

DEFENDING TRUCK DRIVERS IN PUNITIVE DAMAGE CLAIMS: WHEN DRIVER TRAINING IS USED AGAINST YOU

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Over the past fifteen years, plaintiffs have increasingly relied upon *Alfonso v. Robinson*¹ to plead willful and wanton conduct in an effort to recover punitive damages against commercial truck drivers for conduct violating their training or “the rules of the road.” Before *Alfonso*, Virginia case law stated that a sober driver’s intentional violation of the rules of the road was not enough to bring a claim for punitive damages. *Alfonso* changed the landscape of these claims where a professional driver’s conduct violates his safety training or the Federal Motor Carrier Safety Regulations. In addition to the potential increased value in seeking a claim for punitive damages and the admission of unfavorable evidence, plaintiffs often seek to use a willful and wanton conduct claim against commercial drivers to overcome the defense of contributory negligence in disputed liability cases. This article discusses the case law that plaintiffs rely upon to bring these claims and strategies to consider when defending them.

I. HISTORY AND BACKGROUND OF WILLFUL AND WANTON NEGLIGENCE, CONTRIBUTORY NEGLIGENCE, AND EMPLOYER LIABILITY

A. DEGREES OF NEGLIGENCE

Virginia law recognizes three degrees of negligence: (1) ordinary or simple, (2) gross, and (3) willful, wanton, and reckless.² The Supreme Court of Virginia has defined ordinary or simple negligence as the failure to use “that degree of care which an ordinarily prudent person would exercise under the same or similar circumstances to avoid injury to another.”³ Gross negligence is a degree of negligence that constitutes an utter disregard of prudence amounting to a complete neglect of the safety of another.⁴ It is a degree of negligence that would shock fair-minded men but is something less than willful recklessness.⁵ Willful and wanton negligence, by contrast, involves knowing that one’s conduct proba-

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¹ 257 Va. 540, 514 S.E.2d 615 (1999).

² *Griffin v. Shively*, 227 Va. 317, 321-22, 315 S.E.2d 210, 212-13 (1984).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

bly would cause injury to another and disregarding that person's rights, or acting with reckless indifference to the consequences of which he is aware from his knowledge of existing circumstances and conditions.⁶ "Willful or wanton negligence involves a greater degree of negligence than gross negligence, particularly in the sense that in the former an actual or constructive consciousness of the danger involved is an essential ingredient of the act or omission"⁷ Notably, allegations of negligence and willful and wanton conduct are not separate claims. Rather, "negligent conduct and willful and wanton conduct merely refer to different degrees of proof that can be applied to the same theory of liability."⁸

In Virginia, punitive damages are generally disfavored and may be awarded "only in cases involving the most egregious conduct."⁹ That said, unless reasonable minds cannot differ, all degrees of negligence are ordinarily issues for a jury.¹⁰ "Each case raising an issue of willful and wanton negligence must be evaluated on its own facts, and a defendant's entire conduct must be considered in determining whether his actions or omissions present such a question for a jury's determination."¹¹

B. CONTRIBUTORY NEGLIGENCE

In Virginia, a plaintiff's ordinary negligence will bar him from recovery against a negligent defendant or perhaps even a grossly negligent defendant if the plaintiff's own negligence contributed to the causation of his injury.¹² However, a key principle is that a defendant whose conduct amounts to willful and

⁶ *Id.*

⁷ *Id.*

⁸ *Wilby v. Gostel*, 265 Va. 437, 578 S.E.2d 796 (2003).

⁹ *Bowers v. Westvaco Corp.*, 244 Va. 139, 150, 419 S.E.2d 661, 668 (1992) (citing *Philip Morris, Inc. v. Emerson*, 235 Va. 380, 407, 368 S.E.2d 268, 283 (1988)).

¹⁰ *Wolfe v. Baube*, 241 Va. 462, 466, 403 S.E.2d 338, 340 (holding that plaintiff's conduct did not amount to willful and wanton negligence as a matter of law).

