

TRANSPORTATION

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In light of the recent trucking accident lawsuit involving actor and comedian Tracy Morgan and Wal-Mart, this article examines the impact of bad brakes allegations and violations of hours of service rules on punitive damages claims made by plaintiffs under Florida law.

Tracy Morgan v. Wal-Mart: An Examination of Punitive Damages

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In what has arguably become the most publicized trucking accident in years, the June 7, 2014 incident involving comedian and actor Tracy Morgan and a truck driver for Wal-Mart has certainly caused lawyers to reevaluate the laws and regulations surrounding the permissible hours of service allowed for truck drivers. This article will explore the claims brought by Tracy Morgan in his civil lawsuit and discuss whether punitive damages are available in Florida against a trucking company where the truck driver is over the permitted number of hours and where there are allegations of a defective braking system.

On July 10, 2014, attorneys for Tracy Morgan, Ardley Fugua, Jr., Jeffrey Millea and Krista Millea (“Morgan Plaintiffs”) filed suit in a New Jersey federal court seeking compensatory and punitive damages against Wal-Mart Stores, Inc.¹ (“Wal-Mart”) alleging that Wal-Mart knew, or should have known, that its driver, Kevin Roper, had been awake for more than 24 consecutive hours preceding the accident with Morgan Plaintiffs.² Morgan Plaintiffs allege that Mr. Roper fell asleep at the wheel, which resulted in his tractor-trailer colliding with the limousine containing Morgan Plaintiffs. The civil action follows criminal charges filed against Mr. Roper for vehicular homicide by operating a vehicle recklessly and recklessly causing serious bodily injury.³

According to the civil Complaint, Mr. Roper commuted more than 700 miles from his home in Jonesboro, Georgia to work at a

facility in Smyrna, Delaware; thus, Wal-Mart knew that Mr. Roper’s “hours were not in compliance with Federal Motor Carrier Safety Administration Regulations, which were enacted largely to combat the dangers of driver fatigue.”⁴ In addition, the Complaint alleges the “state of the art” collision avoidance system did not engage prior to impact, a feature that Wal-Mart knew or should have known had been compromised.⁵

Morgan Plaintiffs ultimately allege, *inter alia*, that Wal-Mart “knew its actions were substantially certain to result in serious injury or death”; “recklessly and intentionally engaged in a pattern and practice of having its drivers violat[e] the [Federal Motor Carrier Safety Regulations]”; condoned its drivers’ practice of violating the Federal Motor Carrier Safety Regulations; and failed to take proper safety measures to ensure that its drivers were not suffering from fatigue.⁶ Morgan Plaintiffs request punitive damages as a result of Wal-Mart’s “gross, reckless, willful, wanton and intentional conduct.”⁷

Florida statutes, like most other states, impose a heightened standard of evidence for punitive damages claims by permitting punitive damages only where there is clear and convincing evidence that an individual tortfeasor committed “intentional misconduct or gross negligence.”⁸ With regards to a

⁴ (Compl. ¶¶ 67, 69).

⁵ (Compl. ¶ 71).

⁶ (Compl. ¶¶ 74-82).

⁷ (Compl. ¶ 85).

⁸ § 768.72(2), Fla. Stat. To meet the clear and convincing standard, “the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.” Owens-Corning Fiberglas Corp. v. Ballard, 749 So. 2d 483, 486 n.4 (Fla. 1999). See also In re Davey, 645 So. 2d 398, 404 (Fla. 1994). Gross negligence is “willful and wanton misconduct of a character no less culpable than what is necessary to convict of criminal manslaughter.” Tiger Point Golf

¹ The Complaint also named Wal-Mart Transportation, LLC and stated that it was a wholly-owned subsidiary of Wal-Mart Stores, Inc.

² (Compl. ¶ 68, July 10, 2014).

³ See Yoni Bashan, *Driver Hours Under Review in Fatal Turnpike Crash*, Wall St. J., June 9, 2014.

trucking company, Florida law dictates that plaintiffs are required to meet the standards of section 768.72(2) and prove the company: 1) actively and knowingly participated in the punitive conduct; 2) the officers, directors, or managers of the corporation knowingly condoned, ratified, or consented to such conduct; or 3) the corporation engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.⁹ This additional step of affirmative knowledge and/or action has helped to insulate and provide additional protection to Florida trucking companies.

