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Punitive Damages in Trucking Litigation: Recognizing Risk and Assessing Exposure *by Matthew S. Hefflefinger and Patrick E. Poston*



I. Introduction and Scope

Punitive damages can be a major source of unrest and anxiety for defense attorneys and their clients. As any seasoned practitioner can attest, requests for punitive damages are becoming increasingly prevalent in trucking litigation, given the severity of injuries often associated with trucking accidents. As with many nuances inherent in the practice of law, the availability of punitive damages is extremely fact driven, and practitioners are prudent to take notice of common factual threads which frequently give rise to such claims. Early identification of facts which may sustain a punitive damages claim is vital to the formulation of a comprehensive litigation and/or settlement strategy well tailored to the interests of our clients.

The purpose of this article is to equip the reader with working knowledge of common factual circumstances which beget punitive damages in trucking litigation. It would be admittedly impossible to include an exhaustive discussion of relevant caselaw given the confines of this article; rather we emphasize exemplary cases indicative of common factual threads routinely linked to a request for and/or an award of punitive damages in the trucking context. It is the authors' hope that, in approaching the subject in this manner, we as practitioners will be better equipped to identify these "red flags" early in the litigation process and thereby take appropriate measures to best protect our clients' interests.

II. Punitive Damages: A Brief Overview

The logical starting point directs us to an initial (albeit brief) canvas of punitive damages generally. Many states have adopted, in whole or in part, the Restatement (Second) of Torts approach to punitive damages. Accordingly, punitive damages can generally be described as follows:

- (1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.
- (2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant. Restatement (Second) of Torts § 908 (1979).

Given the punitory nature explicit to punitive damages, most courts are reluctant to impose these damages on corporate defendants for the conduct of an employee. Where punitive damages are sought against a corporate defendant and liability is predicated upon a theory of *respondeat superior*, many states have adopted, in whole or in part, Section 909 of the Restatement (Second) of Torts. Accordingly, punitive damages based upon a theory of *respondeat superior* are only appropriate if:

- (a) The principal authorized the doing and the manner of the act;
- (b) The agent was unfit and the principal was reckless in employing or retaining him;
- (c) The agent was employed in a managerial capacity and was acting in the scope of employment; or
- (d) The principal or a managerial agent of the principal ratified or approved the act.

a. U.S. Supreme Court Weighs in On Constitutionality of Punitive Awards.

The defense-minded practitioner can find some comfort in the fact that, although it stopped short of creating a bright line test, the U.S. Supreme Court has promulgated a three part standard to identify unconstitutionally excessive punitive damages awards. *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996). The *BMW* Supreme Court identified three factors courts should consider to determine whether a punitive award is excessive: 1) the degree of reprehensibility of the defendant's conduct; 2) the disparity between the harm or potential harm suffered by the plaintiff and the punitive damages award; and, 3) the difference between the punitive damages remedy and the civil penalties authorized or imposed in comparable cases. *Id.* at 575. Accordingly, *BMW* provides strong ammunition in the battle against excessive punitive damages awards. While an in-depth discussion of *BMW* is not warranted given the scope of this article, any practitioner litigating a case with a potential for punitive damages should be intimately familiar with the Supreme Court's discussion of these three factors.

III. Common Factual Threads in Trucking Cases Involving Punitive Damages.

The following trucking cases involve decisions where punitive damages were either allowed to go to the jury or awarded. The inclusion of these cases is intended to provide a canvas of factual situations which support a request for punitive damages. Our emphasis is on breadth as opposed to depth. In most of these cases a combination of multiple facts, rather than one single fact, resulted in the applicability of punitive damages. These cases are organized into common factual categories for the convenience of the reader—however these categories are not mutually exclusive. Practitioners are encouraged to read these cases in full for a more thorough understanding of the factors courts rely on in assessing punitive damages.

a. Driver Conduct.

In certain instances, the conduct of a driver has warranted punitive damages where it evidences a reckless indifference for the safety of others. One common example is repeated operation of a tractor trailer in violation of the limitations on maximum driving time set forth in 49 CFR Section 395.3. See *Torres v. North American Van Lines, Inc.* 658 P.2d 35 (Ariz. App. 1983) (Punitive damages appropriate where driver consistently failed to properly log driving time permitting an inference of driver's deliberate attempt to avoid 70 hour rule). Punitive damages have also been deemed appropriate where drivers have consciously and knowingly operated a vehicle while fatigued. See *Achey v. Crete Carrier Corp.*, No. 07-cv-3597, 2009 WL 101843 (E.D. Pa. Jan. 14, 2009) (Punitive damages request allowed to go to jury where driver consciously operated his tractor trailer while knowingly fatigued due to poor sleep and driver fell asleep to cause accident). Punitive damages have also been awarded where a driver leaves his vehicle protruding into oncoming traffic without taking sufficient precautionary measures. See *Medlin v. Clyde Sparks Wrecker Serv., Inc.*, 59 F.App'x 770 (6th Cir. 2003) (Punitive damages awarded where tow truck driver left tow truck protruding onto busy highway and driver failed to radio police or erect warning signs). The operation of a vehicle while under the influence of alcohol has also been deemed sufficient to support an award of punitive damages. See *Alexander v. Alterman Transport Lines, Inc.*, 387 So.2d 422 (Fla. 1st DCA 1980) (Punitive damages request submitted to jury where driver consumed alcohol previous night and morning of fatal accident). Punitive damages have also been awarded where a driver operates his tractor trailer in a reckless and unsafe manner. See *J.B. Hunt Transport Inc. v. Bentley*, 427 S.E.2d 499 (Ga. Ct. App. 1993) (Punitive damages awarded where testimony established driver swerved erratically and failed to slow down in construction zone).

b. Trucking Companies' Hiring and/or Supervision Policies.

