



Arkansas Association of Defense Counsel

October 10, 2016

Violations of the Federal Motor Carrier Safety Administration Regulations and Punitive Damages.

For the vast majority of defense attorneys who have been involved in commercial transportation litigation, we are unfortunately quite familiar with an all too common allegation (or some variation thereof) included in the plaintiff's complaint: "the defendant acted in reckless disregard of the consequences through its non-compliance with the Federal Motor Carrier Safety Administration Regulations, from which malice may be inferred." Perhaps the included regulatory violation allegation is even more egregious, with something along the lines of: "the defendant's willful and wanton disregard of the FMCSA record-keeping and post-accident drug/alcohol testing requirements demonstrate the defendant-driver was fatigued and intoxicated at the time of the accident, entitling plaintiff to punitive damages." Nevertheless, *does* a mere violation of the Federal Motor Carrier Safety Administration Regulations ("FMCSR") warrant punitive damages in the state of Arkansas? Fortunately for defendants, the answer is no.

Even though plaintiffs continue to seek punitive damages based solely upon a defendant-carrier or defendant-driver's alleged violations of the FMCSR, the Arkansas Supreme Court expressly held in 2012 that more is needed in order for such damages to be recoverable. Specifically, the case of *Brumley v. Keech*, 2012 Ark. 263, 2012 Ark. LEXIS 282, concerned a tractor-trailer accident in which the plaintiffs sought punitive damages for alleged FMCSR non-compliance. In that litigation, the defendants moved for partial summary judgment on the plaintiffs' punitive damages claim, which was denied by the

Circuit Court. *Id.* at *1. The court did exclude evidence of defendants' failure to conduct post-accident drug/alcohol testing, but reserved its ruling on other claimed violations of the FMCSR for trial. *Id.* at *1-2. At trial, Larry Cole, a well-known plaintiff's expert in the trucking industry, was permitted to testify that the defendants failed to follow certain industry standards by exceeding permissible hours-of-service and by failing to keep proper logbooks. *Id.* at *2. The defendants then moved for directed verdict on punitive damages at the close of plaintiffs' case, arguing "even if they were required to follow these standards, their failure to do so was not a cause of the accident." *Id.* The court granted the defendants' directed verdict motion. *Id.*

On appeal, the plaintiffs argued the lower court erred in excluding evidence of the defendants' failure to comply with the FMCSR post-accident drug/alcohol testing requirements and in granting the defendants' directed verdict motion. *Id.* In affirming the circuit court's decision, the state Supreme Court found:

...in the instant case, the alleged violations of 49 C.F.R. §382.303 occurred after the accident and there is no indication that the violations **contributed to or caused the accident**. Moreover, there was no evidence that [the defendant-driver] had been drinking alcohol or using controlled substances prior to the accident or that he was, or appeared to be, under the influence of alcohol or any controlled substances at the time of the accident.

Id. at *5-6 (emphasis added). As such, the Court held the alleged violations of the FMCSR by defendants did not support a punitive damages award. *Id.* at *6. It also ruled the lower court did not abuse its discretion in excluding evidence that defendants failed to perform required post-accident drug/alcohol testing and did not err in granting directed verdict on punitive damages. *Id.*

The federal courts of this state have also followed the logic set forth in *Brumley*. The case of *Riffey v. CRST Expedited, Inc.*, 2013 U.S. Dist. LEXIS 179594 (E.D. Ark. 2013), concerned a number of evidentiary issues regarding whether the plaintiffs' punitive damages claim against the defendants was appropriate. Of particular importance for this analysis, the plaintiffs argued the defendant-carrier knew or should have known the defendant-driver's "driving would cause injury to others because: he was cited for speeding twice and failed to report one citation within 24 hours as required by company policy; he struck a fixed object with his tractor-trailer; and he submitted 55 inaccurate driving logs during the month preceding the collision." *Id.* at *17. However, the District Court disagreed and determined that the defendant-driver's inaccurate logs could only be considered evidence of negligence, not evidence of punitive conduct. *Id.* at *17-18. The court acknowledged the Arkansas state court position that "violations of the FMCS Regulations do not support an award of punitive damages if there is no indication that they contributed to or caused the plaintiff's injuries." *Id.* at *18. Because nothing in the record suggested the defendant-driver's inaccurate logs somehow led to the plaintiffs' damages, the court ruled this evidence insufficient to enable the plaintiffs to survive summary judgment.

In sum, despite the fact plaintiffs continue to attempt to support their claims for punitive damages with allegations of FMCSR violations by the defendants, such allegations are insufficient to support a

punitive damages award without evidence of causation. Simply because a driver fails to undergo FMCSR required post-accident drug and alcohol testing following an accident, for example, this does not mean an inference can be raised that the driver was under the influence at the time of the collision and that punitive damages are appropriate. Arkansas law makes clear that something else is required; some evidence that would connect the alleged regulatory violation to the actual injuries of the plaintiff. If a plaintiff is incapable of producing any evidence that would causally connect an FMCSR violation to the subject accident, then judgment as a matter of law on the plaintiff's punitive damages claim is proper.

The thanks of the AADC go out to Evan Stallings of the Barber Law Firm for writing this article.



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