

Who Is Ultimately Responsible for Proper Loading of a Truck?

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One of the most common defenses to carrier liability under Carmack claims is “Act of the Shipper”. This recent case places liability on the carrier, where the carrier had opportunity to inspect the load and failed to properly secure it.

*Spence v. ESAB Group, Inc.,
2009 US Dist. LEXIS 95348.*

A truck driven by Plaintiff, Spence, overturned as he rounded a curve on an interstate highway. Spence was hauling welding supplies manufactured by Defendant, ESAB Group. The supplies were loaded onto Spence’s trailer by employees of ESAB. Spence claimed that ESAB was negligent in loading and securing the welding materials. ESAB claimed the responsibility was on the driver, Spence, and that ESAB owed no duty of care to secure the cargo.

Spence admitted being aware of federal regulations requiring that cargo be adequately secured. In addition to federal regulations, the Texas Commercial Motor Vehicle Drivers Handbook requires a driver to make sure that the cargo is properly secured and specifies blocking and bracing as one of the techniques to be used. Spence had transported welding supplies from ESAB on five prior occasions with no problem. On prior occasions, he had used load locks (prevents forward and backward motion of freight) and occasionally load stars which prevents lateral shifting of freight. It was not clear in this accident whether load stars had been used. Spence complained about the loading to ESAB but did not refuse to accept the load, as he could have. Spence did not demand or ask that the cargo be loaded differently. Unlike every previous occasion, Spence did not secure the cargo with a load lock because he did not have one with him. Spence did not ask that the trailer be loaded differently for that reason. In fact, Spence inspected the cargo and accepted it by signing the bill of lading.

The crux of the dispute between the parties was ESAB’s insistence that it owed no duty to Spence to secure the cargo, and Spence’s assertion that ESAB

did owe him a duty. The Court found in favor of ESAB and against Spence citing the federal regulation which places the duty of proper securement squarely on the driver. 49 CFR 390 -393. In fact, upon review of the federal regulations, the Court stated that the regulations imposed duty on the driv-

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er to properly distribute and adequately secure the cargo from shifting so that it does not adversely affect the stability of the vehicle. It stated, “Thus under federal law, the responsibility for insuring that cargo loaded onto a trailer is properly secured rests squarely on the driver, not the shipper. In fact, shippers, like ESAB, are not subject to the federal regulations.”

Since Spence inspected the cargo after it was loaded and had opportunity to properly secure it, and failed to do so, he was found liable.

The Court also cited common law cases which follow the same rule as the federal regulations. Other theories of liability were asserted which are not relevant to the foregoing discussion.

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