

Confusion Created by the Migrant and Seasonal Agricultural Worker Protection Act: Should Congress Revisit the Legislation?

INTRODUCTION

The Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA),¹ enacted on January 14, 1983, was designed “to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers”² and “to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers.”³

This comment analyzes the practical application of portions of the MSAWPA involving the motor vehicle safety standards enumerated throughout the MSAWPA.⁴ It notes that the MSAWPA, as currently written, poses problems for both agricultural employees and employers. At present, the MSAWPA prevents agricultural employers from regulating their conduct to foreclose or minimize possible exposure to liability. The comment concludes that the MSAWPA’s failure to provide guidance to agricultural employers about how to minimize their liability exposure is self-defeating to Congressional intent.

The comment also explores the result of the failure to have a seat belt requirement enumerated in the MSAWPA and its accompanying regulations. It examines the motor vehicle safety standards of the MSAWPA and suggests that failure to enumerate a seat belt requirement defeats the Congressional purpose of providing for the safe transportation of agricultural workers.

Additionally, the comment analyzes the problems associated with the lack of a period of limitations for claims filed under the

¹ 29 U.S.C. §§ 1801-1872 (1995).

² *Id.* § 1801.

³ *Id.*

⁴ *See, e.g., Id.* § 1841; 29 C.F.R. §§ 500.100-500.105 (1995).

MSAWPA. It concludes that Congress should bring continuity to the MSAWPA by inserting into it a limitations period.

I. BACKGROUND OF MIGRANT AGRICULTURAL WORKER LEGISLATION

The MSAWPA replaced the Farm Labor Contractor Registration Act of 1963 (FLCRA) that "was enacted to protect agricultural workers whose employment had been historically characterized by low wages, long hours and poor working conditions."⁵ The MSAWPA was enacted because the FLCRA failed "to achieve its goal of fairness and equity for migrant workers combined with employer objections as to their treatment under [the FLCRA] which, at best was haphazard, burdensome, and often conflicting."⁶

Congress recognized that new legislation was needed to replace the FLCRA to eliminate burdensome regulations and harassment for farmers and other agricultural employers,⁷ while at the same time, to provide genuine protection to migrant and seasonal agricultural workers.⁸

The MSAWPA provides many protections for migrant and seasonal workers. Guidelines have been implemented governing information and recordkeeping requirements,⁹ housing safety requirements,¹⁰ and motor vehicle safety requirements.¹¹ The MSAWPA also provides injured workers the right to pursue a private right of action.¹² The private right of action allows an aggrieved person to maintain a civil action in any district court.¹³ Upon a court finding that a defendant has intentionally¹⁴ violated any provision of the MSAWPA or applicable regulation, the court may award actual damages¹⁵ or statutory damages of up to \$500

⁵ H.R. REP. NO. 885, 97th Cong., 1st Sess., *reprinted in* 1982 U.S.C.C.A.N 4547.

⁶ *Id.* 4547.

⁷ 128 CONG. REC. H26,010.

⁸ *Id.*

⁹ 29 U.S.C. §§ 1821, 1831 (1995).

¹⁰ *Id.* § 1823.

¹¹ *Id.* § 1841; 29 C.F.R. §§ 500.100-500.121 (1995).

¹² 29 U.S.C. § 1854 (1995).

¹³ *Id.*

¹⁴ "A violation is intentional under the Act if it is the natural result of one's conscious and deliberate acts." *Osias v. Emerson Marc*, 700 F. Supp. 842, 844 (D-Md. 1988) (quoting *Bueno v. Mattner*, 829 F.2d 1380, 1385-86 (6th Cir. 1987)).

¹⁵ New revisions to the MSAWPA were enacted on November 15, 1995. These

per plaintiff per violation, or other equitable relief.¹⁶

The FLCRA and the MSAWPA were designed to protect a large class of people. It is reported that in 1994 there were about two and one-half million hired farmworkers in the United States.¹⁷ Of those, approximately two million were crop workers.¹⁸ About half of the two million crop workers were employed longer than one month but less than ten months.¹⁹ These workers depended on seasonal farm work for most of their earnings. It is reported that in 1994 they earned an average of \$5,000 annually for six months of work on farms.²⁰

"Agriculture consistently ranks as one of the three most dangerous occupations in the United States, along with mining and construction."²¹ Because of their mobility, farmworkers are considered at high risk for lack of adequate safeguards to protect their health and safety.²² The plight of the farmworkers first came to the attention of the American people in Edward R. Morrow's documentary, "Harvest of Shame," which illustrated the bitter ex-

revisions include barring actions for actual damages where state workers' compensation coverage is provided to the injured worker. *See* 29 U.S.C. § 1854.

¹⁶ In situations where an injured worker's claim for actual damages is precluded under the MSAWPA because of the availability of workers' compensation coverage, the MSAWPA provides for higher statutory damage awards than the \$500 per plaintiff. The higher statutory award of up to \$10,000 per plaintiff per violation is available in four situations: (1) where a defendant violated 29 U.S.C. § 1841(b) by knowingly requiring or permitting a driver to drive a vehicle for the transportation of workers while under the influence of alcohol or a controlled substance; (2) where a defendant violated a safety standard prescribed in 29 U.S.C. § 1841(b) which was determined in a previous judicial or administrative proceeding to have been violated by the defendant; (3) where the defendant willfully disabled or removed a safety device prescribed in 29 U.S.C. § 1841(b); and (4) where the defendant violated a safety standard prescribed under 29 U.S.C. § 1841(b). *See* 29 U.S.C. §§ 1854(e)(1)(A), 1854(e)(2)(A), 1854(e)(3)(A), 1854(e)(4)(A).

