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Inside

RECENT COURT DECISIONS,
cont.

Page 2

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RECENT COURT DECISION RENDERS THE “BASIC SPEED LAW” ANYTHING BUT BASIC FOR TRUCK DRIVERS AND THEIR LIABILITY INSURERS

by *Brad Post*

An extremely controversial recent California court decision has garnered a significant amount of attention in the trucking industry, as well as from those that insure their drivers. In *Weaver v. Chavez* (2005) 133 Cal. App. 4th 1350, a California Appellate Court overturned a defense verdict in favor of a tractor trailer driver and determined that a plaintiff's case was prejudiced when the trial court did not instruct the jury on a federal standard of care that, the court held, establishes a higher standard of care for commercial vehicle and passenger vehicle operators. That standard of care exceeds that of any non-commercial vehicle operating on the same road, at the same time, as a commercial vehicle and/or common carrier. Under the doctrine of federal preemption, the Court may have succeeded in expanding tort liability in the trucking industry well beyond its existing parameters.

On December 10, 2001, Ms. Weaver was driving her Toyota Avalon eastbound on the 210 freeway on a rainy morning. The traffic was considered moderate to heavy, which is typical for a Los Angeles freeway. At the same time, another automobile attempted to enter the freeway from an on ramp. Unfortunately, that driver, a Mr. Gomez, was traveling far too fast for the rainy conditions and lost control, impacting

RECENT COURT DECISIONS continued on page 2

Brad Post



Bradley A. Post is the Managing Partner in the Modesto office of Borton Petrini, LLP. Brad received his undergraduate degree from University of the Pacific in 1981. He attended McGeorge School of Law, obtaining his J.D. in 1986 and was admitted to the bar the same year. Brad is a specialist in cases dealing with motor vehicle defense, wrongful termination, public entity law, premises liability, construction defect, and business litigation.

Brad stays on the cutting edge of his profession through membership in several legal and professional organizations. Among these are the State Bar of California, the Stanislaus County Bar Association, and the American Bar Association. Brad is also a member of the Mid Valley Claims Association, Modesto Claims Association, and the Association of Defense Counsel, Northern California.

Brad does his part to serve and promote his community. He is actively involved with the Modesto Chamber of Commerce. He is a board member and President of the Stanislaus County Society for Handicapped Children and Adults, and a board member of the United Way and the Stanislaus County Bar Association.

RECENT COURT DECISIONS

continued from Page 1

Ms. Weaver's vehicle. Approximately 120 feet behind Mrs. Weaver, commercial vehicle driver Frank Chavez, Jr. saw the accident, applied the brakes to his tractor and single trailer and began to "jackknife" across the freeway. He was able to regain control of his vehicle, but could not stop before colliding with Weaver's vehicle. Mrs. Weaver sustained serious injuries.

It was later conceded that Chavez was traveling at 56 miles per hour, in a 55 MPH zone, which is above the speed limit but within the 5 MPH "cushion" generally allowed by law enforcement before a citation will be issued.

However, there was conflicting evidence as to the proper speed Chavez should have been traveling given the rainy conditions. In sum, whether Chavez had violated the Basic Speed Law was left unresolved prior to trial.

Mrs. Weaver and her husband sued Mr. Gomez, Mr. Chavez, and Mr. Chavez's employer, Villa Park Trucking, Inc. Prior to commencement of the trial, Mr. Gomez was dismissed from the case. The case then proceeded against Mr. Chavez and Villa Park.

Until this point, all parties and their counsel had every reason to believe that this case would proceed as a very typical, rear-end collision with the usual issues of comparative negligence, medical expenses, subrogation and the like, which are far too frequent as a result of accidents on California highways. That such a garden variety big rig personal injury case would extend tort liability of commercial drivers, their employers and their insurers, to a level that exceeds the standard of care required of every other driver on the freeway, was almost certainly unforeseeable in this case.

Instructing The Jury On The "Standard Of Care" Required By Defendant

The pertinent issues began when the trial court entertained a motion by the plaintiff to instruct the jury on a federal standard of care that required "extreme caution" in the operation of a commercial motor vehicle during inclement weather. 49 Code of Federal Regulations part 392.14 reads as follows:

"Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke,

adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured."

In its opposition, defendants argued that California Vehicle Code 22350, or the "Basic Speed Law" was the appropriate standard of care. California Vehicle Code 22350 states:

"No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property."

