KRYSTLE NICHOLS : NUMBER: 556,363-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

ALLSTATE INSURANCE COMPANY : CADDO PARISH, LOUISIANA

IN ITS CAPACITY AS LIABILITY

INSURER OF RYAN G. HAMMOND AND

IN ITS CAPACITY AS UM INSURER

OF KRYSTLE NICHOLS, AND

RYAN G. HAMMOND

**REASONS FOR JUDGMENT**

**ON MOTION FOR SUMMARY JUDGMENT**

**(Filed 1/18/2013 by Interior Exterior Building Supply, LP)**

**and MOTION FOR PARTIAL SUMMARY JUDGMENT**

**(Filed 1/23/2013 by Krystle Nichols)**

The Court has considered the Motion for Summary Judgment, filed 1/18/2013 by Interior Exterior Building Supply, LP (IEBS), and the Motion for Partial Summary Judgment , filed 1/23/2013 by Krystle Nichols, the exhibits and memoranda attached to each motion, the oppositions filed by plaintiff and defendant Ryan Hammond and Allstate Insurance Company, applicable law and oral arguments of counsel held on March 4, 2013. Based on a thorough review of the summary judgment record, and for reasons which follow, the Court concludes that the motion by IEBS should be granted and that the motion by Krystle Nichols should be denied.

One of the cases cited by plaintiff counsel in opposition to the motion by IEBS and in support of Ms. Nichols’ motion is a workers’ compensation case pertaining to LSA-R.S. 23:1061 – *Dean v. Southmark Construction*, 2003-1051 (La. 7/6/04) 879 So. 2d 112. The other case cited by plaintiff counsel was a tort suit, which should have been brought as a workers compensation matter – Scott v. Smith, 30330, (La. App. 2 Cir 4/8/98) 714 So. 2d 7 (1998). The case which the Court deems most applicable is *Woolard v. Atkinson*, 43, 332 (La. App. 2 Cir 7/16/08) which distinguishes the liability standard in workers’ compensation and tort cases. The work-related standard for workers’ compensation liability is broader than the course and scope standard for vicarious liability - LSA R.S. 23:1061 vs La. C.C. art. 2320.

The applicable rule of law is that an employee, in going to and from work – or to and from a fast food restaurant during lunch - is not considered as acting within the course and scope of his employment so as to render the employer liable to third persons – such as Ms. Nichols – for the employee’s negligence. The fact that in this case Mr. Hammond used his cell phone, for which he received a $100.00 monthly allowance, to conduct an item of business for his employer is not sufficient to impose vicarious liability on the employer. There are no genuine issues of fact; IEBS is entitled to judgment as a matter of law; accordingly the motion for summary judgment by IEBS is granted. Obviously, based on the same legal rationale, the plaintiff’s motion is denied.

Counsel shall submit formal and separate judgments regarding in accordance with this ruling and in compliance with La. Dist. Ct. R. 9.5.

Signed this 28th day of March, 2013, in Shreveport, Caddo Parish, Louisiana.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

Amy Brainard, Counsel for Krystle Nichols

Eron Brainard, Counsel for Krystle Nichols

Frank Carroll, Counsel for Interior Exterior Building Supply, LP

Billy Guin, Counsel for Ryan Hammond and Allstate Insurance Company

Jay Adams, Counsel for Allstate Insurance Company