



BY CHRIS COTTER

Partner, Roetzel & Andress, LPA
ccotter@ralaw.com | 330-849-6756

Lifting the Fog on Extreme Caution Driving

Inclement weather such as rain, snow, and fog is a constant feature of motor vehicle travel. During poor conditions, commercial truck drivers and their dispatchers must use discretion when deciding whether travel should continue and in what manner.

Federal Motor Carrier Safety Regulations (49 C.F.R. § 392.14) specifically address driving in adverse weather conditions and require commercial drivers to exercise extreme caution. How to interpret extreme caution is subject to debate. The regulation states the driver shall reduce speed when adverse weather conditions are present and cease operations when conditions become sufficiently dangerous.

However, some courts have interpreted extreme caution as placing a heightened standard of care on the commercial driver, requiring greater vigilance and attentiveness than a passenger car driver.

Exercising Vigilance

The regulation is triggered when “hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction.” While the list of weather conditions is meant to be broad, extreme caution is not required unless those conditions “affect visibility or traction.”

For instance, if a commercial driver

encounters a wall of fog upon rounding a curve on a mountainous highway, Part 392.14 would not be triggered until the moment the driver can reasonably observe the fog.

Once the regulation is triggered, what must the commercial driver do to use caution? The regulation instructs that “speed shall be reduced” when such conditions exist and, if conditions become sufficiently dangerous, the vehicle’s operation “shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated.”

These portions of the regulation are intentionally imprecise and open ended because evaluating the severity of weather conditions and deciding the appropriate response are best left to the driver’s discretion.

The Federal Motor Carrier Safety Administration (FMCSA) acknowledges this view in its official guidance, and it comports with the notion that the driver is the “captain of the ship”, a view many motor carriers adapt regarding a driver’s decision-making authority while on the road.

Travel does not need to cease because adverse weather conditions are present. Part 392.14 requires the driver to stop not simply when visibility or traction affect travel, but when the impairment of visibility or traction is sufficiently dangerous.

Determining Liability

There is disagreement over whether extreme caution imposes a heightened standard of care on commercial drivers, above and beyond the typical standard of care for the operation of motor vehicles, known as the reasonable care standard. The issue arises when an accident occurs in inclement weather and the injured party brings a lawsuit against the motor carrier and commercial driver. The difference between a heightened standard and a reasonable care standard can have a drastic effect on whether the carrier is liable for causing the accident.

Part 392.14 does not state extreme caution is a heightened standard. Further, the FMCSA has not taken that position. Yet, some courts have determined that Part 392.14 holds commercial motor vehicle drivers to a higher standard of care any time adverse weather conditions affect visibility or traction.

The good news is that many courts decline to impose the heightened standard of care when applying the extreme caution regulation. ■