



# TRANSPORTATION LAW UPDATE

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## Commercial Motor Vehicle Section:

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## CONNECTICUT

### YOUR DRIVER IS YOUR BEST WITNESS



Gary N. Stewart

On December 15, 2003, Concepcion Garcia was driving her friend, Elkin Lopez, in a 2003 silver Toyota Corolla on Interstate 84 East near Cheshire, Connecticut when she was involved in an accident that killed Lopez and injured herself. Lopez's Estate alleged that his death was caused when the tractor-trailer, owned and operated by Werner Enterprises, Inc., came into Garcia's lane, struck her car and caused it to lose control, spin and be struck by another tractor-trailer that was unable to avoid the out of control car. Both Garcia and the Lopez Estate filed lawsuits in the Superior Court of Waterbury, Connecticut in 2005. The Complaints were not removable to federal court because diversity of citizenship did not exist, but the cases were consolidated. The case was transferred to Rawle & Henderson for handling less than three months before trial.

Plaintiffs contended that Garcia lost control of her vehicle when the Werner tractor-trailer moved into the lane in which Garcia was traveling and collided with her vehicle, causing it to spin out of control. This argument was supported by photographs of the front bumper of Garcia's vehicle and photographs of damage to the driver's side back tire of Werner's trailer.

We argued that the Werner tractor-trailer was not involved in the accident although it was confirmed to be in the vicinity. Furthermore, the photographs of the trailer's tire showed a gash and some red paint transfer, but it was undisputed that Ms. Garcia's vehicle was silver, not red.

After being retained, we contacted the Werner truck driver to gain his trust and cooperation. He was no longer employed by Werner and he was reluctant to get involved in this lawsuit. In addition, he had developed multiple sclerosis which dramatically affected his physical health. After multiple discussions, we believed it was very important to travel to Massachusetts to visit him "in person." Later, he admitted that this visit convinced him that we wanted to help and that we were "on his side." Because of this relationship, we were able to work with him. We believe this cooperation helped convince the arbitrator that Werner's vehicle was not involved in the accident.

Our driver admitted that he was in the area and he saw a vehicle "spin out" behind him. A few miles away, he reported his observation to a local police officer who called the Connecticut State Police.

Our driver told the trooper that he may have been involved in the accident and he also “qualcommed” his employer that he was involved. Plaintiffs attempted to use these statements as “admissions” against him.

Plaintiff offered nine witnesses at the hearing, including Garcia, who testified that she was driving in the left lane when the Werner tractor-trailer moved into her lane, and that the left rear tire of the trailer made contact with her front right bumper area causing her vehicle to move left into a Jersey barrier. However, in Garcia’s statement made to the police on the night of the accident, she reported that a white tractor trailer came into her lane. It was undisputed that the Werner trailer was blue.

Plaintiff also retained an accident reconstruction expert, who testified that the “first harmful event” was when the Werner truck came into Garcia’s lane and contact occurred between the left, rear wheel of the trailer and the right, front bumper of Garcia’s vehicle. In support, the expert relied on Garcia’s testimony as well as photographs of the front bumper and photographs of the trailer’s back right tire. However, he could not determine in which lane the contact occurred or who hit who. We argued that plaintiff had failed to sustain her burden of proof that Werner’s driver was negligent for encroaching into her lane and colliding with her vehicle.

We offered the deposition testimony of some eyewitnesses. The first testified that he was driving in the right lane and as plaintiff’s vehicle passed, he saw it

lose control in the left lane, start to skid, and slide across both lanes of traffic as it proceeded out of control. Importantly, he also testified that he did not see her make contact with any other vehicle. We argued that it would be hard for him to miss a blue, well-lit, tractor-trailer. Finally, the driver of the other tractor-trailer also did not see the Werner tractor trailer prior to this accident. We suggested that this operator was in the “cat bird’s seat” due to his elevated position and that he should have seen a fully lit, light blue tractor-trailer, which would have been right in front of him, if it was involved in a collision with Garcia’s car.

Our driver personally attended the arbitration and provided testimony. He testified that he was traveling in the right lane in the area of the accident when he heard a loud bang that sounded like contact with metal. As he looked in the mirror, he saw sparks and lights spinning around from right to left, allegedly from the plaintiff’s vehicle. He also testified that he did not come into contact with plaintiff’s car.

Finally, we offered the testimony of our own reconstruction expert. He and the Connecticut State Police expert both concluded that the Werner tractor-trailer never came into contact with Garcia’s vehicle. Most importantly, during preparations with our expert, we developed a strategy showing that the damage that should have been on the front bumper of Garcia’s vehicle was not present in the photographs taken by the investigating police officers. This fact supported our expert’s opinion that if our trailer had

moved into plaintiff’s lane, her car would have moved left, striking the concrete jersey barrier on its right side. Yet, no damage was present on that side. Moreover, plaintiff’s own experts reluctantly conceded that fact on cross examination.

After hearing all of the evidence, the arbitrator determined that the plaintiff had not proven her claims of any negligence on the part of Werner Enterprises, Inc or its driver.

*Gary N. Stewart was assisted in Garcia v. Werner Enterprises, Inc. by Rawle & Henderson attorney Brian McCall. They routinely handle cases in Connecticut, Rhode Island, Massachusetts, Pennsylvania and New Jersey.*

Gary N. Stewart is a resident partner in Rawle & Henderson’s Harrisburg office and concentrates his practice in the area of commercial motor vehicle defense.

Mr. Stewart is admitted to practice in Pennsylvania, New Jersey, Massachusetts, Connecticut, Vermont and Rhode Island, as well as before the U. S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey, the District of Massachusetts, the District of Rhode Island, the District of Connecticut and the U. S. Court of Appeals for the First and Third Circuits.

He has been selected by his peers as a Pennsylvania Super Lawyer in 2009 and 2007. It is an honor reserved for the top 5% of all Pennsylvania lawyers.

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