SUPREME COURT OF LOUISIANA

No. 2018-C-1218

KAREN SUE THIBODEAUX

VERSUS

GEICO CASUALTY COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT, PARISH OF LAFAYETTE

CRICHTON, J., would grant and assigns reasons:

I would grant and docket plaintiff's writ application to examine the significant policy issues raised therein. This matter arises in the context of a motion for partial summary judgment. As such, the trial judge's role is not to evaluate the weight of the evidence, and any doubts should be resolved in the non-moving party's favor. La. C.C.P. art. 966; *Larson v. XYZ Insurance Company*, 16-0745, p.6 (La. 2017), 226 So. 3d 412, 416. Here, the facts construed most favorably for the plaintiff, who opposed the motion, reveal that the narrow issue presented is whether an employee returning home in her own personal vehicle from attending an optional training seminar — for which she is not paid — benefits the employer so as to consider the employee within the course and scope of her employment when the employer may have reimbursed the employee for mileage.

Despite the employee's testimony that she was attending the training in order to enhance her overall performance as a pharmacist and not because she was required to do so, the court of appeal concluded that her "motivation for completing the training was to follow her supervisor's directions." *Thibodeaux v. GEICO Casualty Company*, 17-853, p.8 (La. App. 3 Cir. 6/13/18), 249 So. 3d 114, 120. In my view, the court of appeal thus erroneously weighed the evidence in the context of a

summary judgment motion in order to prematurely conclude that the defendant-employer was vicariously liable for the actions of its employee. Such error may rise to a material injustice warranting this Court's review.

More importantly, however, the court of appeal's opinion establishes a new policy for this state that an employer is vicariously liable when an employee is on her way home in her own vehicle from an *optional* employer-paid training seminar and has an automobile accident. Considering the general rule that the act of driving to and from work is not in the course and scope of employment, *Orgeron on Behalf of Orgeron v. McDonald*, 93-1353 (La. 1994), 639 So. 2d 224, this decision expands the doctrine of vicarious liability, which should ordinarily be construed strictly, to cover any optional trainings offered by employers that may improve or increase an employee's skills. I would grant this writ in order to assess whether the court of appeal correctly ruled in light of the substantial burden such policy may have on businesses sponsoring employee trainings in the state.