

***A Primer for the Defense***  
**Catastrophic Claims Resulting from Mechanical Commercial Vehicular Failure**

By Robert A. Biggs, III

For attorneys, risk managers, insurers, and trucking company personnel who are routinely confronted with the defense of catastrophic claims resulting from alleged mechanical failure of truck equipment, there is no substitute for a thorough understanding of the potential applicability of Federal Motor Carrier Safety Regulations (hereinafter, FMCSR) and the applicability of legal theories establishing requisite legal proof requirements governing inspection, repair and maintenance of vehicles, and state statutory and common law regarding establishing a standard of care. It is the purpose of this article to present a fundamental resource for a practical reference when such a claim arises.

A truck is a complex mechanism comprised of multiple mechanical systems that require constant vigilance in their maintenance and repair. The failure of an owner operator or lessee to care for and maintain any one of these multiple systems properly can result in catastrophic failure and resultant exposure to legal damages. Not included within the scope of this article is a discussion of product liability and the legal theories available against the manufacturer or seller of component parts for design or manufacturing defects causing injury.

**The Mandate of Motor Carrier Safety Regulations Affecting Maintenance and Repair**

Tractor-trailer rigs that transport property in interstate commerce are deemed commercial vehicles, subject to the requirements of the Federal Motor Carrier Safety Regulations. See 49 C.F.R. § 390.3.

A majority of states have incorporated all or some part of these regulations. Many have done so by incorporating them into state statutes. See, e.g., MISS. CODE ANN. § 77-7-13(4) (1972) as amended. In instances where state law is in conflict with federal regulations, it is subject to pre-emption. *Kube v. New Penn Motor Express, Inc.*, 865 F. Supp. 221, 232 (D. NJ. 1994).

Congress expressed the broad policy mandate of FMCSR impressed upon owner operators in 49 CFR § 392.1, which provides: “Every motor carrier, its officers, agents, representatives and employees responsible for the management, maintenance, operation, or driving of a commercial motor vehicle, or the hiring, supervising, training, assigning or dispatching of drivers, shall be instructed in and comply with the rules in this part.”

If applicable, FMCSR imposes a heightened standard of care with respect to repair or maintenance than its state law counterparts, the federal regulation sets the applicable standard. 49 C.F.R. § 392.2

### **FMCSR Governing the Requirements for and Maintenance of Vehicle Equipment**

Specific regulations govern both the requirements for and sufficiency of component part equipment. The regulations entitled “Parts & Accessories Necessary for Safe Operation,” which are found in part at 49 CFR § 393, cover requirements for a multitude of equipment and should be consulted when a

specific component system is suspected of causing or substantially contributing to an accident. For purposes of this article, highlighted emphasis is placed on regulations governing lighting, brakes, wheels and tire systems only, even though the regulations cover requirements for additional parts and accessories. Specific regulations govern many additional component part systems and should be consulted as they become potentially relevant to any given claim.

- **Lighting Devices, Reflectors and Electrical Equipment**

49 CFR § 393.1 establishes the specific mandate that:

Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employer shall operate a commercial motor vehicle, or cause or permit to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

49 CFR § 393.9 generally requires that “all lamps on the vehicle be capable of operation at all times.”

49 CFR § 393.11 sets forth, in great detail, requirements of color, position and required lighting devices by type of commercial motor vehicle. Diagrams illustrating the locations of lighting devices and reflectors, by type and size of commercial motor vehicle, are shown in great detail in this section of the regulations. Review of these regulatory lighting requirements is advisable should inadequate lighting become a potential issue in a claim. 49 CFR § 393.11 through 49 CFR § 393.26.

- **Brakes**

49 CFR § 393.40 requires in subsection (a) “a bus, truck, truck tractor or a combination of motor vehicles must have brakes adequate to control the movement of, and to stop and hold, the vehicle or combination of vehicles.” Specific brake requirements are thereafter specified in some detail by 49 CFR § 393.41 through 49 CFR §393.55.

49 CFR § 393.48 provides the general rule that “. . . all brakes with which a motor vehicle is equipped must at all times be capable of operating.”

