



Walter Wright, Jr.

wwright@mwlaw.com

(501) 688.8839

Common Law Property Damage Litigation: 8th Circuit Court of Appeals Addresses Trespass/Nuisance/Negligence Claims Arising Out of Truck/Train Collision

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Co-author: Bailey Knapp

The United States Court of Appeals for the Eighth Circuit addressed in a June 7, 2016 opinion certain issues associated with a negligence claim involving a truck/train crash that resulted in a chemical spill. See *Soo Line Railroad Company d/b/a Canadian Pacific v. Werner Enterprises* 2016 WL 3176822 (8th Cir. June 7, 2016).

The 8th Circuit reviewed whether the district court properly granted summary judgment and dismissed nuisance and trespass claims.

On March 31, 2012, a driver for Werner, the defendant, was travelling northbound around a curve when he struck a train owned by Canadian Pacific, the plaintiff, despite the various safeguards taken by the train conductor. The impact caused the train to derail and punctured the tanker car, spilling aromatic concentrate (a 50% benzene solution). The driver's truck caught fire and he died from smoke inhalation.

Accident reconstructionists discovered no skid marks or other evidence indicating that the driver had attempted to avoid the collision. Further, an autopsy on the driver revealed a blood clot obstructing blood flow in the heart and indicating the beginning stages of a heart attack. The doctor, after ruling out other causes of the accident, concluded that the collision was caused by incapacitation resulting from the heart attack.

Canadian Pacific incurred costs of \$7.76 million in cleaning the hazardous materials, and Werner refused to indemnify. The railroad brought suit against Werner for negligence, nuisance, and trespass.

Before the parties completed discovery, Canadian Pacific moved for summary judgment as to all claims. The district court denied the motion.

At the close of discovery, Werner moved for summary judgment on all claims. The district court granted Werner's motion on the nuisance and trespass claims, but denied the motion with respect to the negligence claim because a genuine dispute remained over whether the driver was negligent.

The parties did not dispute the amount of damages. Therefore, the trial was limited to the issue of liability. Canadian Pacific claimed that Werner's negligence included the driver's action and the failure to report fatigue to his DOT-licensed physician.

Both parties presented expert testimony. Werner's experts supported the sudden-incapacitation defense. Canadian Pacific's experts concluded that it was impossible to rule out alternative explanations. While the driver had been diagnosed with fatigue, he was not diagnosed with a sleeping disorder, and no records indicated whether his ability to drive was impaired.

The jury indicated in its special verdict that the driver was not negligent in operating his truck or failing to report fatigue.

Canadian Pacific moved for judgment as a matter of law or for a new trial, arguing that Werner had not presented sufficient evidence for a sudden-incapacitation defense and the district court had improperly denied its negligence *per se* instruction. The district court denied and this appeal followed.

The 8th Circuit first reviewed the grant of summary judgment as to Canadian Pacific's trespass claim. Trespass requires the intentional entering of land in the possession of another. Canadian Pacific did not argue that the driver entered the intersection intentionally. Its theory that the driver intentionally hid a fatigue diagnosis was deemed insufficient to support a trespass claim. Consequently, the district court properly granted summary judgment.

Canadian Pacific also argued that the district court erred in its interpretation of Minnesota nuisance law. In Minnesota, nuisance requires some form of wrongful conduct. Because negligence was the only potential basis of wrongful conduct, the jury's finding that the driver was not negligent was fatal to this claim.

Canadian Pacific put forth several arguments in support of its negligence claim.

First, Canadian Pacific argued that regulatory violations constitute negligence *per se* under Minnesota law. The district court found that violations of Federal Motor Carrier Safety Administration ("FMCSA") regulations were *prima facie* evidence of negligence. The 8th Circuit determined that regardless of the proper standard, Canadian Pacific was not entitled to summary judgment because a dispute of material fact existed as to whether the driver was incapacitated at the time of the accident.

Canadian Pacific further argued that the FMCSA regulations preempt Minnesota's sudden-incapacitation defense. The 8th Circuit found that because the FMCSA prescribes "standards of care" rather than defenses, Werner's sudden-incapacitation defense was not preempted.

Canadian Pacific also argued that Minnesota's sudden incapacitation defense conflicts with the FMCSA's purpose of promoting roadway safety by undermining the regulations' preventive measures. The court held it was not an obstacle to FMCSA's purpose because the statute is intended to reduce preventable highway accidents. The sudden-incapacitation defense excuses only unforeseeable incapacitation.

Canadian Pacific argued that it was entitled to judgment as a matter of law on its negligence claim. The 8th Circuit found that because two doctors testified that sudden incapacitation was the only plausible explanation for the collision, Werner presented sufficient evidence for a jury to find that the driver was incapacitated and therefore not negligent.

Canadian Pacific also argued it was entitled to judgment as a matter of law because the driver violated FMCSA regulations by failing to disclose his fatigue diagnosis to a DOT physician. Werner's Vice President of Safety and Compliance testified that drivers were only required to report potential fatigue problems if a doctor ordered a sleep study, or a sleep disorder was diagnosed or placed on a work restriction.

None of these events occurred. Further, the doctor left no treatment notes discussing the fatigue symptoms. Therefore, the driver was not negligent in not reporting his fatigue.

Canadian Pacific finally argued that the district court abused its discretion when it instructed the jury that a violation of a federal regulation is *prima facie* evidence of negligence rather than *per se* evidence of negligence. The 8th Circuit concluded that because the primary issue at trial was whether the driver was incapacitated, the district court's instructions adequately submitted the issues to the jury.

The 8th Circuit affirmed the judgment of the district court in its entirety.

A copy of the decision can be downloaded below.

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