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Big-Rig Parking Tests Limits of Foreseeability, Freeway

In an opinion warning truckers not to park too close to the highway, the California Supreme Court also warned courts not to hew too close to the facts when making legal decisions.

In the case considered by the court, the driver of a Ralphs Grocery Co. tractor-trailer had pulled off Interstate 10 into an emergency-parking area to have a snack. A pickup truck, driven by a man who either fell asleep or had a medical incident, crashed into the big rig at more than 70 miles per hour.

The pickup's driver died, and his widow sued, claiming the trucker was negligent for parking alongside the freeway. Although the jury found the dead man was 90 percent responsible for the accident, it still awarded the widow $475,298 against Ralphs.

An intermediate Court of Appeal reversed the verdict, declaring that the Ralphs trucker had no duty to keep off freeway shoulders to protect other drivers who fall asleep at high speed. The accident was so unusual it was not foreseeable, that court held.

The Supreme Court reversed the appellate court unanimously. "That drivers may lose control of their vehicles and leave a freeway for the shoulder area, where they may collide with any obstacle placed there, is not categorically unforeseeable," the high court held in *Cabral v. Ralphs Grocery Co*.

The court also flatly rejected Ralphs' argument that drivers parked on the shoulder should never be held responsible when others crash into them. Just like everyone else, truckers parking big rigs have a duty to take reasonable care not to put others in danger.

If Ralphs were correct, "no liability could be imposed even when a driver unjustifiably stops his or her vehicle alongside the freeway in particularly dangerous circumstances," the court said.

The ruling is the second recently to fault a trucker for where he parked his big rig. In a decision late last year, an appellate court said a trucker could be liable for legally parking in a way that blocked another driver's line of sight. That case, *Lawson v. Safeway Inc.*, was described in the last issue of The Rodolff Law Firm Newsletter.

Where the Court of Appeal went wrong in the new case, the Supreme Court said, was to concoct a legal ruling on the scope of the duty of care out of the very specific facts of the case. “On the duty question … the factual details of the accident are not of central importance,” it said.

The correct question was not whether Ralphs’ driver had a duty — he did — but whether he breached it. And that is a question of fact for the jury, not a question of law for the court.

The question for a court isn’t “whether a *particular* plaintiff’s injury was reasonably foreseeable in light of a *particular* defendant’s conduct” but whether “the category of negligent conduct” might produce “the kind of harm” the plaintiff suffered.

“To base a duty ruling on the detailed facts of a case risks usurping the jury’s proper function of deciding what reasonable prudence dictates under those particular circumstances,” the Supreme Court said.

In this case, then, the duty question was not whether the trucker “could reasonably have foreseen an accident at that exact spot along the highway, but whether it is generally foreseeable that a vehicle stopped alongside a freeway may be hit by one departing, out of control, from the road.”

The answer to that question, the court held, is yes.

Control of Safety Proves Risky for Construction Company

A business that hires an independent contractor generally is not responsible if the contractor’s own employee is injured on the job. Under a 1993 ruling by the California Supreme Court, the injured employee is covered exclusively by the workers’ compensation system.

Last year, the Supreme Court extended that idea to situations in which the independent contractor himself is injured. Even though the injured contractor is not an employee and has no workers’ compensation protection, he still can’t sue the company that hired him.

Or maybe he can.

In a new decision in the very same case, an intermediate Court of Appeal ruled the independent contractor may still sue the company that hired him — if the company had asserted control over job safety and done so poorly.

“When the hirer does not fully delegate the task of providing a safe working environment but in some manner actively participates in how the job is done, the hirer may be held liable to the employee if its participation affirmatively contributed to the employee’s injury,” the appellate court held in *Tverberg v. Fillner Construction Inc.*

Plaintiff Jeffrey Tverberg was a free-lancer hired to supervise a small crew putting up a canopy over the fuel pumps at a large truck stop under construction.

Meanwhile, another independent contractor was erecting concrete posts around the pumps to keep trucks from hitting them. It had dug eight large holes but not put in the posts.

Tverberg asked the general contractor’s supervisor to cover the holes, but he declined. The next day, Tverberg fell into one of the uncovered holes.

In its 2010 ruling, described in The Rodolff Law Firm Newsletter last summer, the Supreme Court rejected Tverberg’s lawsuit against the construction company. It reasoned that someone hiring an independent contractor gives the contractor authority over how work is performed and the contractor takes on corresponding responsibility to do the work safely.

But that only meant that Tverberg couldn't sue the general contractor for vicarious liability. The Supreme Court sent the case back down to the appellate court to see if Tverberg might have a claim for direct liability.

The appellate court ruled there was evidence indicating that the company "affirmatively assumed the responsibility for the safety of the workers near the … holes and discharged that responsibility in a negligent manner, resulting in injury," the court held.

It also said that leaving the holes uncovered violated workplace safety regulations. Obeying those regulations was the construction company's responsibility, and that responsibility could not be delegated to others, the court held.

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The founder and president of The Rodolff Law Firm, APC, Barry L. Rodolff, is a highly experienced lawyer who has been assisting clients faced with civil litigation for more than two decades. Mr. Rodolff developed his skills with two well-respected defense firms, Schell & Delamer, and Haight, Brown & Bonesteel. He also worked in-house at Travelers Insurance Company, representing a variety of insured companies in many types of litigation. His clients have ranged from small businesses to multinational corporations. Mr. Rodolff brings extensive experience and knowledge in the defense of litigation involving premises liability, business, product liability, personal injury, employment, construction defect, and intentional torts.