¹¹ *Alfonso v. Robinson*, 257 Va. 540, 545, 514 S.E.2d 615, 618 (1999) (citations omitted).

¹² *Thomas v. Snow*, 162 Va. 654, 174 S.E. 837 (1934). It is important to note the distinction between acts or omissions that constitute gross negligence and those that are willful or wanton. The court in *Thomas* stated that "it is usually held that in the former contributory negligence on the part of plaintiff will defeat recovery, while in the latter it will not." Although the language in *Thomas* appears to indicate that ordinary contributory negligence is a defense to liability for a grossly negligent defendant, the Supreme Court of Virginia later suggested a one-to-one evaluation of negligence with the following language:

In other words, while contributory negligence, in the sense of failing to exercise ordinary care for one's safety, is not a defense to a defendant's willful and wanton negligence, a plaintiff's wanton and reckless disregard for his own safety bars recovery even against a defendant whose conduct also amounts to willful and wanton negligence. *The reason for this exception is that, when two persons are equally at fault in producing the injury, neither's negligence is the proximate cause of the injury.*

Griffin, 227 Va. at 32, 315 S.E.2d at 322 (emphasis added). *Griffin* addressed whether a defendant's conduct was willful and wanton as a matter of law. Accordingly, the language cited above is dicta and should not be applied as the law of Virginia. Nevertheless, some argue that *Griffin* lays the foundation for the argument that the same one-to-one evaluation should be used with gross negligence, since it too is an elevated form of negligence.

wanton negligence cannot rely upon contributory negligence of the plaintiff as a defense¹³ unless the plaintiff's contributory negligence itself amounts to willful and wanton conduct, in which case recovery is barred.¹⁴

C. EMPLOYER LIABILITY FOR WILLFUL AND WANTON CONDUCT OF ITS EMPLOYEES

While a corporate employer may be liable for the compensatory damages caused by the acts of its employees in the course and scope of their employment, the analysis for determining whether a corporate employer may be liable for punitive damages is different.¹⁵ Specifically,

“A principal, . . . though of course liable to make compensation for the injury done by his agent, within the scope of his employment, cannot be held for . . . punitive damages, merely by reason of wanton, oppressive[,] or malicious intent on the part of the agent.” . . . Consequently, “punitive damages cannot be awarded against a master or principal for the wrongful act of his servant or agent in which he did not participate, and which he did not authorize or ratify.” . . . Alternatively stated, punitive damages may be awarded against a corporate employer only if either (1) that employer participated in the wrongful acts giving rise to the punitive damages, or (2) that employer authorized or ratified the wrongful acts giving rise to the punitive damages.¹⁶

II. TRANSPORTATION CASE LAW BEFORE *ALFONSO V. ROBINSON*

Before its opinion in *Alfonso*, the Supreme Court of Virginia had considered several situations in determining whether the actions of presumably sober drivers were sufficient to support a finding of willful and wanton conduct.¹⁷ For

¹³ *Id.*

¹⁴ *Id.* (citations omitted).

¹⁵ *Woods v. Mendez*, 265 Va. 58, 76-77, 574 S.E.2d 267, 268 (2003). See also the more recent decision in *Egan v. Butler*, 290 Va. 62, 74, 772 S.E.2d 765, 772 (2015).

¹⁶ *Egan*, 290 Va. at 74, 772 S.E.2d at 772 (citations omitted). Most insurance policies will cover an employee driver operating a company vehicle. However, this analysis can be relevant in situations of excess exposure to the employer or where a driver is operating a truck not owned by the employers.

