

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
VIRGINIA, ABINGDON DIVISION

Faustino Reyes Lizama v. Oleksandr Levchenko, et al.

Lizama · No. 1:25CV00038 · Decided February 9, 2026

SUMMARY

The court denied defendants’ Rule 12(c) motion for judgment on the pleadings in a diversity personal-injury action arising from a truck backing accident. The court held that the negligence per se allegations were adequately pleaded and that the answer did not establish contributory negligence as a matter of law, but struck allegations concerning negligent hiring, retention, entrustment, and training.

CASE DETAILS

COURT	United States District Court for the Western District of Virginia, Abingdon Division
WRITING FOR THE COURT	James P. Jones
JURISDICTION	United States District Court for the Western District of Virginia, Abingdon Division
DECIDED	February 9, 2026
DOCKET	1:25CV00038
DISPOSITION	other
PROCEDURAL POSTURE	After defendants filed an answer, they moved under Federal Rule of Civil Procedure 12(c) for judgment on the pleadings. The court denied the motion, except that it struck allegations concerning negligent hiring, retention, entrustment, and training.
STANDARD OF REVIEW	On a Rule 12(c) motion, the court considers the pleadings as a whole, including the answer, and asks whether, viewing the matter in the light most favorable to the nonmoving party, genuine issues of material fact remain or the case can be decided as a matter of law. The complaint must also satisfy the plausibility standard applicable under Rule 12(b) (6).
PRECEDENTIAL VALUE	unpublished district court opinion

TOPICS

- motion for judgment on the pleadings
- pleadings
- negligence
- contributory negligence
- civil procedure

PRACTICE AREAS

civil procedure

negligence

motor vehicle personal injury

QUESTIONS PRESENTED

1. Whether allegations concerning negligent hiring, retention, entrustment, and training should remain in the complaint when plaintiff disclaimed any present intent to assert those claims and the complaint lacked factual support.
2. Whether the negligence-per-se claim was legally insufficient because the complaint did not allege facts establishing that the parking lot was a highway with unrestricted public access for vehicular travel.
3. Whether the defendants were entitled to judgment on the pleadings based on factual allegations in their answer allegedly establishing plaintiff's contributory negligence.

HOLDINGS

1. The court may strike immaterial allegations from the complaint under Rule 12(f)(1), and it struck all assertions of negligence in hiring, retention, entrustment, and training because plaintiff disclaimed any present intent to assert those claims and the allegations lacked factual support.
2. The negligence-per-se claim was adequately pleaded because the complaint's reference to the accident location as a parking lot satisfied federal notice and plausibility pleading standards; whether the location qualifies as a highway with unrestricted public access is a factual matter to be proved later.
3. Defendants were not entitled to judgment on the pleadings based on factual allegations in the answer because plaintiff was not required to respond to the answer, and those allegations were therefore considered denied or avoided.

KEY QUOTATIONS

"A Rule 12(c) motion differs from a motion under Rule 12(b)(6) in that the court may consider the pleadings as a whole, including an answer filed by a defendant." (at 1)

"The test applicable for judgment on the pleadings is whether or not, when viewed in the light most favorable to the party against whom the motion is made, genuine issues of material fact remain or whether the case can be decided as a matter of law." (at 2)

FACTUAL BACKGROUND

While plaintiff was asleep in the cab of his tractor-trailer in a parking lot, defendant Levchenko allegedly negligently backed his truck into plaintiff's truck. Plaintiff alleged severe personal injuries and property damage. Plaintiff also asserted liability against Levchenko's employer and pleaded common-law negligence and negligence per se based on Virginia statutes and regulations and the Federal Motor Carrier Safety Act.

PROCEDURAL HISTORY

Plaintiff filed a diversity personal-injury complaint asserting common-law negligence and negligence per se against the defendant truck driver, along with vicarious-liability allegations against the driver's employer.

Defendants answered and moved for judgment on the pleadings, arguing that unsupported negligent-hiring-related allegations should be removed, that the negligence-per-se allegations were inapplicable to a parking lot, and that the answer established plaintiff's contributory negligence. The court denied the motion except for striking the specified allegations and directed the parties to confer and file a Rule 26(f) report within fourteen days.

DISPOSITION

other

REMAND INSTRUCTIONS

The parties were directed to confer and file a Rule 26(f) report within fourteen days of February 9, 2026.

CASES CITED

- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- McGuire ex rel. Estate of McGuire v. Hodges, 639 S.E. 2d 284, 288 (Va. 2007)
- Caplan v. Bogard, 563 S.E. 2d 719, 723 (Va. 2002)
- Smith v. McDonald, 562 F. Supp. 829, 842 (M.D.N.C. 1983)
- Alexander v. City of Greensboro, 801 F. Supp. 2d 429, 433 (M.D.N.C. 2011)