Courts have also found that trucking companies' hiring and supervision policies (or lack thereof) permitted an award of punitive damages. Punitive damages have been awarded against trucking companies' where a company was aware of a driver's dangerous habits but failed to adequately supervise the driver's conduct. See *Briner v. Hyslop*, 337 N.W.2d 858 (Iowa 1983) (Punitive damages appropriate where intoxicated driver fell asleep causing fatal accident and company knew of driver's drinking habit but failed to adequately supervise and allowed him to drive for excessive lengths of time). Courts have also held that punitive damages were appropriate where a company's failure to monitor driver activity acquiesces violations of F.M.C.S. Regulations. See *Wang v. Marziani*, 885 F.Supp. 74 (S.D.N.Y. 1995) (Punitive damages question for jury where company failed to sufficiently monitor driver activity and driver failed to secure cargo, falsified log books, and operated truck in excess of 70 hours in eight days resulting in fatal accident); see also *Trotter v. B & W Cartage Co.*, No. 05-cv-0205, 2006 WL 1004882 (S.D. Ill. April 13, 2006) (Punitive damages question for jury where driver repeatedly falsified logbooks, violated F.M.C.S.R. hours of operation limits and company inaction created situation where violations were likely to occur); see also *McAchrn v. Knight Transportation*, No. 08-0091 2009 WL 888539 (Az. Ct. App. April 2, 2009) (Punitive damages submitted to jury where trucking company maintained skeletal staff to monitor drivers at night and early morning hours even though these were high risk accident periods). A company's failure to adequately examine a driver's driving record and take appropriate remedial actions through safety training has also exposed trucking companies to punitive damages. See *Ditzler v. Wesolowski*, No. 3:2005-325, 2007 WL 2253596 (W.D. Pa. Aug. 3, 2007) (Punitive damages question for jury where driver's commercial driving record was clean but company failed to check driver's non-commercial driving record prior to employment, company only provided eight hours of driver training, and motor carrier safety director testified he would not hire driver based on information in non-commercial records); see also *Johnson v. ASK Trucking*, No. 09-4058, 2011 WL 1114247 (C.D. Ill. March 25, 2011) (Punitive damages question for jury where driver

had multiple prior traffic violations and several violations of F.M.C.S. Regulations and company failed to provide adequate safety training to correct driver's poor record).

c. Trucking Companies' Operating Procedures.

Punitive damages have been awarded where trucking companies have internal procedures that are incongruous with F.M.C.S. Regulations. Trucking companies have been exposed to punitive damages where policies facilitate fatigued driving and incentivize violations of the hours of operation limitations imposed by the F.M.C.S. Regulations. See *Elbar, Inc. v. Claussen*, 774 S.W.2d 45 (Tex. App. 1989) (Punitive damages award appropriate where company policies resulted in fatigued driving and fatal accident caused by fatigued driver's improper lane change was reasonably foreseeable consequence of policy); see also *Wang*, 885 F.Supp. 74 (S.D.N.Y. 1995) (Punitive damages question for jury where compensation scheme based on hours logged incentivized operation of truck in excess of F.M.C.S. Regulations); see also *McAchrn*, 2009 WL 888539 (Az. Ct. App. April 2, 2009) (Punitive damages submitted to jury where company's compensation scheme compensated driver by the mile and company knew driver falsified logs but failed to take remedial action). Trucking companies have also been exposed to punitive damages where they lack procedures to ensure and monitor compliance with F.M.C.S. Regulations. See *Came v. Micou*, No. 4:04-cv-1207, 2005 WL 1500978 (M.D. Pa. June 23, 2005) (Punitive damages question for jury where fatigued driver in violation of hours of service limits caused accident and company lacked effective procedures to monitor and prevent hours of service violations); see also *McAchrn*, 2009 WL 888539 (Az. Ct. App. April 2, 2009).

d. Physical Condition of Truck.

The operation of trucks with known physical defects likely to cause hazardous or unsafe driving conditions can also support an award of punitive damages. The most common example of such a defective condition is accidents caused by inoperable or poorly maintained brakes. See *D'Arbonne Const. Co., Inc. v. Foster*, 91 S.W.3d 540 (Ar. Ct. App. 2002) (Award of punitive damages appropriate where driver of truck involved in fatal accident admitted truck had many defects including faulty brakes and plaintiff's expert testified truck was not in roadworthy condition at time of accident); see also *White v. Mitchell*, 759 P.2d 1327 (Az. Ct. App. 1988) (Punitive damages award against truck driver appropriate where inspection showed trucks brakes extremely worn out and evidence supported conclusion that driver could not have stopped truck in time to avoid accident given condition of brakes). A company's failure to routinely inspect and maintain its tractor trailers may also expose the company to punitive damages. See *D'Arbonne*, 91 S.W.3d (Ar. Ct. App. 2002) (Punitive damages awarded where truck not serviced in compliance with company maintenance schedule).

VI. Conclusion

The availability of punitive damages can dramatically influence the defense of a lawsuit. Sometimes the facts giving rise to the threat of punitive damages may be readily apparent immediately following an accident, while other times there may be a combination of activities involving both the driver and the company which require a comprehensive analysis of many different facts. It is imperative that we identify these potentially harmful facts as early as possible so that we can provide our clients with a meaningful strategy, ultimately designed to minimize exposure and costs.

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