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# Trucking Company Can't Escape Negligence Action Over Driver's Accident

A trucking company and its founder will remain in federal litigation claiming it is responsible for the alleged reckless conduct of one of its drivers who caused an accident.

By P.J. D'Annunzio | October 08, 2018

A trucking company and its founder will remain in federal litigation claiming it is responsible for the alleged reckless conduct of one of its drivers who caused an accident.

U.S. District Judge Michael Baylson of the Eastern District of Pennsylvania [denied a motion](#)



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<https://images.law.com/contrib/content/uploads/documents/402/28409/Arsenberger->

[Opinion.pdf](#)) filed by defendant Arsenberger Trucking, its founder Robert Arsenberger, and the driver seeking to dismiss two counts of plaintiffs Arthur and Joanne McMahon's complaint.

The lawsuit stems from a 2015 accident in which the plaintiffs were injured when driver Roman Best rear-ended the car driven by Joanne McMahon. The defendants sought to dismiss counts two and three of the complaint, dealing with negligence and punitive damages, for being outside the statute of limitations.

"Taking plaintiffs' allegations in the light most favorable to plaintiffs, as the court must at this stage, the addition of counts two and three is not time-barred because the claims relate back to the same occurrence set forth in the original pleading—the accident," Baylson said. "Further, the addition of defendant [Robert] Arsenberger as a party also relates back to the date of the original pleading because Arsenberger had constructive notice of the suit as the president, owner, and chief operating officer of defendant Trucking Co., a party to the original pleading. Therefore, plaintiffs' additional claims and the amended claims against defendant Arsenberger personally, including punitive damages, will not be dismissed."

The defendants also claimed the plaintiffs failed to plead sufficient factual allegations as to the negligent hiring claim, arguing they had not shown the company knew of "Best's alleged propensity to drive in a reckless manner."

The plaintiffs sought to go after Robert Arsenberger personally.

"Defendant's motion to dismiss plaintiffs' claims will be denied. Piercing the corporate veil of a corporation 'is an equitable remedy whereby a court disregards the existence of the corporation to make the corporation's individual principals and their personal assets liable for the debts of the corporation,'" Baylson said.

The judge added, "Plaintiffs do not need to pierce the corporate veil for a jury to find defendant Arsenberger personally liable. If defendant Trucking Co., the corporate defendant, does not have assets to satisfy the eventual judgment, then piercing the

corporate veil may become relevant.”

Salvatore A. Clemente of Wilson Elser Moskowitz Edelman & Dicker represents the defendants and did not respond to a request for comment.

W. Steven Berman of Napoli Shkolnik in New York City represents the plaintiffs and also did not respond to a request seeking comment.

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