The Legal Doctrine Of Federal Preemption

The plaintiff, in submitting the motion to have the federal code submitted as an instruction to the jury, argued the legal doctrine of federal preemption, which, essentially, states that if a federal regulation demands a higher standard of care than the similar state regulation, than the federal regulation must be followed. Plaintiff argued that the federal code "trumped" the California code by demanding "extreme caution" in inclement weather, as opposed to the "reasonable and prudent" language of the California Basic Speed Law. This difference, plaintiff argued, invoked the doctrine of preemption, which required the court to adopt the federal regulation, and its alleged higher standard of care in its instruction to the jury.

In rejecting plaintiff's theory, and denying their motion, the trial court noted the lack of any case law precedent to support plaintiff's position that the language of the federal regulation did, in fact, impose a higher standard of care, and ultimately held that the California Basic Speed Law was appropriate for purposes of instructing the jury. Ominously, the court also added that the plaintiff "may be on the frontiers of the law" but still felt that the California regulation applied. With the California Basic Speed Law instruction, the jury returned a defense verdict in favor of Mr. Chavez and Villa



Park by a ten-two vote. Plaintiffs appealed to the California 2nd Appellate District.

A Battle Of Definitions

On appeal, the appellate court reiterated the doctrine of federal preemption and the fact that a federal statute or regulation may be adopted as a standard of care by state courts. Once the appellate court reiterated that position, the remainder of its decision focused on the applicable standard of care. Specifically, they focused on the language of the federal statute and the basic speed law and, if the federal regulation did apply, whether its omission as a jury instruction at trial prejudiced plaintiffs’ case to the extent that a new trial was warranted.

In its reasoning, the court focused on the specific terms of “extreme caution” found in the federal regulation, and the “...reasonable or prudent having due regard for the weather...” language included in the California Basic Speed Law. To aid in their decision, the court referred to Black’s Law Dictionary which defined reasonable care as “that degree of care which a person of ordinary prudence would exercise in the same or similar circumstances.” While noting that the same dictionary did not include the phrase “extreme caution,” it did define “extreme” in this context to mean “greatest, highest, strongest, or the like.”

Accordingly, the court held that the “extreme caution” language of the federal regulation imposed a higher standard of care than the mere reasonable care language of the California Basic Speed Law. According to the court, the “extreme” language in the federal regulation necessarily mandated a higher level of caution than that of a reasonable and prudent person in the same circumstances.

The court then concluded that it was reasonably probable that a jury would have returned a verdict in the plaintiff’s favor with the federal regulation as the jury instruction. Accordingly, the court reversed the trial court’s decision, and remanded the case for a new trial consistent with its opinion.

The Practical Effects Of This Decision

What this appellate decision means for the practicing attorney, commercial vehicle operator, and his/her insurer, is that the commercial vehicle operator is now held to a higher standard of care than any other person on California’s roads,

freeways, etc., as the federal regulation specifically applies to commercial vehicles and passenger carriers only, with the California Basic Speed Law applying to other motor vehicle operators. As it stands, this higher standard of care will almost certainly result in more plaintiff verdicts as parties will no longer battle under the same regulation, as commercial vehicle operators will have to show compliance with the higher standard of care found in the federal regulation. As of this writing, a petition for review of this decision has been filed with the California Supreme Court.

Is This Decision Merely A Semantical Debate?

Supporters of this decision point to the legislative history surrounding Congress’ decision to create this legislation, including its contention that such regulation was necessary to ensure public safety. Therefore, those supporters argue, holding commercial vehicle operators, and their employers and insurers to a higher level of care is exactly what Congress intended in order to protect drivers from the hazards that exist when commercial vehicle operators drive in inclement weather.

However, critics of this decision argue that, if there are any differences between the verbiage of the regulations, the differences, if any, are largely semantical, with no real-world direction for those commercial vehicle operators and their employers as to how they must comply with the “extreme caution” language of the federal regulation, and how that differs

from the normal, common sense duty they have followed to this point. Short of ordering their drivers to park their vehicles until inclement weather passes and road conditions return to “normal,” trucking managers are largely at a loss to train and instruct their drivers on how to avoid liability. Additionally, one can only assume that increases in liability insurance will result until interpretive court decisions offer more clarity.

Until that time, commercial trucking employers are advised to convey to their drivers that mere common sense compliance with the basic speed law is no longer always sufficient to avoid liability. At a minimum, when faced with hazardous weather conditions, drivers should severely reduce speed, more so than other vehicles on the road, as compliance with the posted speed limit, in and of itself, may be insufficient to avoid liability under the newly applicable “extreme caution” standard. ❖