¹⁷ *See generally* PHILIP A. MARTIN & DAVID A. MARTIN, *THE ENDLESS QUEST*, 3 (1994).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Valerie A. Wilk, Address Before the Commission on Security and Cooperation in Europe (October 9, 1992), in *MIGRANT FARMWORKERS IN THE UNITED STATES—IMPLEMENTATION OF THE HELSINKI ACCORDS*, May 1993, at 51.

²² Marilyn H. Gaston, Address Before the Commission on Security and Cooperation in Europe (October 9, 1992), in *MIGRANT FARMWORKERS IN THE UNITED STATES—IMPLEMENTATION OF THE HELSINKI ACCORDS*, May 1993 at 41.

periences of migrant farmworker conditions.²³

The need for an act providing protection to migrant and seasonal farmworkers was warranted because of the deplorable conditions under which these individuals worked. Evidence received by Congress confirmed that migrant and seasonal agricultural workers were the "most abused of all workers in the United States."²⁴

II. THE MSAWPA TRANSPORTATION REGULATIONS

One of the most important aspects of the MSAWPA concerns the transportation of workers. The MSAWPA imposes a duty on farm contractors, agricultural employers, and agricultural associations to transport workers in safe vehicles and to provide insurance coverage for the workers while they are being transported.²⁵

These obligations are imposed on the contractor, employer, or association when they use, or cause to be used, any vehicle to transport a migrant or seasonal agricultural worker.²⁶ The applicable regulation states that the term "uses or causes to be used" does not include carpooling arrangements made by the workers themselves using one of the workers' own vehicles.²⁷ The regulation, however, specifically excludes from the carpooling exception "any transportation arrangement in which a farm labor contractor participates or which is specifically directed or requested by an agricultural employer or an agricultural association."²⁸

In enacting the MSAWPA, Congress was concerned with defining the law to all parties so that they could regulate their conduct accordingly.²⁹ As explained below, courts' interpretations of the clause "use, or cause to be used, any vehicle to transport" have

²³ *Id.*

²⁴ H.R. REP. NO. 885, 97th Cong., 1st Sess., *reprinted in* 1982 U.S.C.C.A.N. 4548.

²⁵ 29 U.S.C. § 1841 (1995).

²⁶ 29 C.F.R. § 500.100(a) (1995).

²⁷ *Id.* § 500.100(c).

²⁸ *Id.*

²⁹ "Agricultural employers will be relieved of the excessive burdens of FLCRA and will for the first time be sure of their duties to migrant workers." 128 CONG. REC. H23,499 (statement of Rep. Miller). "It provides better protection for workers while at the same time it removes unnecessary regulations on employers by making the law clear so that whoever houses, transports, or employs migrant workers is responsible for . . . [providing] safe transportation. . . ." 128 CONG. REC. H26,010 (statement of Rep. Panetta).

extended liability to agricultural employers in situations where it is not warranted.

A. *Employer Liability Under the MSAWPA Motor Vehicle Regulations*

1. Application Under the FLCRA

The dangerous extension of liability to the agricultural employer first arose under the FLCRA (the predecessor to the MSAWPA) in a case from Maryland in 1978. In *Marshall v. Buntings' Nursery*,³⁰ the court found that Buntings (the agricultural employer) violated the FLCRA by employing a farm labor contractor without determining whether he was registered as required by the FLCRA. One of the issues in the case was the transportation of some farm workers into nearby towns where they could purchase groceries and personal items, as well as wash their laundry.³¹ Even though these trips were conducted on Friday evenings and Saturdays after completion of the work day, the court found Buntings liable for violating the FLCRA.³² The court rejected Buntings' argument that transportation activities, to be covered under the FLCRA, must be incident to recruitment, hiring, solicitation or the furnishing for the workers.³³ It found that a contractor's activities under the FLCRA include the transportation of workers into neighboring towns to wash their laundry and to acquire groceries. Based on this finding, the court extended liability to the agricultural employer.³⁴

2. Application Under the MSAWPA

Extension of liability was also imposed on an agricultural employer in Florida in 1992 under the MSAWPA. In *Saintida v. Tyre Jackor Super Picking, Inc.*,³⁵ the court concluded that Jackor (the agricultural employer) hired a farm labor contractor on several occasions without inquiring into his registration status as required under the MSAWPA.³⁶ In *Saintida*, the plaintiffs were injured in a

³⁰ 459 F. Supp. 92 (D. Md. 1978).

³¹ *Id.* at 97.

³² The court found that the defendants violated FLCRA by failing to have appropriate evidence of proper insurance. *Id.* at 94.

³³ *Id.* at 97.

³⁴ *Id.* at 98.

³⁵ 783 F. Supp. 1368 (S.D. Fla. 1992).

