



VOLUME 15 | NUMBER 7 | 2014

TRANSPORTATION LAW UPDATE



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PENNSYLVANIA PUNITIVE DAMAGES

No Direct Negligence Claim Against Employer



Gary N. Stewart

U.S. Senior District Judge A. Richard Caputo of the Middle District of Pennsylvania (Wilkes-Barre) issued a memorandum decision confirming that federal district courts in Pennsylvania apply the “majority rule” and refuse to allow claims for negligent entrustment, supervision, monitoring and hiring to proceed when 1) the supervisor/employer defendant admits that its employee/driver was acting in the scope of his or her employment at the time of the accident and 2) plaintiff does not have a viable claim for punitive damages against the supervisor/employer defendant. Judge Caputo noted that the Pennsylvania Supreme Court has yet to address this issue.

In *Edward Sterner, et al. v. Titus Transportation, LP d/b/a Air-Ride Transport and Roger L. Robertson C.A. No.: 3:cv-10-2027* Judge Caputo confirmed that there were no punitive damages claimed in the underlying action and thus dismissed all direct actions against the employer because the employer had admitted that the driver was its employee and was acting within the scope of his employment at the time of the accident.

The accident which prompted the litigation was fairly simple. Two trucks collided on I-81 in Pennsylvania. The impact, some might say, was minor when one considers that the State Police noted that both trailers sustained little damage and allowed both respective operators to drive their rigs away from the scene. Needless to say, the injuries that plaintiff alleged he sustained were not.

An action was filed and allegations made that our driver was an “agent, servant, and/or employee” of the defendant motor carrier. Traditional allegations of negligence

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and punitive damages against both the driver and company as well as claims for corporate negligence—including negligent entrustment, instruction, supervision and monitoring and a separate punitive damages claim against the corporate defendant—were also included.

Defendants admitted that the driver was an employee and was operating their tractor-trailer. Thereafter, the company filed a suggestion of bankruptcy and the case was stayed. A motion to lift the stay was filed in the U.S. Bankruptcy Court for the Eastern District of Texas, which granted plaintiffs' petition to permit continuation of the Pennsylvania litigation for recovery of up to only the limits of applicable insurance coverage. Most important, the Court ordered that plaintiff not seek punitive damages because coverage was excluded by the applicable policy.

Thereafter, the U.S. District Court for the Middle District Court of Pennsylvania lifted the stay and the case was permitted to proceed. As traditionally seen, discovery requests were served by the plaintiffs where they broadly inquired into the defendant employer operational methods and safety practices.

We requested that plaintiffs voluntarily dismiss the direct negligence action in light of the fact that punitive damages were dismissed, and thus proceed with only the negligence claims related to the driver and vicarious liability claims to his employer.

Plaintiffs disagreed and although they conceded that the punitive damages were no longer in the case,

they asserted that the general rule in Pennsylvania allowing for the dismissal of the direct negligence claims does not take effect until after discovery is completed.

Judge Caputo explained that it did not matter that discovery had not been completed and stated that “in the majority of states that have addressed this issue, a plaintiff cannot pursue a claim against an employer for negligent entrustment, hiring, supervision and training when the employer admits that its employee was acting within the scope of employment when the accident occurred”. Cases from Arkansas, Florida, Georgia, Idaho, Illinois, Indiana, Missouri, Nevada, New Hampshire, New York, Pennsylvania, Utah and West Virginia were noted.

The Court explained that the rationale is that the employer's liability is a derivative claim fixed by a determination of the employee's negligence and therefore, courts following the “majority rule” have determined that evidence of these direct claims become unnecessary, irrelevant and prejudicial if the employer has already admitted vicarious liability and *respondeat superior*. However, Judge Caputo reiterated that there is an important exception to this rule when plaintiff has a *valid* claim for punitive damages.

Essentially, the lynchpin, in our opinion, is the determination as to whether a valid claim for punitive damages is still present in the litigation. Obviously, if the defendants can have punitive damages dismissed entirely so that they are simply not present in the pleadings, then the majority of jurisdictions will allow the dismissal of the direct actions. Judge

Caputo specifically noted that Virginia, Alabama and Kansas follow the minority rule, which holds that an admission of liability does not preclude an action for both *respondeat superior* and negligent entrustment, training, hiring, retention and/or supervision.

