

Trucking Company's Accident Reconstruction Expert Excluded as Spoliation Sanction for Company's Failure to Preserve Truck After Fatal Accident

By Benjamin Carroll

In a wrongful death lawsuit, a federal district court in Washington excluded the defendant trucking company's accident reconstruction expert as a spoliation sanction for the trucking company's failure to preserve its truck involved in a fatal motor vehicle accident. *Gorman v. Totran Transp. Servs. Ltd.*, No. C21-5525-MLP, 2023 U.S. Dist. LEXIS 27897, at *2 (W.D. Wash. Feb. 17, 2023). On August 5, 2020, a truck driver, Rodney Pryce, was preparing to stop his commercial vehicle in congested traffic when he collided into the back of a Jeep Cherokee. The driver of the Cherokee, plaintiff's decedent, died instantly.

The day after the accident, the truck driver's employer, Totran Transportation Services, LTD ("Totran"), hired an accident reconstruction expert, John Straubinger, who inspected the commercial vehicle and downloaded the data from its engine control module ("ECM"). Totran also hired Dr. David Krauss, a human factors expert.

On August 19, 2020, Totran repaired the truck and then placed it back into service on or around August 28, 2020, or September 8, 2020. On August 31, 2020, Plaintiff's counsel sent Defendants a preservation letter and a request to inspect the truck. However, on September 9, 2020, Mr. Pryce's truck was involved in a second collision and declared a total loss. On December 3, 2020, Plaintiff's counsel sent a second request to Defendants to inspect the truck, but Defendants did not respond to this letter. On January 18, 2021, the truck was sold for salvage.

The Estate of Ms. Gorman later filed suit against Totran and asserted claims of wrongful death and negligent hiring, retention, and supervision of the truck driver. The Estate learned at Totran's corporate representative deposition that the truck had been inspected, ECM data had been downloaded, and a driver tablet and web-based application containing pre-collision data from a driver tracking system was no longer available and could not be retrieved. After the deposition, Totran provided the Estate with the ECM data.

The Estate sought spoliation sanctions against Totran based on its failure to preserve the truck and the driver's tablet and app data. As sanctions, the Estate moved to exclude Defendants' accident reconstructionist, exclude Totran's human factors expert, and strike Totran's contributory negligence affirmative defense.

In addressing this issue, the Court first cited Washington federal courts that deal with the legal principles of spoliation and a party's duty to preserve evidence: "Spoliation occurs when a party destroys or alters material evidence or fails to preserve evidence

when the party is under a duty to preserve it...A party has a duty to preserve evidence when litigation is pending or reasonably anticipated.” *Kische USA LLC v. Simsek*, 2018 U.S. Dist. LEXIS 13956, 2018 WL 620493, at *4 (W.D. Wash. Jan. 29, 2018); *Moore v. Lowe’s Home Ctrs., LLC*, 2016 U.S. Dist. LEXIS 82652, 2016 WL 3458353, at *3 (W.D. Wash. June 24, 2016). The court also noted that courts will consider the prejudice suffered by the affected party and the motive of the spoliating party.

The Court concluded that Totran spoliated “clearly relevant” evidence that had prejudiced the Estate. The Court explained that Totran’s “willfulness in allowing Mr. Pryce’s semi-truck to be destroyed” was evident. Even though Totran was on notice to preserve relevant evidence just three weeks after the accident, Totran put the truck back into service about one week after the accident. Totran’s destruction of the truck therefore deprived the Estate of the ability to have its own human factors expert perform critical aspects of his analysis such as the following: “(1) determining the actual driver eye height; (2) recording the truck’s actual dimensions; (3) assessing the mirror positions; (4) verifying the sight lines referenced in his report; (5) determining new sight lines; (6) determining if or how the A-frame of the truck’s cabin blocked Mr. Pryce’s view; and (7) determining if other blind spots existed for drivers.” *Id.* at *10-11.

Because the Court was obligated to impose “the least onerous effective sanction” for the spoliation, the Court did not grant the Estate’s entire request. First, the Court excluded Totran’s accident reconstruction expert from providing expert testimony. Unlike Mr. Straubinger who had inspected the truck and used this data to form his opinions, the Estate was deprived of an opportunity to inspect the truck. Second, the Court declined to exclude Totran’s human factors expert because Dr. Krauss did not specifically rely on Mr. Straubinger’s inspection data, but only relied on the ECM data which was available to the Estate. Third, the Court declined to strike Totran’s affirmative defenses. The court stated that, although “it appears that Totran willfully allowed the driver tracking system data to be destroyed upon the changing of its internal systems,” this destruction did not prejudice the Estate because the Estate already had access to similar data from the ECM. Nevertheless, the Court did allow Totran to retain a different accident reconstruction expert within a limited period of time.

The *Gorman* case serves as a stern warning to trucking companies to adequately preserve all relevant evidence, including the truck itself, when litigation is likely. Even though the trucking company was allowed to retain a new accident reconstruction expert, the trucking company’s defenses will be severely hamstrung due to its experts’ inability to access the original truck to develop new defense theories, especially as eyewitness depositions occur. For example, if a witness testifies that the truck was turning at a certain angle and speed before impact, the trucking company’s accident reconstruction and human factors experts would not have the ability to recreate and perform additional measurements that could provide a viable defense, such as a lack of perception-reaction time for the driver. Finally, had the truck’s ECM data not been preserved by the trucking company, the Court probably would have levied even harsher sanctions.



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