



VOLUME 19 | NUMBER 1 | 2018

TRANSPORTATION LAW UPDATE



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PENNSYLVANIA DEFENSE VERDICT

Jury Rules For Defendants In Sideswipe Accident

Rawle & Henderson LLP recently obtained a defense verdict in a commercial motor vehicle case in the Montgomery County Court of Common Pleas. This matter involved a collision between a tractor-trailer and passenger sedan while both vehicles attempted to execute a right turn from a multi-lane exit ramp onto a multi-lane roadway. Plaintiff, Francesca Rodriguez DeJesus, sued the tractor-trailer driver, Lauri Hackett, and her employer, Dakotaland Transportation Inc., alleging negligence in the operation of a tractor-trailer. Fowlds Brothers Trucking Inc. was improperly named as a defendant and dismissed before trial.



Sonia Di Valerio

On a clear fall afternoon, Plaintiff DeJesus was driving to work in Bala Cynwyd, Pennsylvania. Her father was a front-seat passenger. DeJesus exited Interstate 76 and stopped in the right lane of the exit ramp. She intended to turn right onto Route 1 southbound. However, the light controlling the traffic exiting Interstate 76 onto Route 1 southbound was malfunctioning.

According to DeJesus, she remained at the stop line waiting for an opportunity to merge into heavy traffic on Route 1 south. While she was waiting, defendant's tractor-trailer came down the exit ramp in the middle lane and executed a right turn onto Route 1 south, sideswiping DeJesus's vehicle and dragging it along until it got pinned between the trailer tires and a guardrail bordering the right shoulder.

The driver of the tractor-trailer, Lauri Hackett, maintained that DeJesus was not stopped as she alleged. Hackett testified that the tractor-trailer was in the middle lane of the exit ramp. No vehicle was in the right lane. The traffic light controlling the exit ramp was malfunctioning. Hackett checked her mirrors, saw that no vehicle was in the right lane and began to inch into the middle lane of Route 1 south. She was traveling less than 5 miles

per hour as she attempted to merge into traffic. When the tractor was turned into the middle lane of Route 1 with the trailer still executing the turn, she heard a honk. Hackett stopped the tractor-trailer, looked at the side mirror and saw the sedan against the rear tandem tires of the trailer.

Both vehicles pulled to the side of the road. Local and state police were called. The state police investigated the accident. No citations were issued. During discovery, the state trooper testified that the location of the accident was notorious for right turn accidents, particularly because there are no lane markings as the multi-lane ramp feeds into the multi-lane roadway.

Discovery provided that DeJesus was very familiar with the roadway as she traveled it nearly every day. Hackett had never been to this location before. Moreover, while DeJesus was about to start her work day, Hackett was ending hers.

At trial, plaintiff attempted to establish and argue that Hackett was fatigued although she had no expert to support this claim. In response to defense objections, the Court precluded plaintiff from arguing “fatigue” but allowed her to argue that Hackett was tired. Plaintiff’s father testified in support of plaintiff.

At trial, the defense brought out that plaintiff was late for work at the time of the accident. The defense argued that plaintiff was speeding, failed to appreciate the tractor-trailer executing a right turn, and lost control of her vehicle as she attempted to turn right. In doing so, plaintiff struck the rear tandem tires of the trailer.

According to DeJesus, at impact her left shoulder struck the interior of the driver’s side door and she felt a pull in the neck. Although she continued to her job as a custodian

that day, four days later she sought medical care for neck and low back pain. About a week after the accident, DeJesus presented to a chiropractor for persisting neck and low back pain. She treated with the chiropractor for four-and-a-half months. She was diagnosed with strains and sprains of the cervical and lumbar spine. Treatment included massage and spinal manipulation. Her low back complaints resolved during treatment. However, DeJesus continued to experience neck pain, which radiated into the left shoulder. She began treating with an orthopedic surgeon and a pain-management specialist, who administered an injection to the cervical spine.

Tests were ordered. The MRI and EMG showed bulging discs at C5-6 and C6-7, left-sided radiculopathy at C6-7, and tendinitis in the left shoulder. DeJesus’s orthopedic surgeon related these conditions and treatment to the accident. He stated that the bulging discs and radiculopathy were permanent.

DeJesus testified that the persistent neck and shoulder pain affected her ability to interact with her toddler, whom she had trouble lifting. She also had difficulty performing household tasks, such as laundry and grocery shopping, and engaging in social activities, such as dancing. She sought damages for past and future pain and suffering.

Defense expert in orthopedic surgery examined DeJesus and reviewed the medical records. The defense orthopedic surgeon testified that by history, DeJesus sustained a lumbar strain and sprain that had resolved, a cervical strain and sprain, and left shoulder tendinitis. He found that plaintiff continued to have restricted cervical and shoulder range of motion, as well as restricted use of the left arm.

Defense expert in radiology opined that the MRI and EMG showed pre-existing and chronic issues, but no traumatic injuries that could be related to this accident.