³⁶ *Id.* at 1371.

motor vehicle accident after finishing work.³⁷ At the time of the accident, the farm labor contractor was transporting the plaintiffs to a country store to secure employment for the following day.³⁸ The plaintiffs were unable to obtain medical care or compensation for lost wages because the farm labor contractor's vehicle lacked insurance coverage.³⁹

Jackor argued it was not liable for violations of the MSAWPA vehicle insurance provisions because it did not cause the plaintiffs to be transported by the farm labor contractor.⁴⁰ The court, however, rejected this argument by finding that "[a]n employer is found to have caused the transportation of harvest workers by a farm labor contractor when this transportation is a 'necessary element in obtaining the workers' to harvest the grower's crop."⁴¹ Since Jackor caused the transportation of the workers, the court held Jackor was liable for the plaintiffs' actual damages for the failure to provide insurance⁴² coverage as required by the MSAWPA.⁴³

3. The MSAWPA Fails to Give Necessary Guidance to Employers

The problem with both *Buntings' Nursey* and *Saintida* is that liability was imputed to the agricultural employers in situations that the employers could not control. Both cases involved situations where the farmworkers' and labor contractors' conduct was not for the benefit of the agricultural employers. Nor did the agricul-

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 1373.

⁴¹ *Id.*; (quoting *Frenel v. Freezeland Orchard Co., Inc.*, 108 Lab. Cases (CCH) ¶ 45,415, (E.D. Va. 1987)).

⁴² For example, either liability or worker's compensation. 783 F. Supp. at 1373.

⁴³ The court rejected the defendant's argument that the lack of worker's compensation insurance was irrelevant because "accidents occurring during an employee's travels to and from work are not considered to have arisen within the scope of employment and, thus, are not compensable under [local worker's compensation laws]." 783 F. Supp. at 1374. Because the court found that the employer actually provided the transportation and because it was the employer's transportation provider who deviated from his normal duties for personal business, then it would be considered to have arisen out of and in the course of employment, thus rendering it compensable. *Id.* (quoting *Wert v. Tropicana Pools, Inc.*, 286 So.2d 1, 2 (Fla. 1973)).

tural employers request or direct the employees' or labor contractors' conduct at the time of the accidents. Yet in both cases, liability was extended to the employers.

Extending liability in situations like those of *Buntings* and *Saintida* places the agricultural employers and associations in an unfair position. Agricultural employers must be able to conform their conduct to situations they control. Placing liability on employers in situations like those encountered in *Buntings* and *Saintida* deprives them of the opportunity to take necessary precautions to minimize or eliminate liability exposure. Even though Congress recognized the need to define the law so that all parties could regulate their conduct accordingly,⁴⁴ the MSAWPA fails to give the necessary guidance to agricultural employers so that they may insulate or protect themselves from potential liability exposure. Moreover, it is unreasonable to hold agricultural employers liable for a violation of the transportation portions of the MSAWPA in all situations where the farmworker is being transported. In non-agricultural business enterprises, liability for injuries suffered by employees as a result of motor vehicle accidents is extended to employers under the doctrine of respondeat superior. This extension of liability, however, is only extended to employers in special circumstances.

4. The Doctrine of Respondeat Superior

Generally, "[a]n employer is not liable under the doctrine of respondeat superior for the negligent operation by an employee of a motor vehicle owned by the employee unless it is shown that at the time of the accident the employee was acting within the scope of his employment."⁴⁵ The fact that the employee was driving to or from work at the time of the accident is not sufficient to warrant a finding that the employee was acting within the scope of his or her employment.⁴⁶ "Power to control the acts of the wrongdoer must, of course, have been vested in the defendant at the time of the injurious occurrence" in order to impute liability to the employer under the doctrine of respondeat superior.⁴⁷ The power to control the employee's activities is of critical

⁴⁴ See statements of Reps. Miller and Panetta, *supra* note 29.

⁴⁵ 7A AM. JUR. 2D *Automobiles and Highway Traffic* § 705 (1992).

⁴⁶ *Id.* at §§ 705, 707.

⁴⁷ See 53 AM. JUR. 2D *Master and Servant* § 417 (1992).

importance in the analysis of respondeat superior cases.⁴⁸

This notion of the employer's right to control the employee's activity at the time of the conduct at issue, which is so important in non-agricultural business enterprise cases, appears to be ignored in MSAWPA cases. The following are examples of non-agricultural employment cases that were decided under the doctrine of respondeat superior:

*Jones v. Blair*⁴⁹ involved a motor vehicle accident that occurred during an employee's drive home from work. The employee was paid transportation benefits for his travels to and from work. He argued that the court should find employer liability under the doctrine of respondeat superior because of the nature of the specialty work he performed. The court stated that an employee acts within the scope of his employment when the employer has the right to direct the means and manner of doing work, and has the right of control over the employee.⁵⁰ The court further stated that as a general rule, an employee is not acting within the scope of his or her employment while driving to and from work, explaining that although the act of driving to the job is work motivated, the element of employer control is lacking.⁵¹ The plaintiff argued that the specialty of work argument is an exception to workers' compensation principles under the coming and going rule and should be extended to respondeat superior cases.⁵² The court rejected this contention by stating that workers' compensation benefits turn solely upon whether the employee was injured while performing an activity related to his job and whether the act was a function of benefit to the employer.⁵³ The court noted that the doctrine of respondeat superior subjects an employer to liability for injuries suffered by an indefinite number of third persons. The court reasoned that in order "[t]o limit this liability, the narrower concept, 'scope of employment,' has long been tied to the employer's right to control the employee's activity at the

⁴⁸ See generally RESTATEMENT (SECOND) AGENCY § 228 (1957), Comment C, which states: "As stated in Section 220, one is a servant only if, as to his physical conduct in the performance of the master, he is subject to the control or the right to control of the master."

⁴⁹ 387 N.W.2d 349 (Iowa 1986).

