

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAFFAELE C. VELLECA, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
 :  
IVAN WAYNE JONES and :  
CONTINENTAL EXPRESS, INC., :  
Defendants. : NO. 00-431

**MEMORANDUM & ORDER**

**JAMES MCGIRR KELLY, J.**

**OCTOBER 2, 2000**

The bizarre factual scenario leading up to the injury of Plaintiff, Raffaele C. Velleca ("Velleca"), reads like a bar exam question. Defendants Ivan Wayne Jones ("Jones") and Continental Express, Inc. ("Continental") have filed the present Motion to Dismiss and claim that under the convoluted facts alleged by Velleca, their acts cannot be the proximate cause of his injuries and they do not owe a duty to him.

**FACTUAL BACKGROUND**

Velleca's Complaint alleges the following facts. While driving eastbound on Interstate 78 in a truck owned by Continental, Jones allegedly struck a dump truck owned by Denville Line Painting and operated by Hugh McCarthy ("McCarthy"). The impact of the collision caused the dump truck to crash through the cement center barrier and into a truck owned and operated by Zbigniew Szymojko ("Szymojko"). Szymojko's truck

was then struck by another truck, this one operated by Paul Praschunus ("Praschunus"). Velleca, a tow truck operator, arrived at the scene of the accident to assist in the separation and removal of the debris at the accident scene. While separating the Szymojko and McCarthy trucks, the frame of the Szymojko truck buckled and Velleca received a blow to the head. Velleca filed his Complaint against Defendants and seeks to recover for injuries he sustained as a result of the blow to the head. Specifically, Velleca's Complaint alleges that Jones was traveling at a high rate of speed and fell asleep while driving.

#### **DISCUSSION**

In considering whether to dismiss a complaint for failing to state a claim upon which relief can be granted, the court must consider only those facts alleged in the complaint and must accept those facts as true. Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Moreover, the complaint is viewed in the light most favorable to the plaintiff. Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975). In addition to these expansive parameters, the threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low: a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

In order to prove Defendants' negligence, Velleca must prove

that they (1) owed a duty recognized by law to Velleca; (2) breached that duty; (3) a causal connection between the breach and the injury; and (4) loss or damage suffered by Velleca. See Reilly v. Tiergarten, 633 A.2d 208, 210 (Pa. Super. Ct. 1993).

Defendants argue that they owed no duty to Velleca and that their actions were not a substantial factor in causing Velleca's injuries.

Each person bears the responsibility to avoid an unreasonable risk of harm to another person. See Suchomajcz v. Hummel Chemical Co., 524 F.2d 19, 24 (3d Cir. 1975). For a duty to attach, the harm must be foreseeable. See id. The allegation that Jones fell asleep while driving at a high rate of speed could easily be found by a jury to create an unreasonable risk of harm to another. While the allegations of Velleca's complaint place the foreseeability of Velleca's injuries into doubt, the Court cannot say that, as a matter of law, the buckling of the Szymojko truck, which struck Velleca on the head, was unforeseeable. Accordingly, the Court will reserve for a jury the existence of a legal duty.

In order for Defendants' negligence to be a legal cause of Velleca's injuries, their negligence must be a substantial factor in bringing about those injuries. See Taylor v. Jackson, 643 A.2d 771, 775 (Pa. Cmwlth. 1994). In determining whether Defendants' conduct was a substantial factor in causing Velleca's

injuries, the factfinder should consider: (1) the number of and extent to which other factors contributed to Velleca's injuries; (2) if the forces set in motion by Defendants were continuous and active, or only caused harm when acted upon by outside forces; and (3) the lapse of time. See id (citing Restatement (Second) of Torts § 433 (1965)).

In Taylor, a driver on a wet highway slowed down or stopped because of a sudden rainstorm. A tractor-trailer following the initial driver jack-knifed. Two tractor-trailers that had stopped for the accident were underneath an electric wire that fell. As traffic backed up, a second accident occurred about one half mile behind the first accident. Two hours after the initial accident, the plaintiff was struck one mile behind the initial jack-knifed tractor trailer. Id. at 773-74. The Commonwealth Court held that (1) the passage of two hours did not, in and of itself, preclude that the effects of the defendants' negligence influenced the occurrence of the accident and (2) the diversion of rescue resources caused by the second accident could have been a substantial factor in causing the third accident. Id. at 776.

Much like the court in Taylor, this Court believes that the circumstance leading up to Velleca's injuries demonstrate an attenuated chain of causation. Where reasonable minds could differ as to whether an actor's conduct is a substantial factor in causing injury to another, however, the issue should be left

to a jury. Id. The attenuation of the facts in Taylor extends much further than the facts alleged by Velleca. Therefore, whether Defendants' acts were a substantial factor in bringing about Velleca's injury will be left to a jury.

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CONTINENTAL EXPRESS, INC.,           :  
    Defendants.                           :  
  :     NO. 00-431

**O R D E R**

AND NOW, this second day of October, 2000, upon consideration of the Motion to Dismiss of Defendants, Ivan Wayne Jones and Continental Express, Inc. (Doc. No. 3), the Response of Plaintiff, Raffaele C. Velleca, the Reply of Defendants and Plaintiff's Sur-reply thereto, it is ORDERED that the Motion to Dismiss is DENIED.

BY THE COURT:

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JAMES MCGIRR KELLY, J.