Before trial, the parties attended court mandated arbitration. DeJesus was awarded \$65,000, which defendants rejected. After a three-day trial, the jury returned a verdict for the defense.

Franchesca Rodriguez Dejesus v. Fowlds Brothers Trucking Inc., Dakotaland Transportation Inc., and Lauri Hackett, No. 2016- 09541, Montgomery County Court of Common Pleas

Sonia Di Valerio is Of Counsel to the firm in our Philadelphia and New Jersey offices. She concentrates her practice on the defense of trucking and bus companies and their insurers. She regularly addresses claims of negligent entrustment and spoliation in cases involving catastrophic injuries. As part of that practice, Sonia represents clients in connection with employment litigation matters in both the State and Federal Courts of Pennsylvania and New Jersey. In addition to representing trucking and bus companies, Sonia has also represented municipalities and municipal authorities as well as privately owned companies. She has defended these clients against age discrimination claims, wage claims, whistle blower claims and claims arising under the FMLA and FLSA. In addition to litigated matters, Sonia has counseled clients in connection with termination issues, hiring issues and non-compete clauses. She has extensive experience in binding and non-binding arbitrations as well as court conducted and private mediations. She has tried cases to verdict in the State Courts of New Jersey and Pennsylvania as well as the Federal Courts.

Sonia earned her J.D. from Temple University School of Law in 1999 with distinguished class performance in Criminal Law and Evidence. While attending law school, she served as Editor-in-Chief of the *Temple Environmental Law and Technology Journal*. She served as a judicial law clerk to the Honorable Lee B. Laskin, J.S.C., in the Superior Court of New Jersey from August 1999 to August 2000. She earned her B.A. in Communications from Temple University in 1992. Sonia is a member of the Delaware County Bar Association.

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NEW ADDITION

Justine L. Bressler has joined our Harrisburg office as an associate. She concentrates her practice in the areas of commercial motor vehicle defense, construction, insurance coverage, product liability, premises liability, workers' compensation, commercial litigation and employment relations.

Justine earned her J.D. from Widener University Commonwealth Law School in 2011. She was on the Dean's List. While attending law school, she served as a law clerk for the Pennsylvania Public Utility Commission from August 2010 to May 2011. She also served as a law clerk for the Pennsylvania Office of Consumer Advocate from May to September 2010. She earned her B.A. in Political Science & English from the State University of New York at Albany in 2007. She graduated with honors and was on the Dean's List.



Justine L. Bressler

Justine is admitted to practice in Pennsylvania, New Jersey and New York, as well as the U.S. District Court for the Middle District of Pennsylvania. Prior to joining Rawle & Henderson LLP, Justine was an attorney with a general liability law firm in Harrisburg.

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TRUCKING INDUSTRY DEFENSE ASSOCIATION

Timothy J. Abeel, Chair of Rawle & Henderson LLP's Commercial Motor Vehicle Section and a founding member of the **Trucking Industry Defense Association (TIDA)**, has announced he is stepping down as Editor of the *TIDA Newsletter*. Tim has been the editor of the newsletter for over 23 years, since TIDA's founding in 1993. Tim is one of the founding members of TIDA. He served as the association's President in 2000 and 2001 and as a Board Member from 1994 to 2003. In 2005, TIDA presented him with the John T. Biezup Memorial Service Award for his dedication and service to the trucking industry.



Timothy J. Abeel

"Truly one of the greats, thank you Mr. Abeel, we are all grateful for your service," said Andrew Stephenson, Board Member and Chair of the TIDA Member Communication Committee. "This was a legendary run as our newsletter editor. Few associations across this great continent can boast that sort of continuity—an epic marathon of publications, one article and one newsletter at a time." The *TIDA Newsletter's* new editor is Mark Perkins, Owner of Perkins & Associates, LLC, a Shreveport, Louisiana law firm that concentrates on transportation law.

Timothy J. Abeel has defended transportation companies in the state and federal courts of Pennsylvania, New York, New Jersey and Delaware for more than 30 years. He is admitted to practice in all the state and federal courts of Pennsylvania and New York, as well as the U.S. Courts of Appeal for the Second and Third Circuits and the Supreme Court of the United States. He has been admitted to the state and federal courts of New Jersey and Delaware pro hac vice since 1982.

Tim graduated, *magna cum laude*, from the State University of New York at Albany. He received his law degree from the Temple University School of Law. He is a recipient of the Associate Justice Lewis F. Powell Jr. Award from the American College of Trial Lawyers and the Frank Edward Roda Memorial Award from the Pennsylvania Trial Lawyers Association for Excellence in Advocacy.

Tim's clients include some of the largest transportation companies and insurers of commercial motor vehicles in the United States. He is the editor of Rawle & Henderson LLP's *Transportation Law Update* newsletter. He is a member of the Executive Committee of Rawle & Henderson. Tim has been rated AV Preeminent for 20 years and has been selected as a Pennsylvania Super Lawyer for 14 consecutive years, since the program's inception.

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