

TRACY MORGAN V. WAL-MART: WHEN THE LAUGHING STOPS!

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Tracy Morgan is a well known comedian and actor. After performing in a stand-up comedy show, Mr. Morgan and others rode in a limo-van away from the show towards their destination. As the limo-van apparently slowed due to traffic congestion, it was alleged that a Wal-Mart truck struck the limo-van, in which Mr. Morgan was an occupant, in the rear seriously injuring Mr. Morgan and others. One of the occupants died. Mr. Morgan brought a civil suit against Wal-Mart (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014). Accordingly, this case garnered substantial national exposure from the media. Efforts have been made to ensure the accuracy of the facts. The facts were obtained from court documents and other resources. This case is appropriate for a graduate or undergraduate Business Law class, Employment Law class, or Project Risk Management class.

THE BACKGROUND OF WAL-MART

Wal-Mart Stores, Inc. was incorporated in the state of Delaware. however, Bentonville, Arkansas, was the location of its principal place of business. Wal-Mart stores and facilities were located across the United States globally. Wal-Mart Transportation LLC was an integral facility of Wal-Mart Stores, Inc. (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014).

Wal-Mart began as a low-cost retailer located in Rogers, Arkansas. By 2015, the retail giant had approximately 2.2 million workers across the globe. Notably, 1.4 million employees were located in the United States (Wal-Mart Corporate & Financial Facts, n.d.).

As a hallmark of its business, the company considered providing daily low-cost prices as an important ingredient of its operational strategy. Wal-Mart had more than 11,500 retail units located in 28 countries (Our Business, n.d.). In addition, it had e-commerce websites in 11 countries. The company operated several facilities including Wal-Mart Supercenters, Wal-Mart Discount Stores, Wal-Mart

Neighborhood Markets and Distribution Centers. Further, it operated a fleet of trucks and drivers which moved the goods to the appropriate locations (Our Business, n.d.). Its fleet had approximately 7,400 drivers (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014).

Wal-Mart sales grew to \$482.2 billion in sales for the fiscal year ending in January 2015. In addition, Fortune 500 in 2014 ranked Wal-Mart as the number one company in the world by revenue (Wal-Mart Corporate & Financial Facts, n.d.).

THE CASE

Mr. Kevin Roper was 35 years old and lived in Jonesboro, Georgia. He was stated as being employed by Wal-Mart as a truck driver (Dooley, 2015). Mr. Roper was to begin his shift from his base in Smyrna, Delaware. While on his shift, Mr. Roper was required to make certain drop-offs and pickups at Wal-Mart locations along the route. Mr. Roper drove a 2011 vehicle for Wal-Mart which was described as *truck-tractor* and *semi-trailer* blend which was white and made by Peterbilt (hereafter, referred to as “truck”). According to the National Transportation and Safety Board (NTSB), prior to starting his shift, Mr. Roper drove his personal vehicle for 12 hours from Georgia to Delaware. Then he began his 14-hour shift in the Wal-Mart truck, in the normal course of business, from Smyrna, Delaware (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014; Dooley, 2015).

According to the federal regulations at the time, truck drivers could work up to 14 hours a day. However, they were only allowed to drive the vehicle for a total of 11 hours. In addition, drivers were required to have at a minimum ten hours off between work periods to rest (Trucker in Tracy Morgan Crash Hadn’t Slept, Officials Say, 2014).

Tracy Morgan was a noted comedian and actor. He had completed a comedy performance in Delaware at the Dover Downs Hotel & Casino (hereafter, referred to as Dover Downs) in Delaware. The comedy performance was part of his United States tour called “Turn It Funny.” Other comedians performed in the show as well. (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014).

After the performance, Dover Downs employed Atlantic Transportation who provided transportation for Mr. Morgan and several other show participants to their destination. Atlantic Transportation utilized a 2012 black Mercedes Sprinter (hereafter, referred to as “limo-van”) to carry Mr. Morgan and the other show participants. The limo-van was driven by a driver from Atlantic Transportation and they departed Dover Downs at approximately 11:30 pm on June 6, 2014 (Tracy

Morgan et al. v. Wal-Mart Stores Inc., et al., 2014). It was noted that none of the occupants of the limo-van wore seat belts (Dooley, 2015).

The limo-van and its occupants continued to proceed North on the New Jersey Turnpike near Cranbury, New Jersey at just about 12:54 AM on June 7, 2014. There was congestion on the highway and apparently the limo-van slowed its rate of speed down accordingly (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014).

Mr. Roper, the Wal-Mart truck driver, also proceeded on the New Jersey Turnpike near Cranbury, New Jersey during this time period. As his vehicle neared the 71.4 milepost, it was noted that the traffic had allegedly reduced speed on the New Jersey Turnpike because of the road work. In addition, because of the road work, the speed limit was decreased from 55 miles-per-hour to 45 miles-per-hour at this stretch of the highway. There were signs at various locations noting the decrease in speed (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014). Further, a couple of the lanes on the New Jersey Turnpike were shut-down around the road work near milepost 71.4. There was also a sign providing prior notice to the northbound traffic that the lane ahead was closed (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014).

