

THARPE & HOWELL, LLP

TRANSPORTATION LAW NEWSLETTER

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This Newsletter is brought to you by Partners R. Bruce Salley and Byron Ames of the Firm's Transportation Practice Group. Please feel free to contact "Bruce" at rsalley@tharpe-howell.com; phone number (818) 205-9955; or Byron at bames@tharpe-howell.com; phone number (702) 562-3301 to discuss any questions or comments you might have.

TRUCKING COMPANY "NO-RIDER" POLICIES – DO THEY REALLY PROTECT?

Unsurprisingly, drivers of semi-tractor/trailers can grow weary of long hours alone on the road. As a result, some drivers seek to break-up the monotony by inviting passengers to ride along. While a driver's desire for human interaction is certainly understandable, the presence of a passenger or "rider" in the cab may present significant liability for the trucking company, and separately for the individual driver.

A recurring problem for trucking companies is how to deal with the potential liability of having riders in the cab with the driver while hauling loads. Although drivers are trained professionals, passengers can distract and lead to unsafe driving and potential accidents resulting in injury to others. Passengers themselves can also be seriously injured or killed should an accident occur. Despite this liability potential, some trucking companies have no policy on the issue and allow passengers to ride along. However, many companies are unwilling to accept the additional liability and have specific policies prohibiting anyone, other than the team driver, from riding along.

The question then arises whether a trucking company's "Rider Policy," which prohibits its driver employees from carrying a passenger, actually absolves the trucking company of liability in the event its driver, in violation of company policy, carries a passenger and is involved in an accident in which the passenger is either implicated in the causation of the accident, or worse yet, is injured or killed.

The California Supreme Court has held an employer **is liable** for injuries sustained by an **unauthorized** passenger where the driver was carrying out his employer's business at the time. In *Meyer v. Blackman*, 381 P.2d 916, 59 Cal.2d 668 (Cal. 1963), the driver was a mechanic who regularly tested vehicles after working on them. At the time of the accident, he was driving a vehicle he had recently worked on – and was on an errand to get a part. The driver picked up an unauthorized passenger on his way to the parts store, and then collided with a truck and trailer while en route. The passenger was killed. The defendant employer argued it should not be held liable because the driver did not have authority to invite passengers to ride in the truck with him. However, the Supreme Court held the acceptance of an unauthorized passenger, causing the driver to appear to have been combining personal business with that of his employer's, did not vitiate any of his subsequent acts directed to the benefit of his employer. The Court noted it is well known that employee-drivers often commit such breaches by carrying unauthorized passengers, and so long as the injury to the rider occurs while the driver is carrying out his employer's business, the employer must be held liable under the principle of liability for a servant's torts committed during the master's business, even though the driver was acting contrary to the employer's express orders. The Court stated that the employer is in the best position to prevent the operation of its vehicles by those prone to willful and reckless driving.

However it is important to note that different laws on the “rider” issue apply - dependent on state. For example, for truckers who work and/or travel in the State of Utah – there does not appear to be any cases directly on point. But cases from the United States 10th Circuit, in which Utah sits, provide some guidance. In *Beardsley v. Farmland Co-Op, Inc.*, 530 F.3d 1309 (10th Cir. 2008), the plaintiff had accompanied her husband, the driver, as a passenger in a tanker truck. The driver did not seek or receive permission from his employer to take his wife while performing company business. The truck rolled, and Beardsley brought a personal injury action against the employer, alleging that under Wyoming law it was vicariously liable for its driver’s negligence.

The District Court, sitting due to diversity, concluded the defendant employer was entitled to summary judgment as a matter of Wyoming law because Wyoming employers are **not liable** to unauthorized guests of their employees. On appeal, the 10th Circuit Court of Appeals noted the case hinged on whether plaintiff was an authorized passenger in the semi-truck, and turned to Wyoming agency law. The Court affirmed the decision, noting the driver did not have authority, either express or implied, to invite plaintiff to ride along. The Court also held the driver did not have implied authority to take his wife along, and his wife did not reasonably rely on the driver’s ostensible authority to invite her.