In defective brake cases, Florida courts have enforced the high standard for the imposition of punitive damages. In White Construction Company v. DuPont, the Florida Supreme Court emphasized that defendant's conduct must be of a character no less culpable than what is necessary to convict of criminal manslaughter.¹⁰ In White, a driver of a CAT 988 loader operated the machine with defective brakes, which ultimately led to a collision with the plaintiff. The evidence established "that [the] loader's brakes had not been working for some time" and that the owners and the driver of the loader were

aware the brakes were defective.¹¹ The Court held that although this evidence was sufficient to show negligence, the evidence was not sufficient to prove punitive damages because it did not rise to the level of criminal manslaughter.¹²

Hours of service violations appear to be more problematic for the defense in punitive damages claims if the violations are causally connected to the incident. While there does not appear to be direct reported case law on point in Florida, other states have allowed violations of Federal Motor Carrier Safety Regulations hours of service rules to subject the violator and his employer to punitive damages.¹³ It is important to note that the plaintiff must still prove the accident was casually related to the hours of service violation.¹⁴

In the Morgan case, Mr. Roper is charged with vehicular homicide by operating a

and Country Club v. Hipple, 977 So. 2d 608, 610 (Fla. 1st DCA 2007).

⁹ See Tiller v. Ford Motor Co., No. 3:03-cv-489-J-32HTS, 2006 WL 166530, at *2-3 (M.D. Fla., January 21, 2006) ("[W]here a corporation is involved, punitive damages may be imposed based on the actions of an employee or agent of the corporation only if the plaintiff meets the requirements of subsection (2) [of section 768.72, Florida Statutes] and at least one of the . . . conditions codified in subsection (3) [of section 768.72.]").

¹⁰ White Constr. Co. v. DuPont, 455 So. 2d 1026, 1028 (Fla. 1984), *receded from on other grounds*, Murphy v. International Robotic Sys., Inc., 766 So. 2d 1010 (Fla. 2000).

¹¹ White, 455 So. 2d at 1028.

¹² Id.; see also Behn v. State, 621 So. 2d 534, 535 (Fla. 1st DCA 1993)(discussing the standard required for punitive damages and recognizing that "[a]lthough knowingly operating a truck with bad brakes is negligent, it does not rise to the level of culpable negligence."):

¹³ See Trotter v. B & W Cartage Co., Inc., No. 05-cv-0205-MJR, 2006 WL 1004882 (S.D. Ill. 2006) (interpreting Missouri law and finding that damages for aggravating circumstances could go to the jury given that the driver who collided with the plaintiff was "driving well outside his federally-regulated hours of service" and operating the vehicle in a state of fatigue; further, there was evidence the driver falsified his log books and his employer for years "operated with conscious indifference to its regulatory duty to maintain management systems effective in preventing hours of service violations by drivers"); Came v. Micou, 2005 WL 1500978 (M.D. PA 2005); Torres v. North American Van Lines, Inc., 658 P.2d 835 (Az. Ct. App. 1982)

¹⁴ See Riffey v. CRST Expedited, Inc., No. 3:12-cv-00294-BRW, 2013 WL 6836665 (E.D. Ark. Dec. 20, 2013); Burke v. TransAm Trucking, Inc., 605 F. Supp. 2d 647 (M.D. Pa. 2009).

vehicle recklessly and recklessly causing serious bodily injury. However, in Florida, additional knowledge or action by the company as to the violation of hours of service regulations would still need to be proven for liability to be assessed against the carrier. Whether Mr. Roper is convicted of such charges and whether Wal-Mart engaged in conduct under New Jersey law, thus entitling the Morgan Plaintiffs to punitive damages, has yet to be established.

While there is no doubt that punitive damages have been sought by plaintiffs to provide additional pressure towards settlement, trucking attorneys and their clients are still prudent to evaluate each claim at the onset for factors which may be considered by the Court

in their jurisdiction as showing “reckless disregard of human life or a conscious indifference to the consequences,” and include in their inquiry what hours of service facts may be ascertained for the applicable time frame. In addition, Florida attorneys and their companies should review whether there is evidence the company was taking an additional step in engaging or participating in the violation of hours or knew, condoned or ratified such violation. Absence this evidence, the company has a stronger argument, at least in Florida, against any demand for punitive damages.

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