



TRANSPORTATION LAW UPDATE



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PENNSYLVANIA HIT FROM BEHIND



Gary N. Stewart

On June 28, 2006 at approximately 5:00 p.m., a J.B. Hunt driver was operating a tractor trailer on I-81 north near Dorrance, Pennsylvania when he was rear-ended by a straight truck driven by plaintiff. At this location, I-81 has three travel lanes as well as a very long (over a mile) entrance lane on the far right to allow vehicles to merge into traffic from I-80. It was uncontested that there are unobstructed site lines for over one mile on this slight uphill grade. Plaintiff sustained life threatening abdominal injuries, including a mesenteric artery tear, a broken knee cap, an ankle fracture and an achilles tendon tear. He was life-flighted from the scene. Thereafter, he had a total of seven surgeries and claimed he was no longer able to work. The workers' compensation lien was in excess of \$500,000. Plaintiff's settlement demand was well in excess of a million dollars.

The case was tried for a week in the U.S. District Court for the Middle District of Pennsylvania in Wilkes-Barre before U.S. District Judge A. Richard Caputo and a jury. The jury returned a defense verdict.

The Accident

At trial, plaintiff claimed that he was traveling 55 mph in the right lane and he admitted that he may have been going 57-58 mph in the 55 mph speed zone. He asserted that he first saw the J.B. Hunt tractor trailer about "a quarter mile" away, but he could not tell whether the truck was in the right merge lane from I-80 or stopped on the side of the road. Plaintiff testified that it was not until he was about 50 to 75 yards away

that he realized that the tractor trailer was moving at a slow rate of speed and he could not stop in time. He swerved to the right and struck the right rear of the J.B. Hunt trailer. Plaintiff did not recall anything else about the accident. At trial, plaintiff claimed that the J.B. Hunt tractor trailer did not



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have its hazard lights activated, it violated the 25 mph minimum speed limit on an interstate, and it "hopped" or cut in front of him at 25 mph, giving him nowhere to go.

The J.B. Hunt driver was unable to attend trial due to injuries that he sustained in a subsequent accident so his testimony was shown to the jury via video. He maintained that he merged off I-80 onto I-81 north. The J.B. Hunt trailer was full of paper products, but it was not heavy. He was accelerating on the road which had a slight incline, when he came upon two slow moving "doubles." The J.B. Hunt driver activated his turn signal to move into the middle lane. However, traffic was closing on him and his window of opportunity to change lanes passed. He turned off his signal and saw plaintiff's truck coming from behind when the impact occurred. The driver admitted that he was traveling 25 mph at the time of the collision. He insisted that his hazard lights were activated.

At trial, plaintiff called a Pennsylvania state trooper who arrived at the scene of the accident. The trooper testified that the speed limit was 55 mph and minimum highway speed was 40 mph. He stated that hazard lights were required if a vehicle was not traveling the minimum

speed limit. During cross-examination, he stated that although it was not written in his report, he specifically recalled that the J.B. Hunt driver told him that his hazard lights were activated.

The Ex-Wife

While plaintiff was pinned in his truck, he called his wife, from whom he was divorced at the time of trial. The ex-wife testified that her husband said he was in an accident, that he loved her, and he thought he was going to die.

During cross-examination, the ex-wife admitted that the plaintiff had difficulty sleeping before the accident. In fact, she made him visit his doctor just two weeks before this accident because he was always tired, sleepy and fatigued. The plaintiff sustained a broken nose as a child and had sleep apnea. According to the medical records, plaintiff told his physician that he had difficulty staying awake in the afternoon.

Plaintiff denied that he went to the doctor two weeks before the accident because he had difficult sleeping. Rather, he claimed it was a

regular check-up. Plaintiff was adamant at trial that he was not tired or fatigued at the time of the accident despite the fact that he had been working for almost 14 hours.

The Experts

Plaintiff's engineering expert testified that the J.B. Hunt driver was negligent by failing to activate his hazard lights because his speed was below 40 mph. During cross-examination, he claimed that if the J.B. Hunt driver could not maintain the normal flow of traffic, he should have moved to the middle lane, moved to the shoulder, or stopped his vehicle. He referenced a specific statute which required vehicles to pull off the roadway if they could not maintain the normal flow of traffic. However, we noted that this statute applied only when there was an undivided two lane highway. I-81 was six lanes in the accident area.

The defense accident reconstructionist testified that plaintiff was negligent by failing to be attentive to the task of driving. Plaintiff's counsel cross-examined him extensively on whether our driver's hazard

lights were activated because the J.B. Hunt driver never stated this fact during his deposition. The defense expert noted that not only did the truck driver testify that his lights were flashing, he was never specifically asked at his deposition whether his hazard lights were on. He added that even if the truck driver did not have his hazard lights on, he was not in violation of any statute. The J.B. Hunt driver could not be ticketed for driving only 25 mph on I-81 in the area of the accident because there was no minimum speed limit sign posted and a driver can only go as fast as the vehicles in front of it.

The Claim for Future Damages—Whether This Affected Plaintiff's Credibility

There was no dispute that plaintiff sustained severe injuries and he would not be able to return to work as a truck driver. However, the defense disputed plaintiff's claim that he could never work again in any capacity. We used the testimony of plaintiff's own treating physician to show that plaintiff was able to return to work in a job which required him to walk, stand or sit for up to 8 hours. Plaintiff's vocational expert argued that plaintiff was unable to work in any full-time position. However, he admitted during cross-examination that a functional capacity evaluation revealed that plaintiff was "exaggerating" his symptoms.

Conclusion

We are often faced with cases in which we are defending rear end collisions, and in doing so, we often admit breach of the duty of care. This time, however, we were able to use some of the tactics we often see from the plaintiffs' bar to our own advantage. Specifically, we obtained a jury instruction for negligence *per se* based on the plaintiff's violation of motor vehicle statutes. We also used the assured clear distance rule to show that the J.B. Hunt driver was not negligent.

Knoch v. J.B. Hunt Transport Inc.
(U.S.D.C., M.D. PA., 2011)

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