

MOTOR CARRIER LIABILITY REGARDING MECHANICAL FAILURES AND DRIVER COMPLAINTS

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I. Introduction

Not a single day goes by in the trucking industry without a mechanical problem on a truck. Often, these problems are not critical to the safety of the truck. However, when a safety related mechanical problem arises, the driver has a duty to report the problem and the motor carrier has a duty to correct the problem. Even if a mechanical problem is not detected, the motor carrier may still be held liable under the negligent maintenance theory.

II. Negligence and Recklessness

Establishing liability in the context of a mechanical failure generally requires proof of negligence (also known as negligent maintenance). Courts have held that there must be proof of negligence in order to establish liability in cases concerning suspected equipment failures. *Hertz v. Goza*, 306 So. 2d 656, 660 (Miss. 1975); *Nichols v. International Paper Co.*, 644 S.W.2d 583 (Ark. 1983).

In a negligent maintenance case, proof of negligence requires four essential elements that the plaintiff has the burden of proving. First, the plaintiff must establish that the defendant has a legal duty or standard of care. Second, the plaintiff must prove the defendant breached or violated that duty. Third, the plaintiff must prove by a preponderance of the evidence that breach or violation proximately caused the injury. Finally, the plaintiff must prove that he/she were, in fact, injured or damaged. See *Arnona v. Smith*, 749 So. 2d 63 (Miss. 1999). The following is a discussion of three negligent maintenance elements: duty/standard of care and proximate causation.

A. Duty/Standard of Care

The Code of Federal Regulations provides specific requirements for commercial motor vehicle maintenance. 49 C.F.R. § 396. 49 C.F.R. places a duty to inspect and maintain on motor carriers:

Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection and maintenance of motor vehicles shall comply and be conversant with the rules of this part.

49 C.F.R. requires "every motor carrier shall systematically inspect, repair and maintain, or cause to be systematically inspected, repaired and maintained, all motor vehicles subject to its control."

A motor carrier's duty to correct a safety related mechanical problem is explicitly stated in Title 49, Section 396.11 of the Code of Federal Regulations. That regulation reads as follows: "Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of the vehicle." 49 C.F.R. § 396.11(c). The mechanical parts listed on the driver vehicle inspection report that can affect truck safety are as follows: Service brakes including trailer brake connections, parking (hand) brake,

steering mechanism, lighting devices and reflectors, tires, horn, windshield wipers, rear vision mirrors, coupling devices, wheels and rims, and emergency equipment. 49 C.F.R. § 396.11(a). The requirements for and the sufficiency of these component parts are found in 49 C.F.R. § 393, entitled “Parts & Accessories Necessary for Safe Operation.” 49 C.F.R. § 393 and its subsections should be consulted when a specific part is suspected of causing or substantially contributing to an accident.

Motor carriers should carefully maintain (1) Lighting Devices, Reflectors, and Electrical Equipment; (2) Brakes; and (3) Tires and Wheels, all listed under 49 C.F.R. § 393. These specific parts are often the main components that cause or substantially contribute to an accident leading the FMCSA to adopt strict safety regulations regarding these parts.

49 C.F.R. § 393.9 generally requires that “all lamps on the vehicle be capable of operation at all times.” Furthermore, § 393.11 through § 393.26 establishes the requirements of color, position and required lighting devices by commercial vehicle as well as providing detailed diagrams of the lighting device locations on certain motor vehicles. If inadequate lighting is a potential issue in a case look to these regulations for guidance.

49 C.F.R. § 393.40(a) requires “a bus, truck, truck tractor or a combination of motor vehicles must have brakes adequate to control the movement of, and to stop and hold, the vehicle or combination of vehicles.” Detailed brake requirements are set forth in § 393.41 through § 393.55. 49 C.F.R. § 393.48 generally provides that “...all brakes with which a motor vehicle is equipped must at all times be capable of operating.” A significant regulation is 49 C.F.R. § 393.52. It provides the requirements for precise brake performance:

1. Developing a braking force at least equal to the percentage of its gross weight specified in the table accompanying this regulation;
2. Decelerating to a stop from 20 miles per hour at not less than the rate specified in the table accompanying this regulation; and
3. Stopping from 20 miles per hour in a distance, measured from the point at which movement of the service brake pedal or control begins, that is not greater than the distance specified in the table accompanying this regulation.

