claim is overruled and denied and that Plaintiff's cross-motion for partial summary judgment on her *respondeat superior* claim against Western & Southern is granted. Western and Southern's Motion for Summary Judgment with regard to Plaintiff's negligent hiring claim is granted but overruled with regard to the claim of negligent retention as said claim presents an issue of fact for the jury. Western & Southern's Motion for Summary Judgment with regard to the claims of gross negligence and punitive damages is granted.

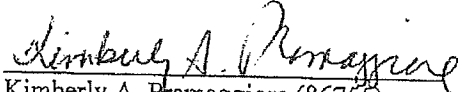
SO ORDERED this 27 day of Feb, 2010.

  
\_\_\_\_\_  
Judge Conley

Have seen and Agreed:



William T. Forester, Esq.  
Forester Law Offices  
P.O. Box 1036  
312 Main Street  
Logan, WV 25601  
*Attorney for Plaintiff*



Kimberly A. Pramaggiore (86755)  
K. Roger Schoeni (82813)  
201 E. Fifth Street, Suite 800  
Cincinnati, OH 45202  
*Attorneys for Defendant, The Western &  
Southern Life Insurance Company*

*William Wilhoit per*  
William Wilhoit, Esq. *actual auth*  
P.O. Box 35 *2/17/10 KAP*  
Grayson, KY 41143  
*Attorney for Defendant Brian Phillips*

*Richard Martin per email auth 2/8/10*  
Richard Martin, Esq. *KAP*  
P.O. Box 2528  
Ashland, KY 41105  
*Attorney for Defendant Joe Sharp*

363347.1