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RAWLE & HENDERSON LLP

TRANSPORTATION LAW UPDATE



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Commercial Motor Vehicle Section:

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BE PREPARED



James R. Callan

A careful reading of a plaintiff's theories of liability embodied in the Complaint is mandatory in preparing to take, and defend, the deposition testimony of the parties. In a recent personal injury action against a small Florida-based trucking company, the plaintiff's Complaint consisted, in large part, of claims based in products liability. Plaintiff's Complaint and his own deposition testimony turned out to be fatal to his case.

Plaintiff was a commercial tractor trailer driver, working sporadically as an independent contractor for the defendant, a small auto transport business. The defendant's clients were mostly individuals, retired New York "snowbirds" who transported their personal vehicles back and forth from Florida for the portion of the year they resided there. The defendant trucking company operated just two car-carriers between New York and Florida. The defendant testified that he had purchased the subject tractor trailer in 1993.

At the time of the accident, plaintiff drove the defendant's tractor trailer from Florida to the delivery destination in Flushing, New York. Despite not being authorized to do so, plaintiff began to unload vehicles from the car-carrier without supervision. After removing the lower tier of vehicles, plaintiff began to hydraulically lower a vehicle from the upper level. However, plaintiff failed to relieve the pressure on the chains holding the vehicle in place before lowering the vehicle. When he attempted to release the pressure on the chains using a metal bar inserted into a ratchet mechanism, he lost control of the bar which spun around and struck him in the face, breaking his nose and several teeth.

Plaintiff alleged in his Complaint that the defendant trucking company breached warranties of fitness of its tractor trailer for its intended purpose, defendant manufactured and designed the

“metal plate” that injured plaintiff, and defendant warranted that the merchandise was of merchantable quality and fit for the purpose for which it was were designed, manufactured, assembled, inspected, sold and/or leased and intended. Plaintiff’s Complaint was replete with similar allegations of defective design, testing, manufacture, breach of express and implied warranties, and strict liability for sale of a defective and inherently dangerous product. Plaintiff also alleged in his Bill of Particulars that he was injured because the trailer was “old and rusted.”

Based on plaintiff’s allegations, we focused on two issues during this deposition: 1) whether plaintiff could produce any proof that the defendant was in the “stream of commerce” with respect to the manufacture, distribution or sale of the subject trailer; and 2) whether plaintiff could specifically identify the defective mechanism of the trailer which caused his accident.

The deposition testimony of the parties proved that the defendant was merely an end-user of the trailer. He was not in the business of selling, leasing or distributing trailers and had not been part of the manufacturing or design process. He simply bought a used car-carrier and put it to work in his business.

Plaintiff’s testimony proved that he had no idea how the accident actually occurred, or what mechanism on the trailer malfunctioned, other than to claim that the “chains were rusty and broken.” Plaintiff also conceded in his deposition testimony that the chains holding the vehicle he was lowering were not broken.

Following the completion of discovery, we prepared and filed a Motion for Summary Judgment seeking to dismiss all of the products liability claims in the Complaint since the defendant was never part of the “stream of commerce” and therefore could not be strictly liable under a theory based on product liability. The motion also sought dismissal since plaintiff could not identify exactly what defective component of the trailer had caused his accident, and therefore, could not prove that the accident was proximately caused by any negligence on the defendant’s part.

In a brief Decision and Order, the Supreme Court Queens County, New York granted the defendant’s Motion, and dismissed plaintiff’s Complaint for the reasons described above.

Preparation for an adversary’s deposition must include a thorough review of each element required to prove plaintiff’s theories of liability as al-

leged in the pleadings. Plaintiff’s own deposition testimony showing his inability to prove each element of a *prima facie* case is the most persuasive component of a successful motion for summary judgment.

James R. Callan graduated from Temple Law School in 1996 where he completed the Integrated Trial Advocacy Program and was a member of the Moot Court Honor Society. He received his undergraduate degree from Temple University as well.

Prior to receiving his law degree, James was a television producer for advertising. Now, he focuses his energies on the defense of commercial motor vehicles and their insurers, and coverage issues and litigation.

James is admitted to practice in New York, New Jersey and Pennsylvania, as well as the U.S. District Courts for the Northern, Eastern, Western and Southern Districts of New York, the Eastern and Middle Districts of Pennsylvania, the District of New Jersey and the U.S. Court of Appeals for the Third Circuit.

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