¹⁷ The Supreme Court of Virginia has also written numerous opinions on which facts suffice to bring a punitive damages claim of willful and wanton conduct involving intoxication. See, e.g., *Woods v. Mendez*, at 76-78, 574 S.E.2d at 267-69 (concerning common-law punitive damages claims stated by allegations that one defendant drank 10 beers, fell asleep at the wheel, collided with plaintiff's vehicle at a speed of at least 60 m.p.h., and made no attempt to avoid the accident; and another defendant “intentionally engaged in a sustained, highly erratic pattern of driving that affected several lanes of travel on an interstate highway, endangering the other drivers who lawfully were operating their vehicles at high rates of speed on the highway” and did so “in an intoxicated state evidenced by a BAC of more than twice the level established for a criminal conviction of driving under the influence”); *Webb v. Rivers*, 256 Va. 460, 507 S.E.2d 360 (1998) (permitting common-law punitive damages where defendant had BAC of 0.21% and “was so intoxicated that he did not know where he was,” drove 90 m.p.h. in a neighborhood with a 25 m.p.h. limit, and ran a red light); *Huffman v. Love*, 245 Va. 311, 427 S.E.2d 357 (allowing punitive damages where defendant operated his vehicle with a BAC of 0.32%—

example, in *Wallen v. Allen*, the defendant tractor-trailer driver rear-ended a school bus that was stopped to pick up school children.¹⁸ One child died and a number of others were seriously injured.¹⁹ The plaintiff was a child who was sitting in the back of the bus and suffered severe injuries, including a comminuted fracture of his leg, which required surgery to save.²⁰ The plaintiff brought a willful and wanton negligence count for hiring and retaining an incompetent tractor-trailer driver.²¹

The owner of the trucking company hired the driver after seeing him operate another company's equipment.²² The driver was in good health and had a clear driving record.²³ However, while he had a Class A license, which allowed him to operate the tractor-trailer legally if he owned the tractor-trailer, he did not have a Class A chauffeur's license, which would have permitted him to drive tractor-trailers owned by others.²⁴ The driver had only two weeks' experience operating eighteen-wheel equipment.²⁵

Before the accident, the driver had only three hours of sleep in the prior eighteen hours, had driven more than 150 miles, and had performed physical labor multiple times when he coupled and uncoupled four trailers.²⁶ Furthermore, the owner of the trucking company pled guilty to twenty-six misdemeanor counts involving violations of federal regulations governing common carriers operating

“so intoxicated that he could not talk, stand, or walk”—notwithstanding that he had received court-ordered education on the dangers of drinking and driving as a result of two prior drunk driving convictions, knew that his driving ability was impaired because he had just collided with another vehicle, drove 10 m.p.h. above the posted limit, crossed into the oncoming lane of traffic, collided with the plaintiff's vehicle, and left the scene of the accident); *Doe v. Isaacs*, 265 Va. 531, 579 S.E.2d 174 (2003) (finding insufficient evidence for punitive damages where defendant was likely intoxicated, failed to keep a proper lookout, and feloniously left the scene of the accident); *Puent v. Dickens*, 245 Va. 217, 427 S.E.2d 340 (1993) (stating jury could have found that defendant “was drunk, that he was ‘going very fast,’ that he did not attempt to stop before striking the rear of [plaintiff's] car,” which was stopped at a traffic light with its brake and rear lights lit, “and that he attempted to leave the scene of the collision”; but “these combined factors [we]re insufficient to justify a finding of the wanton negligence necessary for an award of punitive damages”); *Hack v. Nester*, 241 Va. 499, 404 S.E.2d 42 (1991) (rejecting punitive damages despite evidence that defendant was drinking alcohol, driving on the wrong side of the road at night with a missing headlight, and suffered from night blindness); *Baker v. Marcus*, 201 Va. 905, 910, 114 S.E.2d 617, 621 (1960) (reversing award of punitive damages when defendant with “borderline” intoxication rear-ended the plaintiff's vehicle because there was “nothing to show that she acted in a spirit of mischief, criminal indifference, or conscious disregard of the rights of others”). While these cases certainly can be used to argue that a sober commercial driver's conduct is far less egregious than that of an intoxicated driver whose actions have been held insufficient to satisfy the standard for willful and wanton conduct and they provide context on the issue of when the punitive claims can be successful, the focus of this article is on sober commercial drivers who violate their training or the Federal Motor Carrier Safety Regulations.

