

**Lasecki v Murnyack**

2016 NY Slip Op 30770(U)

April 29, 2016

Supreme Court, Wayne County

Docket Number: 77325/2015

Judge: Daniel G. Barrett

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court held in and for the County of Wayne at the Hall of Justice in the Town of Lyons, New York on the 20<sup>th</sup> day of April, 2016.

PRESENT: Honorable Daniel G. Barrett  
Acting Supreme Court Justice

STATE OF NEW YORK  
SUPREME COURT COUNTY OF WAYNE

RONALD T. LASECKI AND  
MARY S. LASECKI

Plaintiffs,

-vs-

DECISION  
Index No. 77325

2015

PAUL MURNYACK AND  
D&D FREIGHT SYSTEMS, INC.,

Defendants.

The Plaintiffs have filed a motion to limit proof at the time of trial. The Defendants have filed a separate motion requesting that the trial be bifurcated. This Decision encompasses both applications.

MOTION IN LIMINE

In their application, the Plaintiffs requested that all testimony pertaining to certification of the operator of the over-the-rail mower be precluded. The transcripts of three eye witnesses to this accident, Ronald T. Lasecki, Donald C. Smith and Paul Murnyack were provided. The transcripts provided a very thorough description of the accident.

On June 3, 2013, Plaintiff was assigned the task of mowing the side of Route 104 in Sodus. The Department of Transportation has a shop in Sodus near the intersection of Route 104 and Ridge Road. Plaintiff was engaged in on the job training with his over-the-rail mower. The over-the-rail mower is a tractor with a mowing unit attached to it. The tractor is adorned with lights and flags. Smith was assigned the task of the operation of the "crash truck". It, likewise, is outfitted with lights and flags. Their work assignments were doled out by their foreman. The men began working on Route 104. Plaintiff was operating the mower and Smith was following behind him driving the truck. They were on the north side of Route 104 working in a westward direction when the over-the-rail mower developed problems with the joy stick control which operated the mowing unit. The operation of the tractor was not affected but the control of the mowing unit was affected. A call was placed to the shop to report the problem, they were instructed to bring the mower back to the shop for repair. Plaintiff secured the mowing unit to the tractor with a chain. He then proceeded to cross Route 104 and headed in the opposite direction, east. Plaintiff testified he was traveling east not in the east bound lane of Route 104 but to the south of the white line (fog line) marking the east bound lane from the shoulder of Route 104 when the contact between vehicles occurred. Mr. Smith testified that the tractor mower was not in the eastbound lane at the time of the accident. At the time of the occurrence of the accident, Mr. Smith was outside his truck on the north side of the road pointed west. Mr. Murnyack testified he was operating the tractor trailer about 30 mph and observed the rear wheel of the tractor on the white line. He testified the wheel weights on the tractor extended over the white line six inches to a foot.

Operation certification - Mr. Lasecki and Mr. Smith did not possess a certification from their employer to operate the tractor mower. According to the testimony, before being certified to operate the tractor mower instruction is given on pre and post operation checks of the equipment. This includes greasing it, driving it, and operating the mower controls. Plaintiff had successfully completed that stage. The next phase is on-the-job training. This is operating the tractor in actual mowing conditions. Plaintiff was in that phase of the training process. He used the mower in actual mowing conditions prior to the date of the accident. Over a period of two to three weeks he operated the mower.

The testimony revealed that while one is in the on-the-job training phase one should be accompanied by a certified operator of the mower. The over seeing person drives a truck. Mr. Smith accompanied Plaintiff in the truck but he was not a certified operator of the mower. Plaintiff requests that all testimony pertaining to certification be precluded from the trial.

At the time of the accident the tractor was not engaged in actually mowing the roadside. The tractor was returning to the shop. It was on the opposite side of the road from where the mowing had occurred. At this juncture we have a tractor being operated by an individual with permission of his employer. The operator has no known physical impairment which would affect his ability to operate the tractor. The issue the trier of fact has to determine is who was responsible for the accident which occurred between two vehicles on east side of Route 104. The jury will be charged with the appropriate vehicle and traffic law sections.