Of considerable significance is the regulation 49 CFR § 393.52, governing the precise requirements of brake performance. Under 49 CFR § 393.52, commercial motor vehicles, *inter alia*, must meet the following specific criteria:

1. Developing a braking force at least equal to the percentage of its gross weight specified in the table accompanying this regulation;
2. Decelerating to a stop from 20 miles per hour at not less than the rate specified in the table accompanying this regulation; and
3. Stopping from 20 miles per hour in a distance, measured from the point at which movement of the service brake pedal or control begins, that is not greater than the distance specified in the table accompanying this regulation.

- **Tires and Wheels**

Vehicle tires are subject to the requirements of specific motor carrier regulation 49 CFR § 393.75, which reads in part:

- (a) No motor vehicle shall be operated on any tire that (1) has body ply or belt material exposed through the tread or sidewall, (2) has any tread or sidewall

separation, (3) is flat or has an audible leak, or (4) has a cut to the extent that the ply or belt material is exposed;

(b) Any tire on the front wheels of a bus, truck, or truck tractor shall have a tread groove pattern depth of at least 4/32 of an inch when measured at any point on a major tread groove. The measurements shall not be made where tie bars, humps, or fillets are located; and

(c) Except as provided in paragraph (b) of this section, tires shall have a tread groove pattern depth of at least 2/32 of an inch when measured in a major tread groove. The measurement shall not be made where tie bars, humps or fillets are located.

Specific requirements for “wheels” are specifically provided for under 49 CFR § 393.205, which states:

(a) Wheels and rims shall not be cracked or broken;

(b) Stud or bolt holes on the wheels shall not be elongated (out of round); and

(c) Nuts or bolts shall not be missing or loose.

### **Specific FMCSR Requirements for Inspection, Repair and Maintenance**

In addition to specific requirements for equipment, the FMCSR requires directives and standards for inspection, repair and maintenance. 49 CFR § 396 provides specific requirements for inspection, repair and maintenance. 49 CFR § 396.1 places a broad duty of inspection and maintenance, to-wit:

Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection and maintenance of motor vehicles shall comply and be conversant with the rules of this part.

49 CFR § 396.3 requires “every motor carrier shall systematically inspect, repair and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control.” Additional requirements are “parts and accessories shall be in safe and proper operating condition at all times.”

49 CFR § 396.11 requires covered drivers to complete at the end of the day a “driver vehicle inspection report” that identifies the vehicle and lists any defects or deficiencies that would affect the safety of the vehicle’s operation or result in a mechanical breakdown. 49 CFR § 396.13 requires a legible copy of the last vehicle inspection report be carried in the power unit of each vehicle. Before each trip, a driver must review the last vehicle inspection report and be satisfied that the vehicle is in safe operating condition.

49 CFR § 396.17, entitled “Periodic inspection,” requires periodic owner-operator inspection of the vehicle in accordance with the terms of the regulation. 49 CFR § 396.21 details the specific requirements for the content of a written inspection report and requires that the original or a copy of the inspection report be retained by the motor carrier for a period of fourteen months from the date of the inspection report.

### **Requirements and Proof Necessary for Legal Liability**

Fundamental to any analysis of culpability for claims of mechanical failure is recognition of the legal theories available and the elements of proof required under each theory.

## Negligence

Proof of negligence is generally required in order to establish liability in the context of mechanical failure. The simple fact that an accident occurred is not sufficient to establish legal liability. It is the plaintiff who bears the burden of proof by a preponderance of the evidence. A leading scholarly treatise succinctly states the general rule as follows:

The mere fact that an accident or injury has occurred, with nothing more, is not evidence of negligence on the part of anyone . . . what is required is evidence, which means some form of proof; and it must be evidence from which reasonable men may conclude that, upon the whole, it is more likely that the event was caused by negligence than it was not.

PROSSER AND KEETON ON TORTS, § 39 (5th ed. 1984)

In the context of suspected equipment failure, courts have held there must be proof of negligence in order to establish liability. *Hertz v. Goza*, 306 So.2d 656, 660 (Ms. 1975), *Nichols v. International Paper Co.*, 644 SW 2d 583 (1983).