⁵⁰ *Id.* at 355.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

time of the . . . conduct."⁵⁴

In *Hooper v. C.M. Steel, Inc.*,⁵⁵ carpooling was arranged by employees in which there was a motor vehicle accident that occurred while one employee was driving a fellow worker home. In finding that liability did not extend to the employer under the doctrine of respondeat superior, the court found that an employee does not act within the scope of his employment merely because he transports fellow employees to and from work.⁵⁶

Marketing Sales Industries, Inc. v. Roberts involved an injury to an employee outside regular working hours arising out of a motor vehicle accident.⁵⁷ The court noted that an employer is not liable for an injury inflicted by an employee where the employee is engaged in a personal matter of his own and the act is entirely disconnected from the employer's business. The court emphasized that the test for liability is based on a finding of whether the employee was serving the employer at the time of the conduct at issue.⁵⁸

In *Dragon v. Fisher*,⁵⁹ a motor vehicle accident occurred after an employee made a trip to a store to purchase work trousers. The employee unsuccessfully attempted to have the court extend liability to his employer by arguing that the employer benefitted from the trip and the purchase. The court rejected the contention that the employer benefitted from the visit to the store, and held that, as a matter of law, the employee was not within the course and scope of his employment at the time of the accident.⁶⁰ The court stated that "even though the employee's activity may incidentally benefit his employer, it does not result that he is acting in the course and scope of his employment."⁶¹

⁵⁴ *Id.* at 357.

⁵⁵ 380 S.E.2d 593 (N.C. 1989).

⁵⁶ *Id.* at 596.

⁵⁷ 165 S.E.2d 319 (Ga. 1968).

⁵⁸ *Id.* at 320.

⁵⁹ 244 So. 2d 347 (La. 1971).

⁶⁰ *Id.* at 349.

⁶¹ *Id.* (applying the rule found in *Graffagnini v. George Engine Co.*, 45 So. 2d 412 (La. 1950)).

5. Comparison of Respondeat Superior and the MSAWPA Cases

These cases show that in order to impute liability to an employer under the doctrine of respondeat superior, the employer must be in control of the activity of the employee and derive a direct benefit from the conduct at issue. In *Marketing Sales Industries*, the court found that an employer is not liable for an employee's injuries resulting from a motor vehicle accident that occurs outside regular working hours.⁶² The court emphasized that in order to find employer liability, the employee must be serving the employer at the time of the activity.⁶³ In contrast, in *Saintida*⁶⁴ the agricultural employees were injured when they were travelling to a country store to secure employment for the following day.⁶⁵ Both cases involve a motor vehicle accident which occurred after working hours. Both cases involve acts by employees which did not benefit the employer nor offered the employer the opportunity to control the employees' actions. Yet, the results in both cases differ in that one was decided under the doctrine of respondeat superior and the other under the MSAWPA.

Another example of the similarity of cases with analogous facts yet differing results is the comparison of the *Dragon v. Fisher*⁶⁶ and *Buntings' Nursery*⁶⁷ cases. In *Dragon*, the employee was injured after he purchased some trousers for work. The court held that even though the purchase of trousers may incidentally benefit the employer, as a matter of law it does not result in employer liability because the employee was not acting in the course and scope of his employment.⁶⁸ In *Buntings' Nursery*, the agricultural employees were injured on the way into town to purchase groceries and personal items. In both cases, an employee was injured in a motor vehicle accident going to a store to purchase personal items during non-working hours. Yet, despite the similarity of facts of both cases, the two courts reached different results. Under the reasoning of the *Dragon* court, the employer in *Buntings' Nursery* would not have been held liable for its employees' injuries be-

⁶² 165 S.E.2d at 319.

⁶³ *Id.* at 320.

⁶⁴ 783 F. Supp. 1368.

⁶⁵ *Id.* at 1371.

⁶⁶ 244 So. 2d 347 (La. 1971).

⁶⁷ 459 F. Supp. 92 (D. Md. 1978).

⁶⁸ *Id.* at 97.

cause the purchase of groceries and personal items, although an incidental benefit, was not a direct benefit to the employer and the employees could not be considered as acting within the scope of their employment. However, because *Buntings' Nursery* was decided under the MSAWPA rather than the doctrine of respondeat superior, liability was extended to the agricultural employer.

These comparisons illustrate the discrepancy of the rules applied to business enterprises not covered under the MSAWPA and those agricultural business enterprises regulated under the MSAWPA. It is inequitable for agricultural employers to be held liable for the same acts that non-agricultural employers are not held liable. To hold employers under the MSAWPA liable for the safety of its workers in all situations unfairly burdens the employer. The agricultural employer is placed in a position spared to the majority of other employers in the country—namely the twenty-four hour responsibility of the safety of their employees while being transported in a motor vehicle. If agricultural employers continue to be held liable for the safety of their employees in all situations,⁶⁹ the financial exposure will be vast and the administrative exposure endless. This is too much of a burden for an employer to hold.

Congress should institute a bright-line rule for situations like those in *Buntings' Nursery* and *Saintida*. It could be based on the "Benefit to the Employer" test whereby agricultural employers would be held liable for any violation of the transportation sections of the MSAWPA when they receive a *direct* benefit from the workers being transported. Or, the rule could encompass the same principles as found in the respondeat superior cases. The rule Congress chooses should delineate when agricultural employers will be held liable for transportation violations with respect to worker's transportation to and from work.