In contrast, in *Cain v. Bowlby*, 114 F.2d 519 (10th Cir. 1940), the Court held the defendant employer **was liable** even though the truck was being operated by an **unauthorized person**, because it was being operated for the benefit of the defendant employer. In *Cain*, the driver of a truck brought a passenger, Knight, and permitted him to drive in violation of a company rule. Knight drove while the driver slept. The Court noted the driver was in the vehicle and in charge of both the truck and the business of his employer. The driver failed to supervise or control Knight while he was driving. If he had merely abandoned the wheel or fallen asleep while driving the defendant would clearly be liable. The Court found no substantial difference between that situation and this situation with regard to liability. The Court noted the defendant employer could not escape liability because Knight was at the wheel while its agent slept beside him - because the vehicle was still being operated for the employer’s benefit.

Though the California Supreme Court and the United States 10th Circuit both found reason to hold a trucking company liable for the actions of its employee driver who acted in clear violation of company policy, neither addressed the issues of comparative negligence or a contractual shift of liability. Even though the trucking company could ultimately be found liable to some extent for injuries to a passenger, any comparative negligence of the passenger could shift some of the liability away from the employer and onto the injured passenger. In fact, in some states, a finding of the passenger’s comparative negligence of 50% or greater could **preclude any recovery** against the trucking company. Furthermore, some trucking companies have attempted to contractually shift the liability resulting from a violation of the rider policy onto the driver by having the driver review and sign a written statement confirming the rider policy, which includes language similar to: “Disregarding the Rider Program Policy will leave the employer exempt from any and all passenger liabilities.” While it is unknown if such language would ultimately succeed in shifting the liability away from the employer trucking company, it creates a clear distinction from existing case law and establishes a viable argument that liability has been shifted contractually to the driver.

TRUCK DRIVERS HAVE GENERAL DUTY TO EXERCISE CARE

In *Maria Cabral v. Ralphs Grocery Company*, the California Supreme Court has determined that a truck driver who parks his rig along the side of the highway must exercise due care. In this case, a driver for Ralphs Grocery Company (“Ralphs”) was driving his delivery route on Interstate 10 when he stopped just beyond the Interstate 15 crossing to have a snack. The driver regularly made a brief stop at this location to eat. The driver stopped the tractor-trailer rig off the paved roadway on what the investigating CHP officer described as “the dirt portion of the shoulder.” In 2001, at the request of the CHP, the California Department of Transportation (Caltrans) had placed an “Emergency Parking Only” sign in the area. The Ralphs driver saw the sign from where he stopped, about 16 feet from the outermost traffic lane.

Plaintiff’s husband was driving home from work alone in his pickup truck, eastbound on Interstate 10. A witness who was driving on the freeway behind him at the time testified the pickup truck was traveling at around 70 or 80 miles per hour, swerved within its lane, then changed lanes rapidly and passed other vehicles. Finally, the pickup truck abruptly crossed the outermost lane of traffic and left the freeway “as if he was trying to get off the interstate.” The pickup truck then traveled parallel to the road along the adjacent dirt until it hit the rear of the tractor-trailer. The plaintiff’s husband died as a result of the crash. He was not intoxicated at the time of the accident; and experts opined he either fell asleep or lost control due to an undiagnosed medical condition.

The decedent’s wife sued Ralphs for wrongful death alleging that the Ralph’s driver/employee had caused her husband’s death through his negligence in stopping the tractor-trailer for nonemergency reasons on the freeway shoulder. The Jury found both the decedent and the Ralphs driver negligent - and assigned 90 percent of responsibility to the decedent and 10 percent to the driver for Ralphs. Ralphs appealed the Jury’s award.