THE ACCIDENT

Mr. Roper, the Wal-Mart truck driver, was proceeding at 65 miles-per-hour approximately one minute prior to reaching the congested area. This was 20 miles-per-hour over the adjusted speed limit of the construction zone of 45 miles-per-hour. His vehicle made contact with the rear of the limo-van (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014). The limo-van accordingly made contact with additional vehicles. Then, the limo-van turned over on its side prior to coming to a halt on its side on the New Jersey Turnpike (Dooley, 2015). The limo-van was facing east resting across a couple of lanes.

It took approximately 40 minutes for some of the occupants to be removed from the vehicle by the first responders. This is due to the fact that the limo-van had been modified. It was stated that due to the customized vehicle, the occupants inside the vehicle were not able to escape until rescue groups assisted them. A National Traffic Safety Board (NTSB) investigator stated that he wondered what would have been the fate of the occupants if the vehicle had erupted into fire (Dooley, 2015).

Unfortunately, one of the occupants died due to the accident. Mr. Morgan and others received serious injuries. Mr. Morgan, who was 45 years old at the time, sustained numerous broken bones as well as a very traumatic damage to his brain

(Dooley, 2015). More specifically, Mr. Morgan sustained hurtful injuries to his ribs and his nose (Trucker in Tracy Morgan Crash Hadn't Slept, Officials Say, 2014). His rehabilitation would require numerous operations, substantial medical care, and a great deal of long-term rehabilitation (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014).

It was also noted that Mr. Roper was currently in the thirteenth hour of his 14-hour shift. This was after he had driven for 12 hours from Georgia to Delaware *prior* to beginning his shift (Dooley, 2015; Trucker Charged with Manslaughter in Tracy Morgan Accident Case, 2015). As stated by an NTSB senior accident investigator, the tiredness and exhaustion of Mr. Roper contributed to the accident. It was estimated that Mr. Roper had been awake for 24 hours straight (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014). Some reports stated that he had been awake for as many as 28 straight hours (Dooley, 2015).

DECISION TO SUE

This situation of Wal-Mart being involved in vehicular accidents was not unique. The retail giant over the previous two years had been involved in 380 crashes. These accidents produced nine deaths and 129 injuries (Trucker in Tracy Morgan Crash Hadn't Slept, Officials Say, 2014).

As a result of this accident, there were those who were extremely concerned about Mr. Morgan's recovery possibilities. Further, if he did recover, there were concerns as to the quality of his life. Regardless, the road to this recovery was projected to be long and difficult (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014).

There was an additional concern for Mr. Morgan. How would this accident affect him as a comedian and a performer, a career in which he had invested a great deal of time (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014)?

Due to his substantial injuries, the projected difficult extended recovery time, and the future unknown difficulties, Mr. Morgan decided to sue (Tracy Morgan et al. v. Wal-Mart Stores Inc., et al., 2014). He sought compensatory and punitive damages. The damages would be in addition to other damages and fees.

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EXHIBIT 1

Clarification of Terms

Intentional Infliction of Emotional Distress

This tort is defined as “an intentional act that amounts to extreme and outrageous conduct resulting in severe emotional distress to another.” “To be actionable, the act must be extreme and outrageous to the point that exceeds the bounds of decency accepted by society.” “In a few jurisdictions, a physical manifestation of the mental suffering is required for the plaintiff to recover.”

Source(s): (a) Cross, F.B. & Miller, R.L. (2015, 2012), p. 285. *The legal environment of business* (9th ed.). Mason, OH: South-Western, Cengage Learning.
(b) See also, Garner, B. A. (Eds.) (2010). *Black’s law dictionary*, (9th ed), p. 693. West, a Thomson Reuters Business.

Negligence

“The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others’ rights.”

“In order to succeed in a negligence action, the plaintiff must prove each of the following items”:

1. “Duty. The defendant owed a duty of care to the plaintiff,”
2. “Breach. The defendant breached that duty,”
3. “Causation. The defendant’s breach caused the plaintiff’s injury.”
4. “Damages. The plaintiff suffered a legally recognizable injury.”

Source(s): (a) Cross, F.B. & Miller, R.L. (2015, 2012), pp.294-296. *The legal environment of business* (9th ed.). Mason, OH: South-Western, Cengage Learning.
(b) See also, Garner, B. A. (Eds.) (2010). *Black’s law dictionary*, (9th ed), p. 890. West, a Thomson Reuters Business.

“Respondeat Superior”

The doctrine holding an employer or principal liable for the employee’s or agent’s wrongful acts committed within the scope of the employment or agency

Source(s): See also, Garner, B. A. (2010). *Black’s Law Dictionary*, (9th ed), p. 1118.

Comparative-Negligence Doctrine

The comparative-negligence doctrine notes that “the principle that reduces a plaintiff’s recovery proportionally to the plaintiff’s degree of fault in causing the damage, rather than barring recovery completely. Most states have adopted the comparative-negligence doctrine.”

Source(s): See also, Garner, B. A. (2010). *Black’s Law Dictionary*, (9th ed), p. 258-59. .

EXHIBIT 2

Summary of Hours of Service Regulations

Hours-Of-Service Rules (Property-Carrying Drivers)

- 11-Hour Driving Limit: May drive a maximum of 11 hours after 10 consecutive hours off duty.
- 14-Hour Driving Limit: May not drive beyond the 14th consecutive hour after coming on duty, following 10 consecutive hours off duty. Off-duty time does not extend the 14-hour period.

Source: Federal Motor Carrier Safety Administration (FMCSA)