¹⁸ *Wallen v. Allen*, 231 Va. 289, 290, 343 S.E.2d 73, 74 (1986).

¹⁹ *Id.*

²⁰ *Id.* at 292, 343 S.E.2d at 75.

²¹ *Id.*

²² *Id.* at 295, 343 S.E.2d at 77.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 296, 343 S.E.2d at 77.

in interstate commerce.²⁷ The charges included failure to maintain driver qualification files, including valid medical examiners certificates, a driver's road test, a driver's written examination, a driver's employment examination, a driver's employment application, and the annual review of the driver's driving record.²⁸

The Supreme Court of Virginia in *Wallen* held that the trial court had erred in instructing the jury as to punitive damages because the Court found "no support for a finding of wanton negligence" on the part of the trucking company.²⁹ The Court reasoned that the driver's inexperience did not render him unfit for hire.³⁰ Further, the Court found that had the trucking company followed the regulations, there were no facts showing that the driver was unfit, and the driver's lack of a chauffeur's license did not contribute to the rear-end accident.³¹ Finally, the Court noted that "punitive damages do not arise from ordinary negligence."³²

Next, the Supreme Court of Virginia analyzed whether a plaintiff could bring a claim of willful and wanton conduct against a sixteen-year-old driver who knowingly drove a vehicle when her vision was impaired. In *Clohessy v. Weiler*,³³ the defendant driver hit and killed a pedestrian. The plaintiff's decedent was walking with her back to approaching traffic rather than walking against traffic as required by Virginia Code section 46.2-928.³⁴ The defendant was driving home from a high school football game.³⁵ The defendant stopped just before the accident and turned off the car's engine and headlights.³⁶ Upon restarting the engine, the defendant noticed that the windshield had become foggy.³⁷ She turned on her windshield wipers and defroster but failed to turn on her headlights.³⁸ The defendant proceeded to drive down the road ten miles in excess of the speed limit with a fogged windshield and struck the plaintiff.³⁹

The Supreme Court of Virginia found that these facts did not indicate that the driver's conduct could reasonably be considered anything other than ordinary negligence.⁴⁰ The Court noted that there was a lack of evidence in the record to support a finding that the driver knew that there would be pedestrians walking

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 297, 343 S.E.2d at 78.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ 250 Va. 249, 462 S.E.2d 94 (1995).

³⁴ *Id.* at 251, 462 S.E.2d at 95.

³⁵ *Id.* at 251, 462 S.E.2d at 96.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 252, 462 S.E.2d at 96.

home, particularly on the wrong side of the road; thus the Court found that there was no evidence that the driver had “prior knowledge of specific conditions that would likely cause injury to others.”⁴¹

Finally, the Supreme Court of Virginia analyzed in *Harris v. Harman*⁴² whether intentional violations of traffic laws alone were enough to support a count for willful and wanton conduct. In *Harris*, the plaintiff sought to recover punitive damages from a driver who tailgated the plaintiff’s vehicle, traveling at speeds estimated at 40-60 m.p.h. in a 30 m.p.h. zone.⁴³ The plaintiff alleged that the defendant had intended to tailgate him, had prior knowledge of the road and knew that his speed was in excess of the speed required to safely negotiate the road.⁴⁴ The Supreme Court of Virginia held that the trial court did not err in refusing to instruct the jury on willful and wanton negligence. It explained:

Traffic laws are established for the safety of those who are on the public roads. Every time a driver intentionally violates a traffic law, by definition, the violator is on notice that other users of the road may be injured as a result of his violation. Such conduct alone, however, does not have the characteristics of conduct generally classified as willful and wanton. While each case must be resolved on its own facts, willful and wanton negligence generally involves some type of egregious conduct—conduct going beyond that which shocks fair-minded people.⁴⁵

The Supreme Court of Virginia stated that to rule otherwise “would turn every intentional moving traffic violation into a case of willful and wanton negligence.”⁴⁶

III. *ALFONSO V. ROBINSON*—THE BASIS UPON WHICH PLAINTIFFS BRING WILLFUL AND WANTON NEGLIGENCE CLAIMS AGAINST COMMERCIAL TRUCK DRIVERS

*Alfonso v. Robinson*⁴⁷ has been widely cited by plaintiffs in trucking cases as support for claims of willful and wanton conduct and punitive damages. The Supreme Court of Virginia held in *Alfonso* that there was sufficient evidence involving a commercial tractor-trailer driver’s conduct to submit a case of willful and wanton negligence to the jury.