If Congress wants to change its policy and extend liability to agricultural employers in the transportation of workers when workers voluntarily "carpool"⁷⁰ or drive themselves, then employers can conform their conduct accordingly to foreclose exposure to liability.⁷¹ Incidental benefits such as having workers who are

⁶⁹ For example, employees' trips to the grocery store for food and personal supplies.

⁷⁰ 29 C.F.R. § 500.100(c).

⁷¹ The author of this comment is not recommending that liability be extended to agricultural employers.

well-fed or who are assured of work the following day should be excluded. Situations such as those in *Buntings' Nursery* and *Saintida* should not result in liability for the agricultural employer.

The extension of liability which occurred in *Buntings' Nursery* and *Saintida* also occurs in situations where Congress has attempted to explicitly state its intent, such as the MSAWPA's carpooling exception.

B. Application of Carpooling Exception

The MSAWPA's accompanying regulations specifically exempts an employer from liability resulting from carpooling arrangements among his or her employees.⁷² "[C]ar pooling arrangements made amongst the workers and not specifically directed or requested by the employer, crew leader or agent thereof preclude liability upon the employer."⁷³

Under Congressional direction, the Department of Labor (DOL) implemented applicable regulations excusing agricultural employers from liability in situations where employees, by agreement among themselves, made carpooling arrangements to their work site.⁷⁴ Congress specifically directed the DOL to qualify the exception by stating that the arrangements must not be directed or requested by the employer.⁷⁵ On its face, the regulation appears clear and straight-forward. Its practical application, however, has caused problems for at least one California agricultural employer.

In a 1990 unpublished case from the United States District Court, Eastern District of California, liability was imputed to an agricultural employer under a carpooling agreement entered into by its workers. In *Marquez v. Gerawan Ranches*,⁷⁶ the agricultural employer (Gerawan Ranches) was sued by several of its workers for numerous violations of both state law and the MSAWPA. One of the alleged MSAWPA violations involved the transportation sec-

⁷² 29 C.F.R. at § 500.100(c).

⁷³ *Alviso-Medrano v. Harloff*, 868 F. Supp. 1367, 1374 (M.D. Fla. 1994).

⁷⁴ 29 C.F.R. § 500.100(c).

⁷⁵ *Id.* This states: "[h]owever, carpooling does not include any transportation arrangement in which a farm labor contractor participates or which is specifically directed or requested by an agricultural employer or an agricultural association."

⁷⁶ *Marquez v. Gerawan Ranches*, No. CV-F-90-472 (E.D. Cal. June 26, 1990).

tions⁷⁷ of the MSAWPA.⁷⁸

Plaintiffs were employees of Gerawan Ranches. Many of them⁷⁹ entered into an agreement with their foremen for transportation to the job site. The workers agreed to pay the foremen \$3.00 per day for transportation-related costs.⁸⁰

Gerawan Ranches argued that the carpooling exception⁸¹ exempted it from responsibility for the transportation violations of the MSAWPA.⁸² The court disagreed on the grounds that the arrangements were made by the foremen and not the workers themselves.⁸³ The court noted that the vehicles were not owned by the workers, but by the foremen. Despite finding that the foremen were employees of the defendants, the court found that because Gerawan Ranches was ensured of having a sufficient workforce at its farm, it could not claim that it never explicitly authorized the transportation activities.⁸⁴ Thus, the court found that Gerawan Ranches intentionally violated the MSAWPA and awarded statutory damages to the plaintiffs.

The court in *Marquez* obviously relied on the fact that it was the foremen who were providing the transportation to some of the workers in its crew. Like the courts in *Buntings' Nursery* and *Saintida*, the court in *Marquez* extended liability to the agricultural employer based on a finding that the employer received a benefit from the transportation of the workers. In *Marquez*, the benefit was the assurance of having a sufficient workforce at its farms.⁸⁵

⁷⁷ The plaintiffs alleged that the vehicles violated 29 C.F.R. § 500.105(b)(2)(v) because of the following: lack of fire extinguishers, lack of a sufficient number of seats, overcrowding, lack of seat belts, and no emergency exits were present.

⁷⁸ For the alleged transportation violations, the plaintiffs were asking for statutory damages.

⁷⁹ It was undisputed that some workers transported themselves in their own vehicles.

⁸⁰ For example, gas, insurance, general wear and tear.

⁸¹ See Final Judgment on Decision By the Court and On Jury Verdict, *Marquez v. Gerawan Ranches*, No. CV-F-90-472, (E.D. Cal. July 25, 1991).

⁸² See 29 C.F.R. § 500.100(c), which states: "The term 'uses or causes to be used' . . . does not include carpooling arrangements made by the workers themselves, using one of the workers' own vehicles."

⁸³ See Final Judgment on Decision by the Court and On Jury Verdict, *Marquez v. Gerawan Ranches CV-F-90-472* (E.D. Cal. July 25, 1991).

⁸⁴ *Id.*

⁸⁵ *Id.*

Despite the fact that the carpooling agreement was arranged among Gerawan Ranches employees, the court found that the benefit to Gerawan Ranches was enough to impute liability to it under the MSAWPA. If Congress instituted a bright-line rule based on a direct "benefit to the employer" test or under principles established under the respondeat superior doctrine,⁸⁶ then this type of liability would not be incurred by agricultural employers in situations they do not control. This would conform with how employers in other businesses are treated.