49 C.F.R. § 393.75 requires the following for tires:

- (a) No motor vehicle shall be operated on any tire that (1) has body ply or belt material exposed through the tread or sidewall, (2) has any tread or sidewall separation, (3) is flat or has an audible leak, or (4) has a cut to the extent that the ply or belt material is exposed;
- (b) Any tire on the front wheels of a bus, truck, or truck tractor shall have a tread groove pattern depth of at least 4/32 of an inch when measured at any point on a major tread groove. The measurements shall not be made where tie bars, humps, or fillets are located; and
- (c) Except as provided in paragraph (b) of this section, tires shall have a tread groove pattern depth of at least 2/32 of an inch when measured in a major tread groove. The measurement shall not be made where tie bars, humps, or fillets are located.

49 C.F.R. § 393.205 specifies the requirements for wheels:

- (a) Wheels and rims shall not be cracked or broken;
- (b) Stud or bolt holes on the wheels shall not be elongated (out of round); and
- (c) Nuts or bolts shall not be missing or loose. (A discussion on this topic will follow in the negligence per se section.)

These regulations above and others listed in 49 C.F.R. § 393 provide a beginning point for determining the motor carrier’s standard of care when the plaintiff alleges negligent maintenance. However, most states consider these regulations to be minimal standards and some states prescribe a heightened standard of care. Therefore, defense counsel must also look to relevant state statutes and court decisions.

One particular case out of Ohio is a good example of a state’s heightened standard of care. In *Nichols*

v. Coast Distrib. Sys., 621 N.E.2d 738 (Ohio 1993), the Supreme Court held that the surrounding circumstances established a broader standard of care than the statute that the defendant complied with. *Id.* The court reasoned, “One who merely complies with a statute may still be found negligent, in certain situations, for failing to take the additional precautions that a reasonable person would.” *Id.* at 740. Therefore, when determining the duty or standard of care in a negligent maintenance suit, defense counsel needs to examine both federal and state statutes, common law, and most importantly, the facts surrounding any alleged mechanical failure.

(1) Negligence Per Se

In order for a plaintiff to recover under the concept of negligence, the plaintiff must prove there was a violation of a regulation or statute, the violation was the proximate cause of the accident, and the plaintiff thereby suffers damages. Under this concept, a statute or regulation defines the standard of conduct of a reasonable prudent person. Furthermore, the focus is on whether the defendant violated a statute and not the traditional jury determination of reasonability.

The applicability of the Federal Motor Carrier Safety Regulations (FMCSR) in the context of negligence per se has been addressed by courts throughout the nation. In *Omega Contracting, Inc. v. Tores*, the Supreme Court of Texas provided an analysis of negligence per se and the FMCSR. *Omega Contracting, Inc. v. Tores*, 191 S.W.3d 828 (Tex. 2006). In *Tores*, the defendant’s tractor-trailer tire separated from the tractor, allegedly causing a wreck involving several other tractor trailers. *Id.* The plaintiffs’ complaint specifically alleged violations of FMCSR regulations 49 C.F.R. § 393.205, § 396.3(a) and 396.13. *Id.* The court specifically refused to apply § 393.205 as an indicator of negligence per se because the term “loose” was vague and not susceptible to a precise meaning in the context of securing nuts and bolts. *Id.* at 840. Similarly, the court held that §§ 393.3(a) and 396.13 were not the appropriate basis for negligence per se because determining what is or is not safe under the circumstances bears practically no difference from what is or what is not reasonable. *Id.* at 840-41.