The defendant was operating a tractor-trailer that stalled in a rural area of Interstate 95 shortly before midnight.⁴⁸ The truck came to rest in the right

⁴¹ *Id.* at 252-53, 462 S.E.2d at 96-97.

⁴² 253 Va. 336, 486 S.E.2d 99 (1997).

⁴³ *Id.* at 338, 486 S.E.2d at 100.

⁴⁴ *Id.* at 341, 486 S.E.2d at 101.

⁴⁵ *Id.* at 341, 486 S.E.2d at 102.

⁴⁶ *Id.* at 341, 486 S.E.2d at 101-102.

⁴⁷ 257 Va. 540, 514 S.E.2d 615 (1999).

⁴⁸ *Id.* at 542, 514 S.E.2d at 616.

travel lane near a rest area.⁴⁹ Although the defendant had reflective triangles in his cab, he did not place them behind the truck, deciding instead to run 100 yards to the rest area to call for assistance.⁵⁰ The defendant also failed to activate the truck's flashing hazard lights.⁵¹ The plaintiff was operating her vehicle at 55-60 m.p.h. in the right travel lane and collided with the rear of the defendant's trailer.⁵² Although the tractor-trailer's tail lights were illuminated, the plaintiff testified that she did not realize that it was stopped until she was "on top of it."⁵³

The defendant driver in *Alfonso* was trained that "the deployment of warning flares or reflective triangles was 'the first thing you should do' after securing a truck that had become disabled"; and "[h]e knew that the purpose of the safety triangles was 'to warn people who are coming up from behind and let them know that you're stopped.'"⁵⁴ He admitted that he was aware that federal regulations required "drivers to place flares or reflective triangles at specified distances behind a disabled truck 'as soon as possible, but in any event within ten minutes.'"⁵⁵

The Supreme Court of Virginia concluded that the defendant's conduct was distinguishable from other cases in which it had held that a defendant's conduct, as a matter of law, was not willful and wanton, because the defendant in *Alfonso* "was a professional driver who had received specialized safety training warning against the very omissions he made prior to the accident."⁵⁶ Despite the defendant's training and knowledge, he "consciously elected to leave the disabled truck in a travel lane of an interstate highway without placing any warning devices behind it."⁵⁷ "Such evidence that a defendant had prior knowledge or notice that his actions or omissions would likely cause injury to others is a significant factor in considering issues of willful and wanton negligence," said the Court, and "Alfonso's prior knowledge was a conceded fact that related directly to the specific circumstances with which he was confronted on the night of the accident."⁵⁸

IV. FEDERAL COURT JURISPRUDENCE APPLYING *ALFONSO*

Since the Court's holding in *Alfonso*, the United States District Court for the Western District of Virginia has, on at least eight occasions, addressed whether

⁴⁹ *Id.* at 542-43, 514 S.E.2d at 616-17.

⁵⁰ *Id.*

⁵¹ *Id.* at 543, 514 S.E.2d at 617.

⁵² *Id.* at 542, 514 S.E.2d at 616.

⁵³ *Id.* at 543, 514 S.E.2d at 617.

⁵⁴ *Id.* at 543-44, 514 S.E.2d at 617.

⁵⁵ *Id.* at 544, 514 S.E.2d at 617.

⁵⁶ *Id.* at 546, 514 S.E.2d at 619 (emphasis added).

⁵⁷ *Id.*

⁵⁸ *Id.*

plaintiffs stated claims for willful and wanton negligence and punitive damages in cases arising out of motor vehicle accidents where the defendant was a commercial driver in a tractor-trailer.