Proof of negligence in a mechanical failure case requires four essential elements of proof. The failure of proof on any one of these components will defeat a claim of liability. Universally, these elements of proof include the establishment of a legal duty or standard of care, a breach or violation of that duty, the showing by a preponderance of the evidence that the breach or violation proximately caused injury. *Hampton v. Waste Management of Michigan, Inc.*, 601 NW 2d 1720 (Mich. App. 1999); *Shofer v. Stuart Hack Co.*, 723 A 2d 481 (Md. App. 1999); *Arnona v. Smith*, 749 So.2d 63 (Miss. 1999); *Groce v. Kansas City Spirit, Inc.*, 925 SW 2d 880 (Mo. App. 1996); *Smith v. Kerns*, 931 P

2d 717 (Mont. 1997); *Divis v. Clarklift of Nebraska, Inc.*, 590 NW 2<sup>nd</sup> 696 (Neb. 1999).

### **Establishment of Standard of Care**

By enactment of extensive federal regulations targeted both with a broad brush and in the specific, Congress has set forth specifications and standards for commercial vehicle equipment, its inspection, maintenance, and repair. The standards are regarded as minimal standards in most states. When it is alleged that the failure of commercial vehicle equipment is the proximate cause of an accident, these regulations provide an indispensable beginning point for analysis. A review of relevant state statutes and common law decisions affecting requirements for equipment, its inspection, maintenance and repair is likewise essential. In some cases, state statute or common law decisions may prescribe a heightened standard of care. It follows that strict abidance of a particular statute or regulation does not automatically satisfy the defendant's duty of care. One such example of this principle is reflected in the reported decision: *Nichols v. Coast Distrib. Sys.*, 621 NE 2d.738 (Ohio 1993). In that case, the Supreme Court of Ohio determined that, while strict adherence to state statute mandating that a truck not park within 20 feet of an intersection crosswalk was complied with by the defendant, a broader common law duty established the standard of ordinary care under the circumstances. In so doing, the court reasoned:

Although violation of a statutory duty may constitute negligence, compliance with the statute does not necessarily establish ordinary care. As a general rule, the standard of care prescribed by a statute is a minimum standard of care. One who merely complies with a statute may still be found

negligent, in certain situations, for failing to take the additional precautions that a reasonable person would.

*Id.* at 740; *citing* 57A AMERICAN JURISPRUDENCE 2d (1989) 674, Negligence, Section 752; RESTATEMENT (SECOND) OF TORTS (1965) 39, Section 288C.

Courts from other jurisdictions have affirmed this principle. *Tidewater Marine, Inc. v. Sanco Intern, Inc.* 113 F. Supp. 2d 987, 998 (E.D. La. 2000); *Kentucky Fried Chicken of Cal., Inc. v. Superior Court*, 927 P.2d 1260, 1266 (Cal. 1997); *Lee v. Corregedore*, 925 P.2d 324, 342 (Hawaii 1996); *Cipri v. Bellingham Frozen Foods, Inc.*, 596 N.W.2d 620, 628 (Mich. 1999).

### **Proximate Causation**

It is also a requirement that any breach of the standard of care proximately cause the accident. The case of *Tack v. Reid*, 419 P.2d 453 (N.M. 1966), provides helpful insight with respect to this principle. In that case, the defendant was driving a pickup truck when a piece of farm equipment collided with the plaintiff's automobile parked parallel to the highway. Mechanical failure resulting from the breaking of a bolt caused a piece of farm equipment to swerve from side to side, ultimately resulting in a collision between the farm machine and the plaintiff's parked automobile.

The court found that the defendant technically violated the traffic regulations including the transporting of an over-wide load upon the highway without having secured an authorized permit, and the failure to place warning flags upon the equipment being towed. Despite admitted violations of these statutory regulations, the court in holding that the plaintiff did not meet its burden

of establishing a causal connection between any such violations and the ultimate accident provided the following analysis:

From our examination of the record, we find no causal connection between the claimed acts of negligence and the collision. The trial court, likewise, found no such causal connection as is indicated by its expressed finding that neither the width of the farm implement, the absence of flags, or the failure to have a permit, single or collectively were the proximate cause of the collision.

