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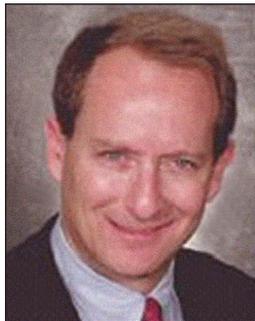
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**PENNSYLVANIA****NEGLIGENCE & PUNITIVE DAMAGES****Battlefield Tort Case****Evan S. Eisner**

Rawle & Henderson attorney **Evan S. Eisner** and his trial team successfully defended a negligence and punitive damages case stemming from a November 2009 crash on a Kuwaiti desert road. The crash resulted in the death of two United States Navy Reservists who were serving in Operation Iraqi Freedom.

Defendants Combat Support Associates, a joint venture of companies AECOM Government Services, Inc., Aleut Corporation, and Research and Maintenance, Inc., provided force protection services to the United States Army for the Army's bases in Kuwait during Operation Iraqi Freedom. On November 19, 2009, one of its employees, a K-9 explosive detection dog handler, was driving northbound on Alternate Supply Route ("ASR") Aspen, a two-lane unmarked desert road which was the main artery linking the Army's northern camps in the Kuwaiti desert. The dog handler and his canine were returning to Camp Buehring after their morning post.

As the dog handler was driving north on ASR Aspen, a U.S. Army convoy was proceeding northbound ahead of him. The convoy consisted of a lead and trail SUV and six commercial buses transporting soldiers to Camp Buehring. Military convoys regularly and frequently used ASR Aspen. The dog handler decided to pass the convoy using the opposite southbound lane by leapfrogging between the convoy's vehicles. At some moment during the dog handler's process of passing the rear SUV and the last bus in the convoy, a vehicle driven by the two Navy reservists appeared in their southbound lane. Plaintiffs contended that the reservists' vehicle had been hidden in the well-known dip in the road in the southbound direction. Upon seeing the reservists' vehicle, the K-9 dog handler attempted to return to his northbound lane of travel.

However, the buses in the convoy were following one another too closely, and did not maintain the 100 meter gap, which, pursuant to Army regulation, allowed passing vehicles room to return to their lane of travel. After an aborted attempt to move back into his lane and in an effort to avoid a crash with the oncoming reservists' vehicle, the dog handler steered west into the desert. At nearly the same time, the reservists also steered into the desert, and the vehicles collided in the desert sand. One of the reservists died at the scene. The other reservist suffered significant brain injuries, head trauma and neck trauma,

among other life-threatening injuries. He remained under the care of the Veterans Administration hospitals as an in-patient for nearly four years before passing away.

Over the course of the two-week jury trial before The Honorable Edwin C. Kosik, District Judge of the United States District Court for the Middle District of Pennsylvania (Scranton), plaintiffs' evidence included the testimony of two soldiers who testified that the passing vehicle was going over 100 miles per hour. Plaintiffs also presented evidence to show that the dog handler was passing on a hill crest over which he could not see oncoming traffic and that the dog handler drove ASR Aspen regularly. Plaintiffs argued that the dog handler was aware of the visibility problem the upward and downward slope of the road presented and the so-called "dip" in the road.

Defendants presented evidence that the speed of the dog handler's vehicle on the road was not known, but that it could not be as fast as suggested by witnesses, given the lack of physical evidence on the road. Expert testimony showed that the dog handler's travel speed was 50 miles per hour when it reached the desert sand. Testimony also established that the dog handler and reservists each had approximately five to seven seconds of time after seeing each other in the southbound lane to avoid a collision. This time gave the dog handler the risk-free option of returning to his lane of travel, regardless of any visibility issues the road presented. Defendants contended that the minimal gap maintained by the United States Army convoy buses prevented the dog handler from returning his vehicle to his lane, and this factor was the only cause of the accident.

Under applicable federal law, the U.S. Army could not be a defendant and no fault could be assessed to it. During trial, the court granted defendants' Rule 50 motion to dismiss plaintiffs' claims of punitive damages.

The jury returned a verdict in favor of both families on the negligence claim after over four hours of deliberation. The damages awarded included the claim of loss of guidance for the reservists' two minor children, a loss of consortium claim for a surviving spouse, the past and future economic loss for both reservists, and the conscious pain and suffering of the reservists. The combined amount of the award was \$7.6 million. Prior to trial, plaintiffs' counsel demanded \$24 million to settle both cases.

Significant pretrial rulings included the District Court's ruling denying defendants' motion to dismiss the case for lack of subject matter jurisdiction under the political question doctrine and combat activities preemption. The District Court certified these issues for interlocutory appeal to the Third Circuit, which declined the appeal. The Supreme Court of the United States may be addressing this "battlefield" tort jurisdictional issue in the near future. The District Court also decided to apply Pennsylvania law and its driving rules of the road, rejecting defendants' request to apply Kuwaiti law. Rawle & Henderson appellate lawyer **Angela M. Heim** prepared the briefing on many of the significant legal issues that this challenging case presented. Associates **Joseph A. Gorman**, **Mary Ann Capriotti** and **Joseph A. Skale** assisted in the pre-trial preparation.

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*Karen A. Amesbury, Executrix of the Estate of Brian Mark Patton, et al. v. CSA, Ltd., United States District Court for the Middle District of Pennsylvania, No. 3:10-cv-01712*

**Evan S. Eisner**, Of Counsel to the firm in our Philadelphia office, focuses his practice on defending catastrophic loss claims, products liability claims, and commercial and toxic tort claims. He earned his B.A., *cum laude*, from Kenyon College, and his J.D. from the University of Pittsburgh School of Law. He is admitted to practice in Pennsylvania and California, as well as U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the U.S. District Court for the Central District of California, the U.S. Court of Appeals for the Ninth Circuit and the U.S. Court of Appeals for the Third Circuit. Evan has been rated AV Preeminent by Martindale-Hubbell.

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**Angela M. Heim**, Of Counsel to Rawle & Henderson, concentrates her practice on insurance coverage matters, professional liability and civil litigation. Ms. Heim graduated from Penn State University in 1990 with a degree in Business Logistic and an emphasis in Economics. Prior to attending law school, she worked for a computer software company specializing in software for home nursing agencies and physicians' offices. In 1995, Ms. Heim graduated from the University of Pittsburgh School of Law and began her practice of law at Rawle & Henderson LLP.

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