In *Baker v. Oliver*,⁵⁹ the court held that a plaintiff sufficiently stated a claim for punitive damages under *Alfonso*. In *Baker*, the defendant stopped his tractor-trailer in a travel lane of Route 522 at 3:00 A.M. and backed into a private drive to turn around and head in the opposite direction.⁶⁰ He used neither turn signal nor emergency flashers, yet slowly pulled out into the road despite seeing the plaintiff's oncoming headlights.⁶¹ The defendant's truck was black and lacked reflective markings or safety devices on its side; therefore the plaintiff had no warning that the truck was there and was unable to stop before colliding with it.⁶² The court denied the defendant's motion to dismiss the claim for punitive damages because the plaintiff had pled that the defendant was a professional truck driver trained in the applicable safety procedures.⁶³

In *Madison v. Acuna* ("Acuna I"),⁶⁴ the court granted the defendant's motion to dismiss the plaintiff's claim for punitive damages despite the holding in *Alfonso*. In *Acuna I*, the defendant was driving a tractor-trailer on Route 42 when he crossed the double-yellow line and struck a vehicle, killing the plaintiff's decedent, who was a passenger in the car.⁶⁵ The defendant had traveled that route three times a week for the three years preceding the accident and had received at least five summonses in that period of time, one of which was for reckless driving in connection with another accident.⁶⁶

In granting the defendant's motion to dismiss, the court found "the facts presented by *Alfonso* to be more obviously egregious than those alleged" in *Acuna I*.⁶⁷ It also noted that there was no allegation that the defendant had been put on notice of the potential consequences of his conduct, as was the case with the defendant in *Alfonso*.⁶⁸ While the plaintiff alleged that the defendant had received prior summonses for his driving along the same route, there was no allegation that the defendant "was specifically warned on any of those occasions about the potential consequences of his driving."⁶⁹ The court concluded that

⁵⁹ 2006 WL 1700067 (W.D. Va. June 15, 2006).

⁶⁰ *Id.* at *1.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at *2 (emphasis added). Notably, this case was decided before the Supreme Court of the United States decided *Twombly* and *Iqbal*, in 2007 and 2009, respectively. Judge Moon himself has alluded that the facts as pled in *Baker* may be insufficient to survive a motion to dismiss in light of the new pleading requirements. See *Madison v. Acuna*, 2012 WL 4458510, at *6 n.6 (W.D. Va. Aug. 28, 2012).

⁶⁴ 2012 WL 4458510 (W.D. Va. Aug. 28, 2012).

⁶⁵ *Id.* at *1.

⁶⁶ *Id.*

⁶⁷ *Id.* at *5.

⁶⁸ *Id.* at *5 n.5.

⁶⁹ *Id.*

“on the basis of the facts alleged in the instant matter, . . . it can be inferred that [the defendant] had, at best, only marginally more prior knowledge than any other motorist that reckless or negligent driving could potentially lead to others’ harm.”⁷⁰

The court concluded that there were no allegations in the complaint that would indicate that the defendant’s “asserted negligence amounted to anything beyond what courts routinely confront in head-on vehicle collisions.”⁷¹ There were no allegations to support an inference that the defendant acted with indifference to the safety of others or had actual or constructive consciousness that an injury would result from his conduct.⁷²

The court granted the plaintiff leave to amend, which led to the second decision in *Madison v. Acuna* (“*Acuna II*”).⁷³ In *Acuna II*, the plaintiff alleged that the defendant fell asleep while driving, causing him to cross the double-yellow line and strike the vehicle in which the plaintiff rode.⁷⁴ The plaintiff further alleged that the defendant had previously received five summonses on this route, one of which was for reckless driving and failure to maintain control and another that was for violating the fourteen-hour rule, which precludes a driver from driving beyond the fourteenth consecutive hour after coming on duty following ten consecutive hours off duty.⁷⁵

The court denied the defendant’s motion to dismiss the claim for punitive damages in *Acuna II* because the plaintiff alleged that the defendant caused the accident by falling asleep while driving and had previously received a summons for violating the fourteen-hour rule.⁷⁶ It was arguable that the defendant received a specific warning about the dangers of driving after being deprived of sleep; thus he was on notice that injury could result from conduct likely to cause sleep deprivation.⁷⁷ It was plausible that because the defendant fell asleep while

⁷⁰ *Id.*

⁷¹ *Id.* at *7.