The rationale is that a claim for negligent training, hiring, etc., is based on the employer's direct liability, differing from a claim under a theory of *respondeat superior*, pursuant to which an employer's liability is derivative of the negligent acts of the employee acting within the scope of his employment.

We attempted to obtain an Order from the Court precluding "plaintiffs from engaging in corporate discovery, including depositions of corporate representatives and documents, materials and manuals that support corporate negligence claims," but the Judge found this request premature and stated that "no specific discovery dispute between the parties has been identified."

However, we will contend that discovery requests addressed to hiring practices, safety procedures and operational rules are not relevant to what occurred at the accident site involving the conduct of the driver now that only the negligent acts of the driver

and vicarious liability of the employer company still remain.

This decision clarifying the following of the "majority rule" in Pennsylvania is important because it confirms that the dismissal of the direct actions can occur not only following discovery and the resulting motion for summary judgment, but also with the filing of a judgment on the pleadings.

It is important, in our opinion, to work to obtain the dismissal of the punitive damages claim so that the case can be focused on the negligent acts of all operators. Then, the resultant costs and expenses of the litigation process can be reduced. A couple of methods to obtain this dismissal are 1) voluntarily, which is difficult; and 2) use of a bankruptcy proceeding when the further action is going to be limited to insurance proceeds to have the Bankruptcy Court note that a claim for punitive damages is not going to proceed. This can be made more possible by noting in the insurance policy language whether claims for punitive damages are in fact excluded.

Edward Sterner, et al. v. Titus Transportation, LP d/b/a Air-Ride Transport and Roger L. Robertson C.A. No.: 3:cv-10-2027

Gary N. Stewart is a partner in the Commercial Motor Vehicle Section in our **Harrisburg** office. Gary is admitted to practice in Pennsylvania, New Jersey, Massachusetts, Connecticut, Vermont and Rhode Island as well as before the U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey, the District of Massachusetts, the District of Rhode Island, the District of Connecticut and the U.S. Court of Appeals for the First and Third Circuits.

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FEATURED SPEAKER



David R. Chludzinski

David R. Chludzinski gave a presentation on **trucking safety issues** to members of the **Watsonstown Trucking Company** in Milton, Pennsylvania, in November. David's hour-long session included recent changes in the Federal Motor Carrier Safety Regulations, electronic data, "hot button" trucking issues, social media issues, distracted driving, cell phone usage, the importance of cooperation with counsel following an accident, and a lively question-and-answer session with the trucking company's drivers and management. David was invited to speak by Gerald Woolcock, Watsonstown Trucking's Director of Safety & Fleet Management. Over 130 employees attended the event. "David was very informative and versed in all aspects of DOT regulation, which made his interesting presentation even more credible," Woolcock said. "I received excellent feedback, not only from drivers but from members of management as well. He was a great addition to our Quarterly Safety Meeting, and his attendance was greatly appreciated."

David is an associate in our **Pittsburgh** office. He concentrates his practice on the defense of commercial motor vehicles and their insurers. David earned his law degree from the Dickinson School of Law at Penn State University. He earned his B.A., *cum laude*, from Boston College. David is admitted to practice in Pennsylvania and in the U.S. District Courts for the Eastern, Middle, and Western Districts of Pennsylvania. David was selected as a "Pennsylvania Rising Star" by Super Lawyers and *Law & Politics* Magazine in 2012, 2013 and 2014. Rising Stars are the top 2.5 percent of attorneys in Pennsylvania who are 40 years old and younger or have been in practice for 10 years or less.

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The **Commercial Motor Vehicle Section** publishes the *Transportation Law Update* as a service to its clients and the transportation industry. This newsletter provides timely articles on new trends in the law and the potential impact of these developments on litigation involving the transportation industry. Previous issues of the *Transportation Law Update* are available on our website: www.rawle.com. If you would like **hard copies** of previous issues of the *Transportation Law Update*, please email info@rawle.com with the specific issues that you would like to receive, and we will mail them out to you promptly.

State Law Summaries for **Pennsylvania, New York, New Jersey** and **Delaware**—which highlight laws that affect commercial motor vehicles operating in those jurisdictions—are also available on our website.