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TRUCKING

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At Gardner, Willis, Sweat & Handelman, we offer a wide range of services including Banking; Bankruptcy; Business Law; Construction Law; Employment Law; Estate and Tax Planning; General Litigation and Appeals; Governmental Law Law; Real Estate; Trucking Litigation, and Workers' Compensation. Sherman Willis, our Managing Partner, is available to speak with you about your unique needs in these and other areas. For a consultation with Sherman, please call at 229-883-2441, or e-mail him at: sherman.willis@gwsh-law.com
All inquiries are confidential.

Use of the Sudden Emergency Doctrine as A Defense in Tractor-Trailer Accidents

The sudden emergency defense may be utilized by drivers of tractor-trailers in limited circumstances. While not always applicable to the facts of an accident, the sudden emergency doctrine can be a defense to liability. It is important to note, however, that the scope of the doctrine is limited. The defense of sudden emergency applies only to those acts that occur immediately after the apprehension of a danger or crisis; the defense is not available unless the evidence shows that the sudden peril offered the defendant a choice of conduct without time for thought, so that any negligence in the defendant's choice may be attributed to lack of time to assess the situation rather than lack of due care. Thomas v. Stairs, 215 Ga. App. 288 (1994); Lucas v. Love, 238 Ga. App. 463 (1999); Jimenez v. Morgan Drive Away, 238 Ga. App. 638 (1999); Rayfield v. Farris, 253 Ga. App. 167 (2002). The doctrine requires that the person confronted by the emergency have the opportunity to exercise one of several reasonable alternative courses of actions, plus sufficient time and opportunity to take an action to avoid injury. Farris, supra.; Ware v. Alston, 112 Ga. App. 627 (1965). The sudden emergency doctrine cannot be invoked by one whose negligent conduct created the emergency. Ware, supra. The policy purpose behind the sudden emergency doctrine is evident. One who is in a sudden emergency acts according to his best judgment, or, because of want of time in which to form a judgment, acts in the most judicial standard, and therefore is not chargeable with negligence. Webb v. Perry, 158 Ga. App. 409 (1981).

In Ware, supra, the Court found the following evidence sufficient to justify a jury charge of sudden emergency: the driver first became aware of a brake failure less than 525 feet away from the intersection, the driver was traveling 45 miles per hour, the driver was unable to stop the vehicle and the driver

swerved to his left before hitting the other automobile. In Farris, supra, the Court declined to charge the jury on the issue of sudden emergency reasoning that the driver who caused the accident did not have any other option, upon realizing the imminence of the accident, other than hitting the other vehicle. The driver must be confronted with alternative courses of action for the sudden emergency doctrine to apply. In Sawyer et al. v. Marjon Enterprises, Inc. et al., 312 Ga. App. 619 (2011), the Court of Appeals considered whether the driver of a tractor-trailer was faced with a sudden emergency when his truck hit a puddle of water causing him to hydroplane, lose control of the truck and strike the other driver's vehicle. Once again, the Court of Appeals declined to extend the sudden emergency doctrine to the facts at issue reasoning that the driver of the tractor-trailer had no choice but to lose control after the truck hydroplaned. Id.

Although the Courts have interpreted the sudden emergency doctrine to apply only in a limited set of factual circumstances, its importance cannot be understated. If the sudden emergency defense is invoked, it bars liability as to actions that would otherwise be deemed negligent. It is an important defense for drivers of all vehicles, including tractor-trailers, to keep in mind.

**Great West Casualty Company, et al.
v. Bloomfield, et al., 313 Ga. App. 180 (2011)**

This case arises out of a wrongful death action brought by a husband on behalf of his wife against two truck drivers, their employers, and their employers' insurers. The jury verdict found no liability on the part of the first truck driver. The first truck driver, his employer, and insurer (First Defendants) moved for attorney's fees and expenses under the offer of settlement statute. The trial court denied the motion because it found that the settlement offer was not made in good faith. The relevant facts show that the First Defendants initially offered \$25,000 to settle. The First Defendants later made a settlement offer during trial for policy limits of \$1,000,000. The trial court denied the motion for attorney's fees and expenses because the offer of settlement was not made in good faith and determined that, absent any evidence that the second settlement offer was made after the discovery of new evidence, the second settlement offer showed that the first settlement offer was made in bad faith. The Court of Appeals reviewed the case on an abuse of discretion standard. The Court of Appeals found evidence to support the trial court's denial of the motion and did not find an abuse of discretion.

Mark represents clients in the construction and trucking industries where he embraces a hands-on approach that includes offering immediate, on site investigation of catastrophic accidents. Mark has a thorough understanding of trucking and construction trade practices, as well as the legal and regulatory issues governing these industries. His ability to relate and explain these complex matters in simple understandable terms has contributed to his success in resolving disputes and winning jury trials.

He is a member of the Trucking Insurance Defense Association. Mark serves on the Board of Directors for the Boys and Girls Club of Albany and is the Chairman of the Board of Directors for the Chehaw Park Authority. He and his wife, Liza, have four children.



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