*Id.* at 425.

Other cases have upheld this fundamental principle in the context of trucking cases. *Mansfield vs. Shippers Dispatch, Inc.*, 399 N.E. 2d 423 (Ind. App. 1980); *M & M Pipe & Pres. Vessel Fab., Inc. v. Roberts*, 531 So.2d 615 (Miss. 1988); *Novander v. City of Morris*, 537 N.E. 2d 1146 (1989); *Southwest Forest Industries. v. Bauman*, 659 S.W.2d 702 (Tex. 1983).

### **Negligence Per Se**

The doctrine of negligence per se has been utilized in some instances to establish negligence as a matter of law. Under the concept of negligence per se, a standard of conduct imposed by a statute or regulation may define the conduct of reasonable prudent person. Under a negligence per se theory, it is not necessary for a jury to determine what a reasonably prudent person would have done under a particular set of circumstances, but rather the focus becomes on whether or not the defendant violated a statute. If there was a violation of a regulation or a statute, the violation was the proximate cause for the accident,

and the plaintiff thereafter suffers damages, then actionable negligence has been proven entitling the plaintiff to recover.

In a potential negligence per se case, the threshold inquiry becomes twofold; namely, whether the plaintiff belongs to the class that the statute was intended to protect and whether the plaintiff's injury is the type the statute was designed to prevent. *Omega Contracting, Inc. v. Tores*, 191 S.W.3d 828 (Tex. 2006); *Estate of Hazelton Exrel Hester v. Cain*, 950 So.2d 231 (Miss. 2007); *Whaley v. Perkins*, 197 S.W.3d 665, (Tenn. 2006); *Brazier v. Phoenix Group Management*, 633 S.E.2d 354 (GA. App. 2006); *Raymaker v. American Family Mut. Ins. Co.*, (Wis. App. 2006).

Courts have addressed specifically the applicability of FMCSR in the context of negligence per se. The recent case of *Omega Contracting, Inc. v. Tores*, 191 S.W.3d 828 (Tex. 2006), provides some insight into the analysis. The Texas court provided meaningful analysis of the Federal Regulations to an accident involving a tractor trailer, whose tire separated from the tractor unit and allegedly precipitated a wreck involving several tractor trailer rigs. Specific allegations targeted an alleged specific failure to comply within FMCSR regulations 49 CFR § 393.205, § 396.3(a) and 396.13. The Texas court specifically refused to apply 49 CFR § 393.205, requiring "nuts or bolts shall not be missing or loose" as an indicator of negligence per se when it reasoned:

. . . [T]he requirement that lug nuts shall not be 'loose' does not put the public on notice by clearly defining the required conduct because the regulations do not define the word 'loose' nor specify any particular amount of torque.

In this context, the word ‘loose’ is vague and not susceptible to precise meaning. It does not put the public/or in this case the owners, operators, and drivers of commercial vehicles on notice of what conduct is prohibited or required. [C]laimant is correct in observing that we must give ‘loose’ its ordinary definition of ‘not rigidly fastened or securely fastened,’ but that definition does not make the regulation any more precise. We hold that section 393.205(c)’s requirement that nuts shall not be loose is not an appropriate standard for applying negligence *per se*.

*Id.* at 840.

Also, the court in addressing the applicability of §§ 393.3(a), and 396.13 regarding the general requirement of repair to “systematically inspect, repair, and maintain. . .” its vehicle reasoned:

Likewise, §§ 393.3 and 396.13 simply require a motor carrier to maintain motor vehicles ‘in safe and proper operating conditions’ and a driver to ‘[b]e satisfied that a motor vehicle is in safe operating condition.’ Determining what is or is not safe in these circumstances bears practically no difference from what is or what is not reasonable. We hold that §§ 393.3 and 396.13 are not appropriate basis for a negligence *per se* instruction. The trial court erred by submitting these instructions to a jury. [citations omitted]

*Id.* at 840–41.

