

Tractor-Trailer Accident Cases: Do Not Overlook The Liability Of The Shipper

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An often overlooked area of liability in tractor-trailer accidents is that of the shipper. In some occasions, the shipper, as well as the trucking company and its driver, may be liable to an innocent victim of a tractor-trailer collision.

As a general rule, a company is not liable for the negligence committed by independent contractors who perform work for the company. However, in situations where the shipping company engages an independent contractor who is unfit to haul its goods, liability may exist as to the shipper on the theory of negligent hiring. Restatement Second of Torts Section 411 states that a principal is "liable for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor...to do work which will involve a risk of physical harm unless it is skillfully and carefully done". Illustration 5 to this section provides the following example:

A, a builder, employs B, a teamster, to haul material through the streets from a nearby railway station to the place where A is building a house. A knows that B's trucks are old and in bad condition and that B habitually employs inexperienced and inattentive drivers. C is run over by a truck carrying A's material and driven by one of B's employees. A is subject to liability to C if the accident is due either to the bad condition of the truck or inexperience or inattention of the driver.

Restatement Second of Torts Section 411 and this example were cited by the Court in Jones v. C.H. Robinson Worldwide, Inc., 558 F. Supp2d. 630 (W.D. Va., 2008), to hold that the plaintiff had presented a valid claim against the shipper for negligent hiring in a tractor-trailer collision case. The Court went on to state that a shipper may have liability for negligent hiring where the work to be performed by the independent contractor involves a risk of physical harm unless it is skillfully and carefully done. The Court stated "that the operation of a tractor-trailer upon the public highway does involve such a risk of physical harm. The likelihood of this risk is reflected in the federal government's licensing requirements to ensure that the commercial truck drivers have the necessary skills to operate a tractor-trailer". Id. at 642.

It is also possible to find liability on the shipper where the shipper is negligent in loading the tractor-trailer, and the improperly loaded vehicle contributes to the crash. In Dill v. Gamble Asphalt, 594 S.W. 2d 719 (Tenn. Ct. App 1979), the Court held that despite the hiring of an independent contractor to transport asphalt, the shipper still had a duty to refrain from overloading the trucks, and was therefore liable to the plaintiff who was innocently injured in a truck collision when the truck was unable to stop as a result of its excess weight.

Another theory to find liability on the shipper may be found in the Federal Motor Carrier Safety Regulations ("FMCSR"). FMCSR Section 390.13 states that "no person shall aid, abet, encourage or require a motor carrier or its employees to violate the rules of this chapter". In situations where the shipper regularly overloads the motor carrier's trucks with its material, for example in excess of the 80,000 pound limit for travel on interstate highways, when the shipper knows or reasonably should know that the motor carrier is going to use the interstate highways to reach its destinations, then it may be argued that the shipper has violated FMCSR Section 390.13 and is therefore liable to innocent victims injured as a result of the overloaded truck.

The trial lawyer for the innocent victim of a tractor-trailer collision should not overlook the potential liability of the shipper, as well as that of the motor carrier and its driver.