In summary, Congress should provide agricultural employers and associations with certainty concerning how and where employers and associations will be exposed to liability under the MSAWPA. As written and implemented currently, the MSAWPA precludes employers from regulating their conduct and their farm labor contractors to limit or foreclose potential liability exposure.⁸⁷ Agricultural employers must be made aware of acceptable forms of conduct so that they may act accordingly and be able to prevent any potential liability exposure. Unfortunately, the situation discussed above is not the only problem area in the transportation portion of the MSAWPA.

⁸⁶ Such as the requirement that the employer have control over the employee's activity and derive a direct benefit from the activity at issue.

⁸⁷ It is noted that Congress reaffirmed the MSAWPA's carpool exception in the November 15, 1995, revisions. However, as a similar statement was found in the 1983 enactment, the implementation of the MSAWPA suggests that such a reaffirmation by Congress will not alter the way some courts interpret the carpool exception.

The *Joint Statement of Legislative Intent*, E1943, available in LEXIS, GENFED library, Congressional History, regarding the November 15, 1995, revisions to the MSAWPA states as follows:

It is necessary to reaffirm that voluntary carpool arrangements established by workers for their mutual economy and convenience are not subjected to the Act's transportation and insurance requirements.

Workers participating in voluntary carpool arrangements should not be deemed farm labor contractors under [the MSAWPA] merely because they receive remuneration from fellow workers to defray the cost of transportation

H.R. 1715-Legislative Intent on Substitute, October 13, 1995, available in LEXIS, GenFed Library, Legis Hist. File.

C. *The Failure to Enumerate Seat Belts as a Requirement Under the MSAWPA and the Related Problem of Causation*

The vehicle standards promulgated by the DOL for the MSAWPA are Department of Transportation (DOT) standards.⁸⁸ Two regulations are applicable⁸⁹ which delineate vehicle standards for all types of vehicles in which agricultural workers are transported. Neither includes a requirement for seat belts.

The omission of a seat belt requirement in the MSAWPA is the focus of attention in *Leal v. Gerawan Ranches*, a pending case in the United States District Court, Eastern District of California.⁹⁰ The defendant in *Leal*, once again, is Gerawan Ranches.⁹¹ In 1993, nine agricultural workers of Gerawan Ranches were traveling to work in a pickup truck when it was struck by an uninsured vehicle that ran a stop sign.⁹² Three passengers were seated in the bed of the pickup truck⁹³ and six were seated in the extended cab. The three people in the bed of the truck were not wearing seat belts, nor was the truck equipped with seat belts in its bed. It appears that only one of the six individuals in the cab was wearing a seat belt.⁹⁴ The plaintiffs (the injured workers) brought suit against their employer (Gerawan Ranches) alleging violations of the MSAWPA. Gerawan Ranches will raise⁹⁵ the carpooling exception to the MSAWPA as a defense because the workers arranged the carpooling among themselves.⁹⁶ Notwithstanding that defense, the case illustrates a problem with the practical application of the MSAWPA as it is now written.

⁸⁸ 29 C.F.R. § 500.101(d) (1995).

⁸⁹ 29 C.F.R. § 500.104 contains standards for passenger automobiles and station wagons and 29 C.F.R. § 500.105 (1995) contains standards for vehicles other than passenger automobiles and station wagons.

⁹⁰ *Leal v. Gerawan Ranches*, No. CV-F-93-5804 (E.D. Cal. Sept. 26, 1993).

⁹¹ See also *Marquez v. Gerawan Ranches*, No. CV-F-90-472 (E.D. Cal. June 26, 1990).

⁹² The plaintiffs had entered into a carpooling agreement whereby they agreed to pay the driver of the truck (a fellow employee) \$4.00 per day for transportation to their work site.

⁹³ The bed of the pickup truck was enclosed by a camper shell.

⁹⁴ It is unclear whether there were six seat belts in the extended cab of the truck. The defendants are prepared to present evidence that there were six seat belts in the cab portion of the truck.

⁹⁵ The defendants will raise the carpooling exception during trial.

⁹⁶ The November 15, 1995, revisions to the MSAWPA, making workers' compensation the exclusive remedy for a claim of actual damages, may eventually apply in this case.

The problem encountered involves the omission of any seat belt standards in the MSAWPA. The two applicable regulations⁹⁷ are silent on any requirement for vehicles to contain seat belts. Although the MSAWPA specifically allows adoption of state safety standards,⁹⁸ California state law does not aid the plaintiffs on this issue with regard to the three individuals who were in the bed of the truck. California has an exclusion for passengers in the back of a pickup truck in special situations.

Although California Vehicle Code section 27315 makes it mandatory for passengers in private passenger vehicles to wear seat belts, section 23116⁹⁹ specifically exempts individuals riding in the back of a pickup truck that has an enclosed camper or camper shell from wearing seat belts. Legislative reasoning is that camper shells prevent persons from being discharged out of the truck. Numerous other states have varying laws on seat belts.¹⁰⁰

The plaintiffs, in *Leal v. Gerawan Ranches*, argue that the lack of seat belts in the bed of the pickup truck caused their injuries.¹⁰¹ However, since California Vehicle Code section 23116 excludes individuals from wearing seat belts in a bed of an enclosed pickup truck, Gerawan Ranches is arguing that there is no violation of the MSAWPA since the MSAWPA itself is silent on the area of seat belts and the applicable state law excludes the mandatory wearing of seat belts in this situation. Gerawan Ranches further argues that since there is no violation of the MSAWPA for the failure to provide seat belts, it could not have caused the plaintiffs' injuries.¹⁰² This "causation" issue was raised and debated in Gerawan Ranches' motion for summary

⁹⁷ 29 C.F.R. §§ 500.104 and 500.105: (1995).