The Court of Appeal reversed the Jury’s decision and held that Ralphs owed **no** legal duty to avoid a collision between a negligent driver and the company’s stopped truck. The California Supreme Court reviewed. The California Supreme Court found that under California law, there is a general duty of each person to exercise, in his or her activities, reasonable care for the safety of others. Accordingly, it reversed the Appellate Court’s decision thereby reaffirming the Jury’s award.

HIGHWAY HERO

Tharpe & Howell proudly nominates Guy Knudsen for the 2011 Hero of the Highway Award for his selfless act of saving the life of another following a 7 vehicle crash.

On January 7, 2011 at 4:53 a.m., Guy Knudsen, a professional driver for ABF Freight Systems, was bobtailing a tractor on westbound Interstate 80 near Reno, Nevada. Visibility was low and there was freezing fog. As Mr. Knudsen rounded a corner at about 55 mph, he saw a white car ahead swerve on the freeway. Mr. Knudsen then swerved to the left into the fast lane in an attempt to avoid whatever the white car had been swerving from. As he swerved, Mr. Knudsen slowed his tractor and, when he was approximately two car lengths away, he saw a dark colored car with no lights on upside down in the middle of the freeway. The shoulders of the road were very narrow with barriers on both sides.

Because of the narrow roadway and the location of the overturned vehicle, Mr. Knudsen was unable to avoid the overturned vehicle without hitting it. The impact caused the hood of the ABF truck to come up which obscured Mr. Knudsen’s vision. He slowed and pulled to the side of the road as best he could in light of the narrow shoulders, and then turned around and saw a tanker truck also hit the overturned car. The tanker truck pulled off of the road in front of Mr. Knudsen’s tractor. Mr. Knudsen called his dispatch and asked them to call 911.

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HIGHWAY HERO

(CONTINUED)

Mr. Knudsen and the driver of the tanker truck got out of their vehicles and tried to slow down additional oncoming traffic to prevent further collisions. The driver of the tanker truck went back to his trailer to get a flashlight to signal on-coming traffic with. While he did this, Mr. Knudsen looked into the upside down car for the driver – but no one was in or near the car.

Mr. Knudsen and the driver of the tanker truck continued to try and slow on-coming traffic, but the cars did not respond. Both Mr. Knudsen and the driver of the tanker jumped over the barrier on the side of the road to avoid getting hit. The next car to hit the overturned vehicle was a Ford F250, which was then hit by a SUV, which was then hit by a PT Cruiser which then slid into the right front side of the ABF tractor. Mr. Knudsen approached the driver of the PT Cruiser to check on her condition. The driver was pinned against the steering wheel and complained of back pain. Mr. Knudsen told the driver to stay in her vehicle and promised he would get her help.

Mr. Knudsen then ran down the freeway looking for the individual who had been thrown from the overturned vehicle – but could not find anyone. He crossed the road and looked over the embankment down to the eastbound interstate and noticed a woman with a visible head injury walking around in circles on the edge of the freeway - confused and disoriented. Mr. Knudsen jumped over the railing and slid down the embankment toward the traffic lanes, injuring himself in the process. He ran to the injured woman and got her safely off the freeway. He then looked up and saw the Highway Patrol on the westbound lanes of the interstate. Mr. Knudsen climbed back up the embankment and informed the officers of the whereabouts of the injured woman down below as well as the injured woman in the PT Cruiser. The Highway Patrol then took over the scene.

As a direct result of Mr. Knudsen's cool head and fast actions, he undoubtedly saved the life of the woman who been thrown from her vehicle and was stumbling around on the dark and foggy freeway with a massive head injury below. Mr. Knudsen sacrificed his own personal safety and physical wellbeing to engage in selfless acts of service to others which saved the life of this woman and he calmed the nerves of others. Guy Knudsen is truly a hero – deserving of recognition and qualifying him for the 2011 Hero of the Highway Award!

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Tharpe & Howell has been part of the California, Arizona, Nevada and Utah business communities for more than 35 years, providing clients with experience, judgment, and technical skills. We are committed to delivering and maintaining excellent client service and case personalized attention, and to be an integral member of each client's team.