⁷² *Id.* The court also took issue with the plaintiff’s conclusory use of punitive damages language, finding that it was insufficient to meet the plausibility requirements of *Twombly*. *Id.* at *7.

Separately, I note that, in seeking punitive damages, Plaintiff merely states: “[The defendant] acted willfully and wantonly, and his actions demonstrate a conscious disregard for the safety of others, thereby entitling the statutory beneficiaries to an award of punitive damages.” In so pleading, Plaintiff has, in a conclusory fashion, simply tracked the language used by the Supreme Court of Virginia when it discusses the requisite showing for an award of punitive damages. As such, Plaintiff has run afoul of the prescription for fact pleading by the Supreme Court of the United States.

Id.

⁷³ 2012 WL 6196450 (W.D. Va. Dec. 12, 2012).

⁷⁴ *Id.* at *1.

⁷⁵ *Id.*

⁷⁶ *Id.* at *4.

⁷⁷ *Id.*

driving he engaged in conduct about which he had been warned; thus it was also plausible that he acted willfully and wantonly.⁷⁸

In *Stanley v. Star Transport*,⁷⁹ the court cited *Alfonso* when denying a defendant's motion to dismiss a punitive damage claim in another trucking case. In *Stanley*, the plaintiff alleged that the defendant driver was professionally trained and acted willfully and wantonly when he drove in a sleep-deprived condition at night on a snow- and ice-covered roadway at excessive speeds.⁸⁰

In *Boone v. Brown*,⁸¹ which involved a tractor-trailer accident, the same federal court granted a motion to dismiss a claim for punitive damages, finding that the facts alleged in the complaint were more akin to those alleged in *Acuna I* than in *Acuna II*. In *Boone*, the defendant tractor-trailer driver struck the plaintiff's vehicle three times while attempting to make a wide right turn at a traffic light and then left the scene of the accident.⁸² The motion was granted because the complaint failed to allege that the defendant "had been specifically warned about the dangers of making wide right turns. Rather, like the original complaint in *Acuna I*, [the plaintiff's] complaint merely offer[ed] facts consistent with a routine traffic accident."⁸³

More recently, the court denied the defendant's motion to dismiss in *Blankenship v. Quality Transportation*.⁸⁴ There, the defendant tractor-trailer driver was hauling 8500 gallons of gasoline southbound on Interstate 81.⁸⁵ The plaintiff-decedent was working as part of a roadway inspection crew and sitting in his pickup truck parked between two "cushion trucks" on the right shoulder of the highway.⁸⁶ The plaintiff alleged that the defendant truck driver had been driving far in excess of the allowable hours and was speeding when he lost control of his truck, struck the plaintiff-decedent, and killed him.⁸⁷ In denying the motions, the court found that driver fatigue, especially while hauling 8500 gallons of a flammable substance, and the excessive rate of speed in a construction zone were facts sufficient to sustain a claim for punitive damages.⁸⁸ The court found that since the defendant was a professional driver he "was presumably aware of the dangers of speeding through a construction zone while hauling hazardous material."⁸⁹

⁷⁸ *Id.*

⁷⁹ 2010 WL 3433774 (W.D. Va. Sept. 1, 2010).

⁸⁰ *Id.* at *1.

⁸¹ 2013 WL 5416873 (W.D. Va. Sept. 26, 2013).

⁸² *Id.* at *1.

⁸³ *Id.* at *3.

⁸⁴ 2015 WL 4400196 (W.D. Va. July 17, 2015).

⁸⁵ *Id.* at *1.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at *3.