⁹⁸ 29 U.S.C. § 1841(a)(2)(b)(1)(A) (1995).

⁹⁹ CAL. VEH. CODE § 23116 (West 1995) provides, in pertinent part:

(a) No person driving a pickup truck or a flatbed motor truck on a highway shall transport any person in or on, and no person shall ride in or on, the back of a truck

(b) Subdivision (a) does not apply if the person in the back of the truck is being transported in an enclosed camper or camper shell that prevents the person from being discharged.

¹⁰⁰ For example, New Hampshire does not have a mandatory seat belt law. The District of Columbia only requires the driver and the passenger sitting in the front passenger seat to use seat belts. (D. C. CODE ANN. §40-1602 (1995).

¹⁰¹ See *Leal v. Gerawan Ranches*, No. CV-F-93-5804, (E.D. Cal. Oct. 20, 1995).

¹⁰² See generally *Leal v. Gerawan Ranches*, No. CV-F-93-5804 (E.D. Cal. Oct. 20, 1995).

judgment.¹⁰³

The word "causation" is not found in the MSAWPA.¹⁰⁴ In interpreting other acts in which a plaintiff may recover actual or statutory damages, courts have held that causation is needed to recover actual damages.¹⁰⁵

In *Hernandez v. Ruiz*, a MSAWPA case,¹⁰⁶ the district court stated that Congress, in creating a private right of action for persons aggrieved by a violation of a statute, could expand the rules of standing, but standing requirements of Article III of the United States Constitution remain. Those requirements include a plaintiff alleging a distinct and palpable injury to himself as a result of defendant's actions and that the injury must be fairly traceable to the actions of the defendant.¹⁰⁷ Thus, merely establishing a violation of the MSAWPA would not automatically entitle a plaintiff to actual damages under the MSAWPA. The plaintiff would need to prove a violation of the MSAWPA that actually caused the injuries he or she suffered.

The issue of causation is of critical importance in the *Leal* case. Because, if it is not a violation of the MSAWPA to fail to provide seat belts, then an agricultural employer should not be found liable under the MSAWPA for the injuries that resulted to an agricultural employee from not wearing a seat belt.

A comparison of safety standards enumerated in the applicable federal regulations as they pertain to motor vehicle safety standards shows that the absence of a requirement for seat belts in vehicles is self-defeating to Congressional intent to provide for the safety of agricultural workers. Omission of seat belts in the

¹⁰³ See Gerawan Ranches' Motion for Summary Judgment, plaintiff's Opposing Brief, and the Court's November 29, 1995 Order Denying Defendant's Motion for Summary Judgment, *Leal v. Gerawan Ranches*, No. CV-F-93-5804 (E.D. Cal. Nov. 29, 1995).

¹⁰⁴ Because causation is not mentioned in the Act, general common law principles of the individual State involved would govern. See *Erie v. Tompkins*, 304 U.S. 64, 78 (1938).

¹⁰⁵ See generally *Hewitt v. Grabicki*, 794 F.2d 1373, 1379 (9th Cir. 1986) stating that a plaintiff is required to establish a causal connection between the disclosure of confidential information and the adverse effect of such a disclosure under the Privacy Act. See also *Toksvig v. Bruce Pub. Co.*, 181 F.2d 664, 667 (7th Cir. 1950), involving the Copyright Act, where actual damages could not be proven because the plaintiff could show no actual damages caused by copyright infringement.

¹⁰⁶ *Hernandez v. Ruiz*, 812 F. Supp. 734, 737 (S.D. Texas 1993).

¹⁰⁷ *Id.* at 737.

federal regulations of the MSAWPA assumes that all states have some type of mandatory seat belt law. As discussed earlier, at least one state does not have a mandatory seat belt law and other states have varying exceptions to the rule. A migrant farmworker or labor contractor may or may not be aware of different states' varying seat belt requirements when travelling through the states. Because the MSAWPA is devoid of seat belt regulations and state laws are inconsistent in this regard, agricultural workers are in danger of serious injury due to the lack of a seat belt requirement.

The DOL, in the MSAWPA regulations, enumerates many motor vehicle safety standards. The safety standards include the size of tread on vehicle tires,¹⁰⁸ the width of seats in trucks,¹⁰⁹ and the spacing of footholds.¹¹⁰ The amount of the safety standards and the minute details enumerated in the regulations demonstrate Congressional concern for the safe transportation of agricultural workers. The omission of any seat belt standards in the regulations is contrary to Congressional intent.

The effectiveness of the use of seat belts has been proven repeatedly.¹¹¹ Since the MSAWPA's purpose is to mandate safe transportation of farmworkers, the omission of a seat-belt requirement is self-defeating. Accordingly, the migrant worker is without an avenue to recover actual damages for his or her injuries, or for that matter, statutory damages.

For this reason, Congress needs to revisit the MSAWPA and review all of the safety requirements enumerated in the regulations. To rely on standards delineated by the individual states ignores the reality that states differ on motor vehicle safety priorities.

