



CAARE – Newsletter

Combined Awareness and Accident Reduction Effort

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*Editor: Shawn Alexander,
CDS*

*Co-Contributor: Paul
Poplaski, CDS*

**Defensive Driving
Course instructed by a
CCIC Loss Prevention
Specialist and
sponsored by the
National Safety
Council!!!!**

If you are interested in
having a Defensive
Driving Course simply
contact your designated
Loss Prevention
Specialist to schedule a
date and time!

CAARE MISSION STATEMENT

Reduce Property Damage and Liability losses by coordinating efforts with the CCIC Loss Prevention Department and our insured's safety management through the exchange of information and services made available from our department and e-mailed directly to you on a monthly basis.

FEAR OF IMPENDING DEATH

In cases where the evidence does not support a claim for conscious pain and suffering, New Jersey plaintiff's attorneys are attempting to bring claims for "fear of impending death" or "re-impact fright". In essence, this claim argues that plaintiff should be compensated for "seeing his life pass before his eyes" before impact or the collision which lead to his death. As of this date, this item of damages has not been recognized in the state of New Jersey.

However, the U.S. District Court for the District of New Jersey recently addressed this issue in an unpublished opinion. Therein, the court attempted to determine how New Jersey state courts would react to such a claim. The case is *In Re Jacoby Airplane Crash Litigation*, D.N.J. 2006, 2006 WL 3511162 (D.N.J.).

In *Jacoby*, the District Court reviewed the New Jersey Survivor's Act, N.J.S.A. 2A:15-3, which permits actions for damages "based upon the wrongful act, neglect, or default of another, where death resulted from injuries for which the deceased would have had a cause of action if he had lived, in addition to damages accrued during the lifetime of the deceased."

The District Court noted the important distinction between injuries sustained post-impact, but pre-death, which is usually conscious pain and suffering and injuries or fright sustained pre-impact. The Survivor's Act contains no express limitation on the types of damages recoverable under the statute, leaving it open to interpretation for a claim of fear of impending death.

In an attempt to determine how a New Jersey state court would rule on such a novel issue, the District Court discussed the evolution of New Jersey case law on emotional distress claims which permit a plaintiff to recover for bodily injury or sickness resulting from fear for one's safety

Verify Driver Performance

By the end of this year FMCSA will have in place a program that will allow carriers to retrieve information from their database. If a driver applicant gives permission, the motor carrier will be able to access inspection and accident report records. This information will give motor carriers a better snap shot of a driver's past performance and goes beyond the data available from the driver's MVR. Since the program requires the driver's approval, an applicant's refusal to allow permission may signal a problem.

This program will provide another tool that carriers can use to identify problem drivers during the application process. Another tool that will greatly assist this process is the proposed national clearing house for drug test results. Problem drivers would not be able to hide behind misrepresentations of their driving history.

Provided by National Transportation Consultants...

caused by a negligent defendant where plaintiff was placed in danger by such negligence, absent physical impact. (See, Falzone v. Busch, 45 N.J. 559, 561 (1965). New Jersey courts have consistently adhered to the notion that fright can be the proximate cause of a substantial physical injury, but there may be difficulty in determining the existence of a causal connection between fright and subsequent physical injury and in measuring the extent of such injury. However, the Falzone court found that the difficulty of proof should not bar plaintiff from attempting to convince a jury of the legitimacy of the claim.

Based on the above cases, the District Court ruled that the New Jersey Supreme Court would conclude that plaintiffs are entitled to attempt to convince a jury that they experienced pre-impact fright. To that end, the Court found that plaintiffs must present evidence that the defendant's negligence proximately caused the "fright from a reasonable fear of immediate personal injury."

It was noted that other jurisdictions, including New York, Maryland and Louisiana, have permitted such a claim, but most were cases of pre-impact fright experienced during an airplane crash. (See Beynon v. Montgomery Cablevision Ltd. P'ship, 351 Md. 460, 507 (1997), Haley v. Pan Am. World Airways, 746 F.2d 311 (5th Cir. 1984) (interpreting Louisiana law), Shu-Tao Lin v. McDonnell Douglas Corp., 72 F.2d 45 (2d. Cir. 1984) (interpreting New York law). However, Nebraska found it to be a viable claim in an auto accident and allowed plaintiff to seek monetary damages for the five seconds his motorcycle was locked with another moving vehicle before he was killed.

In cases where this claim may arise, it is important to consider a forensic pathologist as a defense expert. Often, forensic pathologists issue opinions on whether death was instantaneous. However, in a claim for fear of impending death, the fact of how quickly death occurred is not relevant. Instead, you should make sure your expert understands the claim and focuses his report and ultimate opinion on the plaintiff's actions pre-impact.

For example, we are currently defending a case where this claim is being alleged. Our defense neuro- pathologist was able to conclude that decedent was looking away from our tractor trailer prior to, and at the time of, impact and therefore could not have known what was coming or that he was going to be involved in an accident which could result in his death. Our expert based his opinion on the specific injuries outlined in the autopsy report. Specifically, he found they were to one side of his body/head, and that it could only mean that decedent was turned away from our oncoming tractor trailer.

Jeffrey A. Segal and Nancy E. Monte Carlo
Attorneys
Rawle & Henderson, LLP
Marlton, NJ
jsegal@rawle.com
nmontecarlo@rawle.com



Federal Motor Carrier Safety Administration

For more regulations and updates click on the link provided:

<http://www.fmcsa.dot.gov/>



ABOUT CSA 2010 – WHAT IS IT?

Comprehensive Safety Analysis 2010, CSA 2010, is a Federal Motor Carrier Safety Administration (FMCSA) initiative to improve large truck and bus safety and ultimately reduce commercial motor vehicle (CMV)-related crashes, injuries and fatalities. It introduces a new enforcement and compliance model that allows FMCSA and its State partners to contact a larger number of carriers earlier in order to address safety problems before crashes occur. When the program is fully rolled out by the end of 2010, FMCSA will have a new nationwide system for making the roads safer for motor carriers and the public alike!

In the development of the CSA 2010 program, FMCSA sought to incorporate several key attributes.

FLEXIBILITY - Adapt to Changing Environment. Accommodates changes to the transportation environment, such as evolutions in technology and changing programmatic responsibilities.

EFFICIENCY - Maximize Use of Resources. Improves Federal and State enforcement staff productivity, as well as the safety performance of members of the motor carrier community.

EFFECTIVENESS - Improve Safety Performance. Identifies behaviors associated with safety risk; focuses compliance, enforcement, and remediation efforts on those unsafe behaviors.

INNOVATION - Leverage Data and Technology. Improves safety through the innovative use of technology to track and update safety performance data.

EQUITABILITY - Be Fair and Unbiased. Assesses and evaluates motor carrier safety and enforces Federal laws and safety regulations to ensure consistent treatment of similarly situated members of the motor carrier community.

Please visit the below site to insure your company is aware of the CSA 2010 Program and how this may effect your operation next year!!!!

<http://csa2010.fmcsa.dot.gov/>

To Report a claim call:

800-874-8053

Nights and Weekends
Loss Reporting:

866-724-2416

Available 24/7 for all
claims...



P.O. Box 2575 Jacksonville, FL
32203-2575

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FAX:
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We're on the Web!

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For more Loss Prevention
information, DOT Forms,
Safety Videos, etc. follow
the link below:

http://www.carolinacas.com/service_s.htm

*Carolina Casualty Insurance
Company and the entire Loss
Prevention Staff would like to wish
everyone a happy and safe Holiday!*

