The Morrison Law Journal
July 2019
Volume XIV, Edition 7

When There Is No Excuse: California Court of Appeal Rules That A Defendant In A Personal Injury Case May Not Claim Inability To Obey As A Defense To A Negligence Per Se Claim Absent Special Circumstances

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California law recognizes that, in the context of a negligence per se claim, a defendant to a tort claim may be legally excused from a violation of law on the basis that the defendant could not obey the applicable statute. See, CACI 420. The legal excuse defense was tested recently in the matter of Baker-Smith v. Skolnick (2019) Westlaw 3001624 ("Baker-Smith" case).

The Baker-Smith case involved a flying mattress on a freeway which caused Mackenzie Baker-Smith to swerve and crash at high speed. Shortly after the accident, two eyewitnesses chased a truck to get a license number, obtained the number and called 911 with the truck's description and license plate. A highway patrol officer then stopped the truck, which was towing a trailer. The driver of the truck, Dror Skolnick, the owner of G&L Design Building and Landscape, Inc. ("G&L"), admitted that a mattress may have been in the cargo hold of the trailer. Baker-Smith sued Skolnick and G&L for negligence and negligence per se (her claim being based on Vehicle Code § 23114(a) which requires vehicles to be loaded so that the contents stay put).

After suit was filed, Skolnick changed his account of events to indicate that he had instructed an employee, Juan Lopez, to put tools in the trailer a few days before the accident, but then told Lopez to make sure that nothing was in the trailer. Skolnick testified at trial that, on the day of the accident, that since Lopez had already told him that the trailer was empty, (Skolnick) relied on what Lopez had told him and did not check the trailer (Lopez died before trial). There were also conflicts in the evidence as the pickup truck that Baker-Smith described was different than the pickup truck operated by Skolnick. Given that, Baker-Smith's main theory was Negligence Per Se, which is the doctrine that a defendant breaking the law is presumptively negligent, and claims that applied.

Prior to rendering the verdict, the Trial Court permitted Skolnick to argue that he was excused based upon CACI 420, which provides in pertinent part:

> "A violation of law is excused if the following is true: that just by using reasonable care, a person was not able to obey the law."

The jury returned a verdict in favor of Skolnick/G&L.

On appeal, the Court of Appeal reversed, holding that, as a matter of law, no special circumstances permitting a negligence per se defense had occurred. In its decision, the Court of Appeal cited to the 1923 decision in Berkowitz v. American River Gravel Co. (1923) 191 Cal. 195, 199 wherein the California Supreme Court held that the operator of a gravel truck was excused from liability involving a rear-end accident, even though the truck's tail light was not working at the time of the collision. Noting that the driver had checked the taillight three or four blocks before the accident scene and saw it working, the California Supreme Court ruled that, under such circumstances, the truck company was entitled to an excuse instruction. As for this case, the Court of Appeal ruled that Skolnick's instructions to coworker Lopez provided no excuse and appeared to signal that the excuse to a negligence per se claim (at least based on the ability to obey the law), is likely limited to specific circumstances where the defendant engaged in significant efforts to comply with the law.

The Skolnick case is important in that it may limit an excuse to a negligence per se violation in many cases.

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