III. THE LACK OF A STATUTE OF LIMITATIONS IN THE MSAWPA

The MSAWPA does not contain a statute of limitations. This imposes undue burdens on litigants.¹¹² "Congress recently created a uniform four-year limitations period for civil actions arising

¹⁰⁸ 29 C.F.R. § 500.104(c) (1995).

¹⁰⁹ *Id.* § 500.105(b)(3)(vi)(D).

¹¹⁰ *Id.* § 500.105(b)(3)(vi)(H).

¹¹¹ See Candy Purdy, *It Only Takes a Second: The Importance of Wearing Seat Belts*, CURRENT HEALTH, April 1994 at 19.

¹¹² See Jane Younglove Lapp, Comment, The Migrant and Seasonal Agricultural Worker Protection Act: "Rumors of My Death Have Been Greatly Exaggerated", 3 S.J. AGR. L. REV. 173 (1993).

under federal statutes."¹¹³ It does not apply to the MSAWPA, however, because it is only applicable to causes of action created by Congress after December 1, 1990,¹¹⁴ and the MSAWPA was created in 1983.

The Ninth Circuit, in a case arising out of Arizona, applied a three-year limitation period for a violation of the information and recordkeeping requirements of the MSAWPA.¹¹⁵ In a California MSAWPA case, the Ninth Circuit also applied a three-year limitations period.¹¹⁶ A federal district court in Michigan applied a six-year limitations period for a MSAWPA case.¹¹⁷ A Florida district court applied a four-year limitations period for a MSAWPA case.¹¹⁸

Due to the migratory nature of the farmworker, differing statutes of limitations in different jurisdictions pose serious problems. For example, consider the following hypothetical: a farm labor contractor enters into an agreement with a group of workers to perform crop work. The labor contractor is employed by an agricultural employer in one state to supply workers to harvest corn. Toward the end of the corn harvest, the contractor's motor vehicle is involved in an accident. Several of the workers injure their backs due to a lack of seats in the vehicle.¹¹⁹ The workers continue to work because of the need for income. After the harvesting season is over, the contractor is hired by another agricultural employer in another state. The contractor takes his crew to the second state to harvest oranges and other crops, and the crew stays one year because of the availability of work. The first state has a one-year statute of limitations while the second has a three-year statute of limitations for a transportation violation of the MSAWPA. The injured workers continue to work even though their back injuries become progressively worse. Because the workers moved to another state for work coupled with the profound need to earn a living,¹²⁰ they are placed in an awkward

¹¹³ *Barajas v. Bermudez*, 43 F.3d 1251, 1255 (9th Cir. 1994).

¹¹⁴ *Id.* at 1255.

¹¹⁵ *Id.* at 1260.

¹¹⁶ *Rivera v. Anaya*, 726 F.2d 564 (9th Cir. 1984).

¹¹⁷ *Sanchez v. Morrison*, 667 F. Supp. 536, 538 (W.D. Mich. 1987).

¹¹⁸ *Marquis v. United States Sugar Corp.* 652 F. Supp. 598, 602 (S.D. Fla. 1987).

¹¹⁹ Clearly a violation of 29 C.F.R. § 500.104(n) (1995).

¹²⁰ "Nearly all migrant farmworkers live in poverty." Louis True, Jr., Address Before the Commission on Security and Cooperation in Europe (October 9,

and unwavering position. If the workers do not continue to work they will not be able to support themselves. If the workers wait to pursue legal action against the labor contractor for actual damages sustained in the motor vehicle accident until the time their back injuries seriously interfere with their ability to work, they may be foreclosed by the limitations period in the first state.

Congress, in keeping with its intent to protect the health and safety of farmworkers, should enact a uniform statute of limitations period that considers the migratory nature of the average farmworker. The uniformity of a limitations period must strive to provide an injured worker enough time to pursue an action under the MSAWPA's private right of action for damages resulting from a violation of it.

CONCLUSION

The MSAWPA is legislation that is justified by the conditions that warranted its enactment. The MSAWPA has the ability to expand and improve the working and living conditions of our country's agricultural farmworkers. By imposing penalties and damages against those who violate it, the MSAWPA helps the "most abused of all workers in the United States."¹²¹ However, the MSAWPA, as written, needs to be revisited and reviewed with a critical eye. One area that should be reviewed is the motor vehicle safety standards.¹²² Serious consideration should be given to adding a seat-belt requirement for motor vehicles that transport agricultural workers. A careful review of the other safety standards is also warranted. Federal legislation should not rely upon state safety standards¹²³ because states have differing safety priorities.

In its review of the MSAWPA, Congress should balance the plight of the farmworkers against the burden to agricultural employers and agricultural associations. Liability imposed on agricultural employers should be abolished in situations which agricultural employers or associations have no control over the employees' activities. The MSAWPA should be able to give the necessary guidance to agricultural employers so they may protect

1992), *in* MIGRANT FARMWORKERS IN THE UNITED STATES-IMPLEMENTATION OF THE HELSINKI ACCORDS, at 47.

¹²¹ H.R. REP. NO. 885, 97th Cong., 1st Sess., *reprinted in* 1982 U.S.C.C.A.N. 4548.

¹²² 29 C.F.R. §§ 500.104 and 500.105.

¹²³ For example, states' seat belt requirements.

themselves from potential liability. The purpose of the MSAWPA should continue to be for the achievement of its goal of fairness and equity for migrant agricultural workers. In addition, it should ensure fairness and equity for the agricultural employer as well. After all, the plight of the American farmworker should not be a burden that agricultural employers should carry alone.

KAREN BUCK