### **The Doctrine of *Res Ipsa Loquitur***

The phrase “*res ipsa loquitur*” is derived from Latin and means “the thing speaks for itself.” The doctrine has survived in some procedural form in American jurisprudence, although its practical application may vary from state to state.

Generally speaking, the doctrine creates an inference of negligence based on the facts of an occurrence alone, despite the fact that no direct evidence

exists as to the precise cause of the accident. This inference or presumption of negligence may then be refuted from a defendant by affirmative proof that the injury was not due to a lack of due care on its part.

The doctrine is potentially available whenever a mechanical part produces an injury, has been under the control and management of the defendant, and is an occurrence, which, in the ordinary course of events, does not occur if due care has been exercised. A good illustration of the requirement of “control and management” is presented by the case of *Avis Rent-A-Car Sys. v. Standard Meat Co.*, 288 A.2d 243 (D.C. App. 1972). Under the facts of that case, the defendant lessor had sole control of the tractor rig for the purposes of service, maintenance and repair. The doctrine of *res ipsa loquitur* was asserted as the result of sudden brake failure that caused the tractor trailer rig he was driving to hit a bridge.

The court held that the requisite of control had not been met in order to apply the doctrine of *res ipsa loquitur* to the facts. The court, in holding that the lessee’s driver had been in complete physical control of the tractor trailer for nine to 10 hours prior to the accident, reasoned:

It has been long established in this jurisdiction that the rule of *res ipsa loquitur*. . . arises in a case where the accident is such that, in the ordinary course of events, it would not have happened except through the negligence of the defendant, and where facts relating to the accident are peculiarly within his knowledge: In such a case, from the mere happening of the accident, a presumption of negligence arises, which is not satisfactorily explained by the defendant, authorizes a recovery. [citations omitted]

*Id.* at 246.

*Res ipsa loquitur* is a doctrine to be considered to assist in proof of negligence in mechanical failure cases. All essential elements must be present for the doctrine to apply. The doctrine has been applied in the following decisions involving suspected mechanical failure: *Swiney v. Malone Freight Lines*, 545 S.W.2d 112 (Tenn. App. 1976); *Cheung v. Ryder Truck Rental, Inc.*, 595 So.2d 82 (Fla. App. 1992); *Covey v. Western Tank Line, Inc.*, 218 P.2d 322 (Wash. 1950).

Contrariwise, the doctrine has been rejected in the following decisions involving mechanical failure: *Pattle v. Wildish Constr. Co.*, 529 P.2d 924 (Or. 1974); *Crider v. Infinger Transp. Co.*, 148 S.E.2d 732 (S.C. 1966); *Bess v. Herrin*, 831 S.W.2d 907 (Ark. 1992); *Evans v. Heard*, 442 S.E.2d 753 (Ga. 1994); *Ex parte Crabtree Indus. Waste, Inc.*, 728 So.2d 155 (Ala. 1998).

## **Conclusion**

Claims involving alleged mechanical failure require familiarization with FMCSR, state statutes, and common law precepts endemic to the jurisdiction where the accident occurred. The facts of each individual accident should be considered in light of the prevailing standard of care for that jurisdiction as may be established by regulation and state law. FMCSR is incorporated by reference in many state statutes. These regulations provide minimum standards for adherence regarding equipment sufficiency, inspection, repair and maintenance. Proof of negligence requires the establishment of a duty prescribed by a required standard of care, a breach or violation of that duty, proximate causation and ultimate damages. Proof

of negligence may be facilitated in some instances by the doctrines of negligence per se and *res ipsa loquitur*.

Robert A. Biggs, III is an attorney with Robinson, Biggs, Ingram, Solop & Farris, PLLC, in Jackson, Mississippi, where he handles a broad range of litigation for defendants, including insurance coverage issues, product liability, catastrophic personal injury, trucking, professional negligence and toxic tort cases. He is a certified mediator for the Mississippi State Bar Association, a former president of the Mississippi Defense Lawyers Association, and is a certified panel arbitrator for the American Arbitration Association.