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Long-Distance Hauling Company's Placard on Owner/Operator's Tractor is Not Enough to Impose Vicarious Liability

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The United States Court of Appeals for the Sixth Circuit recently issued a decision that clarifies the steps to be taken by a long-distance hauling company to relieve itself of vicarious liability upon termination of a lease with an owner/operator.

In *Ross v Wall Street Systems*, 400 F.3d 478 (6th Cir. 2005), the United States Court of Appeals for the Sixth Circuit recently issued a decision holding that where the lease between a long-distance hauling company and an owner/operator provides that the owner/operator is responsible for the return of the long-distance hauling company's placards upon termination of the lease, a letter demanding the return of the placards constitutes "reasonable steps" and extinguishes the long-distance company's vicarious liability for accidents that occur after expiration of the lease.

In *Ross*, the plaintiff was seriously injured when his pick-up truck was rear-ended by a tractor/trailer. The plaintiff sued both Wall Street Systems, the long-distance hauling company, and its insurance carrier, Gulf Insurance Company, because the owner/operator's rig carried a Wall Street Systems' placard. Approximately one month before the accident, the lease agreement with the owner/operator was terminated by Wall Street Systems because it learned that the owner/operator's vehicle was actually titled to his mother.

Wall Street Systems sent a certified letter to the owner/operator's mother giving notice of the termination and requesting the immediate return of Wall Street Systems' placards and other documentation provided under the lease. The owner/operator, however, had not complied with Wall Street Systems' request and at the time of the accident, the hauling company's placard was still on the owner/operator's tractor.

The court noted that the ICC Regulations changed the previously recognized doctrine of "logo liability" under which the presence of a long-distance hauling company's government-issued placard created an irrebuttable presumption that the lease continued in effect.

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The Court cited *Jackson v O'Shields*, 101 F 3d 1083, 1088 (5th Cir. 1996), which held the presence of a long-distance carrier's placard on the leased vehicle and the lack of a termination receipt did not alone keep the otherwise-terminated agreement alive. The court also relied on *Graham v Malone Freight Lines, Inc*., 314 F.3d 7, 14-15 (1st Cir. 1999), where it was held that when the lease places the burden of retrieval on the owner/operator, a letter from the long-distance hauling company terminating the lease and requesting the return of the placards is enough to extinguish the long-distance carrier's vicarious liability.

In *Ross*, the Sixth Circuit likewise held that, where the lease provides that the owner/operator is responsible for the return of the long-distance hauling company's placard, a letter demanding the return constitutes "reasonable steps." Specifically, the court ruled that the absence of a valid lease precludes imposition of vicarious liability against Wall Street Systems and the presence of its placards on the owner/operator's tractor at the time of the accident does not constitute grounds for imposing vicarious liability.

The court also held that the 35-day grace period after the termination of the insurance policy mandated by the government for leased vehicles only applies to the termination of insurance policies and not leases. The plaintiff attempted to invoke the 35-day grace period because the accident occurred within 35 days after the lease was terminated.

The Federal Motor Carrier Safety Regulations require that authorized carriers assume full financial responsibility for any leased vehicles. In fact, the government requires long-distance hauling companies to add the form MCS-90 endorsement to their insurance policies to assure that leased vehicles are covered by an authorized carrier's insurance. The MCS-90 endorsement provides that insurance coverage will remain in effect continuously until terminated. The MCS-90 endorsement also provides a 35-day grace period after termination of the insurance policy.

In *Ross*, the court noted that the MCS-90 endorsement is part of the insurance policy between the insurance company and the long-distance hauling company. The endorsement extends coverage of the leased truck, but is not part of any contract between the long-distance hauling company and the owner/operator. In addition, the court held that because there was no contractual relationship between the long-distance hauling company's insurance carrier and the owner/operator, no policy was terminated and there was no 35-day grace period applicable to the owner/operator's rig.

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