

## **New Lawsuit Tests Whether Best-in-Class Safety Technology is New Standard of Care**

**By Chris Cotter and Moriah Cheatham-Williams**

A negligence suit took an unprecedented turn when a Pennsylvania Federal Court allowed strict liability claims to be brought against a trucking leasing company for its failure to outfit its truck with additional safety features.

Judge Kim R. Gibson of the U.S. District for the Western District of Pennsylvania decided that Plaintiff Beatrice Shimmel, guardian of her incapacitated son John Shimmel, adequately pleaded claims based on the theory that the truck leasing company failed to outfit its truck with collision avoidance and automatic braking systems. The Court's ruling permits Plaintiff to pursue this theory in discovery and potentially at trial.

The lawsuit arises from an accident that occurred in 2017, when a commercial tractor owned by Rush Truck Leasing and leased to Express Light Trucking was involved in a collision on a Pennsylvania state route. The driver of the commercial tractor attempted to make an immediate stop for a vehicle that had stalled ahead in its lane. Unable to stop in time, the vehicles collided, sending the commercial tractor into oncoming traffic. A motorcyclist in the oncoming traffic, John Shimmel, attempted to avoid the collision by jumping off his motorcycle. When Shimmel landed on a guardrail, he sustained serious injuries including incapacitation.

In the subsequent Complaint, the plaintiff presented two counts against the truck leasing company, Rush Truck Leasing: (1) product negligence, and (2) strict liability based on a design defect. The legal theory underlying each of these counts was the fact that the commercial vehicle did not have collision avoidance and automatic braking systems, and the lack of these systems proximately caused Shimmel's injuries. Rush Truck Leasing filed a Motion to Dismiss both counts, arguing that the two claims are nothing more than "negligent failure to market" claims, which are not recognized in Pennsylvania against truck leasing companies. A negligent failure to market claim seeks to hold persons and entities responsible for breaching a duty to educate customers with respect to a product's safety features, or for breaching a duty to market their products with certain safety features.

Judge Gibson disagreed. The Court determined that a reasonable person could find that "the likelihood and severity of the potential harm from the product would outweigh the costs of taking precautions." The Court explained that plaintiff sufficiently alleged the commercial tractor was defective when she alleged that the vehicle (1) lacked additional safety features, (2) the lack of additional safety features allowed the truck to cross into Shimmel's lane causing his injuries, and (3) the defect existed at the time the product left Rush's control, meeting the elements of a design defect claim.

Because Rush could have installed the additional safety features prior to leasing the truck to Express Light Trucking, the Court determined that a "reasonable person could plausibly conclude that installing those systems on the truck was less burdensome than the potential for harm of not installing those systems." The Court further explained that it was plausible to conclude that, if the truck had possessed these additional safety features, Shimmel would not have sustained injuries. For these reasons, the Court declined to dismiss the plaintiff's strict liability claims based on a design defect.

As for the plaintiff's product negligence claim against Rush, the Court concluded the product negligence claim was not duplicative of the design defect claim. The plaintiff had alleged that Rush did not educate Express Light Trucking about additional safety features, and that it acted negligently by failing to equip the truck with collision avoidance and automatic braking systems before leasing the truck to Express Light Trucking. With these allegations in the Complaint, the Court concluded that plaintiff's claim for product negligence against Rush extends "beyond purely a negligent failure to market." Judge Gibson state that because plaintiff alleges that Rush was negligent in leasing, plaintiff's allegations support a claim of product negligence. For this reason, the Court declined to dismiss the plaintiff's product negligence claim.

The decision is troubling for a couple of reasons. The costs to truck leasing companies to outfit their fleet with best-in-class technology would drive up costs in the industry, which in turn would be passed on to consumers. Moreover, many trucking companies do not lease vehicles, but own their own vehicles, and decisions like the one in *Shimmel* could force these companies to purchase vehicles with best-in-class technology or to otherwise outfit their fleet with such technology. This would place additional strains on the many small- and mid-sized motor carriers who transport cargo across the country.

The *Shimmel* case will be important to follow as it progresses. The plaintiff is now permitted to pursue her legal theory in discovery and potentially at trial. The Court's ruling on the anticipated Motion for Summary Judgment could give further insights into where the law may be headed.

**Bradley A. Wright**  
330.849.6629 | [bwright@ralaw.com](mailto:bwright@ralaw.com)

**Chris Cotter**  
330.849.6756 | [ccotter@ralaw.com](mailto:ccotter@ralaw.com)

**Nicholas Adair**  
330.849.6639 | [nadair@ralaw.com](mailto:nadair@ralaw.com)

**Susan S. Box**  
330.849.6625 | [sbox@ralaw.com](mailto:sbox@ralaw.com)

**Moriah Cheatham-Williams**  
330.849.6614 |  
[mcheathamwilliams@ralaw.com](mailto:mcheathamwilliams@ralaw.com)

**Laura (Megan) Faust**  
330.849.6617 | [lfaust@ralaw.com](mailto:lfaust@ralaw.com)

**Patrick B. Healy**  
513.361.8298 | [phealy@ralaw.com](mailto:phealy@ralaw.com)

**Phillip S. Heebsh**  
419.708.5390 | [pheebsh@ralaw.com](mailto:pheebsh@ralaw.com)

**Amy K. Herman**  
330.762.7955 | [aherman@ralaw.com](mailto:aherman@ralaw.com)

**Tyler M. Jolley**  
513.361.8284 | [tjolley@ralaw.com](mailto:tjolley@ralaw.com)

**Ronald B. Lee**  
330.849.6648 | [rlee@ralaw.com](mailto:rlee@ralaw.com)

**Moira H. Pietrowski**  
330.849.6761 |  
[mpietrowski@ralaw.com](mailto:mpietrowski@ralaw.com)