As a rule, courts admit rules and regulations governing safety practices to assist the jury in establishing a proper standard of care. Where a company's rules and standards are clearly more demanding than the law requires, however, admitting evidence that the company violates it own regulations may be unfairly prejudicial.

“While internal operating rules may provide some evidence of whether reasonable care has been taken and thus some evidence of the defendant's negligence or absence thereof, such rules must be excluded, as a matter of law, if they require a standard of care which transcends the area of reasonable care...”

Clarke v New York City Transit Authority, 174 A.D. 2d 268, 580 N.Y.S. 2d 221 (1<sup>st</sup> Dep't 1992).

The Court is not persuaded by Martin v Alabama 84 Truck Rental, Inc., 38 A.D. 2d 577 (2d Dep't 1971) in which it was found error not to admit the license into evidence which had a vision related restriction. There were no physical restrictions on Plaintiff relative to operating the tractor. Nor is the Court persuaded by Coogan v Torrissi, 47 A.D. 3d 669 (2d Dep't 2008) involving a driver with a learner's permit driving without

a licensed adult driver. In the learner's permit situation, the adult driver with the license is seated in the vehicle next to the operator with the learner's permit. In the case at bar the certified operator is in another vehicle (the truck following the mower). In addition, the Vehicle and Traffic Law requires the adult licensed driver to be in the vehicle to supervise the driver possessing the learner's permit.

The Court will not permit testimony regarding the certification of Mr. Lasecki or Mr. Smith or anyone else relative to the operation of the over-the-rail mower.

### BIFURCATION OF TRIAL

The Defendants have moved for a bifurcated trial. In support of this application, Defendants point out that Plaintiffs have served a Second Supplemental Bill of Particulars dated January 27, 2016, and a revised Second Supplemental Bill of Particulars dated March 1, 2016. Defendants indicated an independent neurological exam has been scheduled. This has absolutely no bearing on this application.

Pursuant to 22 NYCRR §202.42(a), judges are encouraged to order a bifurcated trial where it appears that bifurcation may assist in clarification or simplification of issues and a fair and more expeditious resolution of the action. The jury in this case has to determine liability between the operators of two vehicles headed east on Route 104 in Sodus on a rain free morning on June 3, 2013. The facts of the case are not complex. We have three eye witnesses whose testimony has been summarized in this Decision. It is foreseeable that the liability portion of this case will be brief.

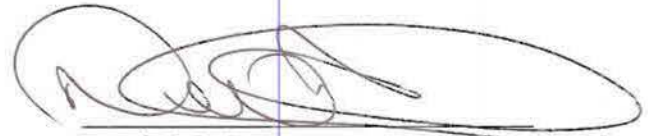
Per this motion, Plaintiffs' have divulged part of the rationale of their liability expert. Plaintiffs' expert opined Defendants' vehicle was traveling at least 55 MPH and Defendant testified he was traveling about 30 MPH at the point of contact.

Based on the submitted transcripts, it does not appear that a defense verdict is likely which would obviate the need for a second trial. The second trial would commence immediately after the liability trial with the same jury. Therefore bifurcation would not result in a more expeditious resolution of the actions (see Carpenter v County of Essex, 67 A.D. 3d 1106, [3d Dep't 2009]).

As addressed earlier, a bifurcation would not assist in a clarification nor simplification of the issues and a fair and more expeditious resolution of the action (see Turnmire v Concrete Applied Tech. Corp., 56 A.D. 3d 1125 [4<sup>th</sup> Dep't 2008]).

The application for a bifurcated trial is denied.

Dated: April 29, 2016  
Lyons, New York



Daniel G. Barrett  
Acting Supreme Court Justice

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