

ELDs and Their Impact on Punitive Damages Claims

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Punitive damages are a source of anxiety for trucking companies and defense firms alike. Since potentially severe injuries are already inherent in trucking litigation, the addition of a punitive damages instruction can allow a plaintiff's attorney to credibly inflate already high verdict values and settlement demands. The potential for punitive damages also presents other difficult issues, such as they are typically not covered by general liability policies. Predictably, motions for punitive instructions by plaintiff's firms are becoming more and more prevalent in trucking cases. One of the more common scenarios where punitive damages can arise is with respect to inaccurate or falsified log books.

Punitive damages are not awarded as compensation, but instead serve to punish the defendant and prevent them and others from committing similar acts of wrongdoing in the future. While the standard can vary somewhat between jurisdictions, most follow the Restatement (Second) of Torts, which states that, "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless to the rights of others."

In trucking litigation, there are rarely cases of "evil motive" such as intent to cause injury. Rather, the focus in most trucking punitive claims is on allegations of recklessness or as some jurisdictions refers to it as "gross negligence." Regardless of the phrasing, what all jurisdictions agree on is that the conduct at issue must be beyond ordinary negligence to justify a punitive damages instruction. Following an accident, plaintiff attorneys commonly focus on the driver's log in an attempt to establish the punitive damages standard. If a claimant can find discrepancies between the log book and other evidence in the case such as a GPS system, they can then credibly claim that the defendant doctored the log to cover up conduct such as driving over federally mandated hours.

Some examples in the caselaw include the 1982 Arizona appellate case of *Torres v. North Am. Van Lines*, 135 Ariz. 35 (C.A. Div. 2 1982). In *Torres*, the court found gross negligence on the part of the trucking company and allowed a punitive damages instruction. Specifically, the driver was two days behind on his log entries and "appeared fatigued" at the time of the accident. The evidence also demonstrated complicity on the part of the trucking company, as they were on notice due to evidence of them allowing drivers to turn in false logbooks over a period of several years. The court held that the driver's attempts to avoid the 70-hour rule and the company's failure to correct its log verification shortcomings constituted the type of wanton misconduct that can give rise to punitive damages.

In the 1990 third circuit case of *Burke v. Maassen*, 904 F.2d 178 (3d Cir. 1990), the evidence showed

that the driver had driven 14 hours on the day of the accident, and then attempted to cover up his driving in excess of the 10 hour limit by falsifying his logbook. The jury awarded punitive damages. Notably, the appellate court reversed. The court found a lack of a causal connection between the driver being 4 hours over the limit and the accident, as well as found that the driver's conduct after the accident (falsifying the log) were not relevant to the analysis.

In the 2001 Seventh Circuit case of *Purnick v. C. R. England, Inc.*, 269 F.3d 851 (7th Cir. 2001), the driver was approaching his daily ten hour limit but had not surpassed it. However, the evidence showed the driver had falsified his log book and exceeded ten hours on several occasions the week prior. Coupled with an admission by the driver that he was "mesmerized" by the road when he struck plaintiff's car, plaintiff argued that the accident was the result of fatigue due to several instances of going over his daily driving limit in the past week. Applying Indiana law, the court, similar to *Burke*, found a lack of a causal connection between the after-the-fact falsifying of the log book and the accident. The court stated that such conduct after the fact did not make the accident any more or less likely, and that plaintiff's evidence of prior violations causing fatigue was thin and insufficient to justify punitive damages.

In the 1995 S.D.N.Y. case of *Wang v. Marzianni*, 885 F.Supp 74 (S.D. N.Y. 1995), the driver was over the speed limit, lost control of his truck, and caused a fatal accident. The subsequent investigation revealed that the driver had falsified his log to cover up his exceeding 70 hours in an 8 day period. The court found that a reasonable jury could find that the driver's conduct satisfied the punitive standard of "reckless indifference to the rights of others." Significantly, the court also found that a reasonable jury could conclude the trucking company was liable for punitive damages due to their failure to monitor the driver's conduct and failure to encourage him not to exceed federally mandated driving limits.

The above cases involving punitive damages have a common thread, which are the difficulties caused by reliance on manually entered time in a logbook. On December 10, 2015, the **Federal Motor Carrier Safety Administration** published a Final Rule requiring **electronic logging devices (ELD)** for commercial trucking companies by December of 2017. Per the U.S. Transportation Secretary, the written log books that have been kept by paper and pencil since 1938 are "outdated and impossible to verify."

The statement by the Secretary is undoubtedly true and the requirement that fleets and drivers use compliant ELDs by December of 2017 should be viewed as a positive development. Many of the factual scenarios discussed in the cases above involving written logs giving rise to punitive claims should no longer be an issue in litigation. First, the drivers will be aware of the ELDs, so there will be no incentive or even opportunity to falsify logs either before or after an accident. Second, ELDs would presumably eliminate the human error component in log entries, such as innocent mistake, which are often spun by claimants in an effort to demonstrate a nefarious motive. Third, ELDs provide trucking companies with accurate and up to date driver log information so scheduling and supervisory decisions can be made in a timely fashion. This could go a long way toward heading off complicity arguments in favor of punitive damages against trucking companies such as found in the *Wang* case.

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