
The Law of Commercial Trucking: Damages to Persons and Property

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A SELECTION OF NEW CASES

Ch. 2 Damages Arising Out of the Purchase of a Nonconforming Commercial Truck or Trailer

Poole v. Nevada Auto Dealership Investments, LLC, 449 P.3d 479 (Nev. App. 2019)(opining that it is a deceptive act or practice for any used vehicle dealer to misrepresent the mechanical condition of a used truck when the dealer sells or offers for sale a used truck in or affecting commerce).

Ch. 4 Warranties in the Sale of New and Used Trucks and Trailers

Bunn v. Navistar, Inc., 2020 U.S. App. LEXIS 863 (6th Cir 2020)(applying Tennessee law)(“Because plaintiff and Navistar mutually anticipated that the trucks may need repairs at some point, it seems particularly unlikely that plaintiff’s request for repairs would put Navistar on notice that the transaction is claimed to involve a breach under §47-2-607[3]).

Ch. 5 Truck and Trailer Repairs

Busque v. Heck, 2019 Mo. App. LEXIS 1716 (Mo. App. 2019) (rejecting claim that an oral agreement to repair a truck was unenforceable since it was in violation of the statute of frauds and noting that under the UCC implied warranties do not apply to service contracts).

Ch. 6 The Concept of Negligence as it Relates to the Injury of Persons and Property Involved in the Trucking Business

Till v. Dolgencorp, LLC, 2020 U.S. App. LEXIS 3799 (7th Cir. 2020) (when a roll-tainer (tall cage-like container) which had been packed with bottled water by a store’s employees, then sealed with other roll-tainers and transported on a tractor-trailer to a store “bucked back” against the driver as he was rolling it into the service entrance causing him to fall and get his arm stuck-in the cage of the roll-tainer and pulled from its socket, the court rejected *res ipsa loquitur* since it believed that the store had not exercised exclusive control over the instrumentality of the driver’s injury).

Ch. 7 Liability of Truck Owners and Operators for Their Own Negligence and for the Negligence of Others

Bacon v. Pape Truck Leasing, Inc., 2020 U.S. Dist. LEXIS 27421 (E.D. Cal. 2020) (when the leased truck driver became injured in a single-truck accident during the course and scope of employment for the special employer, his right to recover damages was limited to his worker’s compensation remedies).

Ch. 8 Rights and Obligations of Bailors and Bailees

Elam v. Ryder Systems, Inc., 176 A.D.3d 675, 107 N.Y.S.3d 718, 2019 N.Y. App. Div. LEXIS 7965 (denying claim for personal injury damages in case in which plaintiff fell when liftgate on rented truck suddenly dropped since there was no evidence that the defendant had created or had actual or constructive notice of a dangerous or defective condition with respect to the truck).

Ch. 9 Liability of Third Parties for Their Own Negligence and the Negligence of Others

Ciotola v. Star Transportation & Trucking, LLC, 2020 U.S. Dist. LEXIS 152963 (M.D. Pa. 2020) (holding that plaintiff’s tort claims against a broker were not preempted by the FAAAA, notwithstanding that there may be some negative financial consequences for a broker or a carrier, but noting that Pennsylvania’s tort law is a part of the backdrop of laws that all businesses must follow).

Ch. 10 Governmental Liability for Negligence in the Design, Construction and Maintenance of Roads and Highways

Podejko v. DOT of Pa, 2020 Pa. Comm W. LEXIS 603, a case against the Fire Department for its allegedly negligent removal of flood water that was diverted onto plaintiff's property causing substantial damage; the court ruled that the Vehicle Liability Exception to governmental immunity applied since the fire truck was being operated at the time of the incident and the word "operated" included not only the transportation of firefighters to where they were needed, but also to the dispersal of water onto fires or to remove flood waters.

Ch. 11 Liability of Owners or Occupiers of Property for Accidents Occurring on or Near Their Property

Shipman v. Aquatherm L.P., 2020, U.S. Dist. LEXIS 73220 (E.D. Pa. 2020) (denying summary judgment motion brought by landowner in case involving a load of pipes falling from a flatbed truck onto a truck driver and killing him).

Ch. 13 The Concept of Strict Products Liability as It Relates to the Injury of Persons and Property Involved in the Trucking Business

McHale v. Crown Equipment Corp., 2020 U.S. Dist. LEXIS 33944 (M.D. Fla. 2020) (failure to include a rear guard door as a safety feature on forklift).

Ch. 15 Liability of the Carrier for the Loss of Property or Damage to Property While Under Transport

Total Quality Logistics, LLC v. Balance Transportation, LLC, 2020 Ohio App. LEXIS 574. When the receiving company signed the bill of lading, and thereafter its employees damaged the cargo during the unloading process while using a forklift, the risk of loss shifted from the carrier, and the carrier was no longer responsible for the loss.

Ch. 16 Liability of the Carrier for the Loss of Property or Damage to Property While Under Transport

Ryder Systems, Inc. v. Charleston Aluminum Transportation, LLC, 2019 U.S. Dist. LEXIS 210518 (M.D. Ala. 2019) (Charleston Aluminum driver rear-ended Ryder Systems vehicle, resulting in discharge of oil and/or dielectric fluid; Ryder paid for the cleanup and sued Charleston for reimbursement under CERCLA; court held for Ryder, finding that Charleston Aluminum was operator of a facility (the trailer) when the hazardous fluids were disposed and is liable under §9607(a) to Ryder for its costs expended plus interest since the record showed Ryder to have no fault in the matter).

NEW SECTIONS

§ 4.21 Defenses to Warranty Actions

- [6] The Running of the Statute of Limitations
- [b] Fraudulent Concealment Doctrine

The doctrine of fraudulent concealment tolls the statute of limitations when a defendant, through deceptive conduct, has caused the claim to grow stale. This requires particular allegation of fraud, a showing of due diligence in an attempt to uncover the facts and an excuse for late discovery. The tolling ceases when the facts are or should have been discovered by the plaintiff.

§ 7.20 Determining an Employer's Liability for Hiring or Retaining an Unfit Truck Driver

- [5] The Negligent Hiring of a Motor Carrier

A negligent hiring cause of action against a broker/third party logistics provider withstood a defense motion for summary judgment in *Schramm v. Foster*, 341 F. Supp. 2d 536 (D. Md. 2004).

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