(2) Res Ipsa Loquitur

Res Ipsa Loquitur creates an inference of negligence based on the facts of the occurrence alone, despite the fact that no direct evidence exists as to the precise cause of the accident. A defendant may refute this presumption of negligence. The doctrine is potentially available whenever a mechanical part produces an injury, has been under the control and management of the defendant, and is an occurrence, that, in the ordinary course of events, does not occur if due care has been exercised. See *Avis Rent-A-Car v. Standard Meat Co.*, 288 A.2d 243 (D.C. App. 1972). The application of res ipsa loquitur is heavily fact sensitive and should be applied on a case by case basis.

B. Proximate Causation

Another element to a negligent maintenance case is proximate causation. A negligent maintenance case requires that the plaintiff prove that any breach of duty or standard of care proximately caused the accident.

In *Tack v. Reid*, the facts of the case provided the Supreme Court of New Mexico with an opportunity to examine proximate causation. *Tack v. Reid*, 419 P.2d 453 (N.M. 1966). In *Tack*, the defendant was towing a piece of farm equipment when a bolt broke causing a piece of farm equipment to swerve from side to side, ultimately colliding with the plaintiff’s parked automobile. *Id.* The court found that the defendant technically violated traffic regulations including the transportation of an over-width load upon the highway without having secured an authorized permit, and the failure to place warning flags upon the equipment being towed. *Id.* Although, the defendant admitted to these violations of these statutory regulations, the court held that the plaintiff did not meet its burden of establishing a causal connection between any such violation and the ultimate accident. *Id.* The court further held “from our examination of the record, we find no causal connection between the claimed acts of negligence and the collision. The trial court, likewise, found no such causal

connection as is indicated by its expressed finding that neither the width of the farm implement, the absence of flags, or the failure to have a permit, single or collectively, were the proximate cause of the collision. *Id.* at 425.

C. Recklessness

Although courts have not specifically addressed the issue of recklessness when a motor carrier fails to correct a safety related mechanical problem after being put on notice by a driver, it is reasonable to assume that a court would instruct the jury as to recklessness. A motor carrier's blatant disregard for safety related mechanical problems rises above negligent maintenance and will likely lead to punitive damages.

D. Practical Applications

The mechanical parts listed on the driver vehicle inspection provide a valuable list of mechanical parts that can, when not fixed, create numerous safety issues. The list is as follows: Service brakes including trailer brake connections, parking (hand) brake, steering mechanism, lighting devices and reflectors, tires, horn, windshield wipers, rear vision mirrors, coupling devices, wheels and rims, and emergency equipment. 49 C.F.R. § 396.11(a). A motor carrier that refuses to immediately fix these mechanical parts after a driver informs the motor carrier the parts are not working properly will likely be subject to punitive damages if an accident occurs and the cause of the accident is the mechanical part.

The brakes included in the list as well as regular tractor brakes are extremely important to the safety of the truck. If an 80,000-pound truck cannot stop effectively then the risk of personal and property injury as well as wrongful death greatly increases. Just imagine, a fully loaded tractor-trailer unable to stop at an intersection or school crossing. Any problems relayed to the motor carrier by the driver about defective brakes needs to be addressed immediately even if that causes a late delivery. The same can be said about the steering mechanism and coupling devices.

The tires, wheels and rims are also extremely important to the safety of the truck. How many times do you see shredded tires on the highway? Often. Every time a tire shreds or blows a tractor-trailer is thrown off course, which may lead to a tragic accident. Properly maintained tires can prevent tragic accidents. It is important for motor carriers to quickly attend to driver requests for tire replacements.

Rear vision mirror also play a huge part in the safety of a tractor-trailer. A truck driver has no other means of seeing behind him besides his rearview mirrors. He needs to be able to see behind him to avoid any accidents while backing up or changing lanes. Once again, use of rear vision mirrors will help prevent tragic accidents. A motor carrier needs to replace any rearview mirror immediately after notification of the damage.

Lastly, a motor carrier needs to fix any windshield wipers immediately after receiving notice by a driver. A driver not being able to see in the rain will definitely lead to an accident.

In conclusion, motor carriers need to listen to their drivers' complaints. Although some complaints are not safety related, those that are need to be fixed immediately. A safe driver that delivers a little late is a lot more valuable to a motor carrier than the unsafe driver who delivers early or on time.