⁸⁹ *Id.*

In *McDonald v. Betsinger*,⁹⁰ the court granted the defendants' motion to dismiss where the only allegation in the complaint to support punitive damages in a rear-end tractor-trailer collision was that the driver was a professional truck driver.

Finally, the court most recently addressed *Alfonso* in *Lester v. SMC Transport*⁹¹ and granted summary judgment in favor of the defendant truck driver. In *Lester*, the driver's tractor-trailer broke down; therefore he parked it at a rest stop on Interstate 81.⁹² The driver obtained a tow truck from another defendant and returned to the truck stop to tow the disabled vehicle.⁹³ Because other trucks blocked his access to the southbound exit ramp,⁹⁴ he chose not to wait but drove north, up the entrance ramp against oncoming traffic intending to make an illegal U-turn onto southbound Interstate 81.⁹⁵ The driver turned the headlights on for both trucks and turned on the hazards for at least one truck. While making the U-turn, he was struck by the plaintiff's driver in the right lane of traffic.⁹⁶ After the accident, the truck driver attempted the illegal U-turn a second time.⁹⁷

In granting the defendant driver's motion for summary judgment, the court in *Lester* distinguished *Alfonso* in several ways. First, the court noted that while the driver certainly violated traffic laws by using an entrance ramp to exit a rest stop, there was no evidence that the driver was aware of any federal regulation specifically addressing truckers in this regard.⁹⁸ Second, he noted there was no evidence of training that the driver underwent to become a truck driver.⁹⁹ Third, unlike the circumstances in *Alfonso*, the truck was not left in the travel lane for an extended period of time.¹⁰⁰

V. ANALYSIS FOR DEFENDING TRUCKING DRIVERS

Claims for willful and wanton conduct and punitive damages that are brought against truck drivers increase the potential value of the claim, may allow for the admission of unfavorable and inflammatory evidence, expand the scope of discovery and costs to the client, and may negate the defense of contributory negligence. Plaintiffs are increasingly pleading willful and wanton conduct in trucking cases because truck drivers are professional drivers who receive train-

⁹⁰ 2016 WL 958737 (W.D. Va. Mar. 8, 2016).

⁹¹ 2016 WL 7439424 (W.D. Va. Dec. 22, 2016).

⁹² *Id.* at *1.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at *2.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

ing to prevent the conduct that may have caused the accident. Many of these claims are unfounded and should be addressed aggressively before trial.

Before *Alfonso*, the case law stated that a sober driver's actions of intentionally violating the rules of the road were insufficient to bring a claim for punitive damages. This was true where drivers purposely operated vehicles with impaired vision or where a driver was intentionally tailgating another driver at speeds up to twice the speed limit.

Alfonso changed the landscape of these claims by drawing a distinction where a professional driver is trained on safety procedures or is subject to the Federal Motor Carrier Safety Regulations. The facts in *Alfonso* involved blocking the right travel lane of a federal interstate while failing to take the proper safety precautions to alert oncoming traffic. In addition, there was evidence that the driver had been trained on the proper safety procedures. The Supreme Court of Virginia found that these admissions by the defendant driver were sufficient to raise a triable issue on whether the defendant was "aware, from his knowledge of existing circumstances and conditions, that his conduct probably would cause injury to another."¹⁰¹ It would also appear that the egregious nature of this case was satisfied by leaving a tractor-trailer on an interstate roadway without proper warning signs.

Following *Alfonso*, plaintiffs have sought to expand its holding to all cases involving truck drivers and to use the drivers' training against them. To legally operate a tractor-trailer in Virginia, truck drivers are required to obtain a class A commercial driver's license. Many attend truck driving schools to aid in their training and employability. Many employers offer ongoing training programs for their drivers and hire safety managers to implement and enforce the safety procedures. Some employers award safety bonuses to their drivers to reward drivers who have no accidents.

Plaintiffs often seek this safety training information in discovery to prove that the driver had actual knowledge that his conduct might cause injury to others. Since almost all safety training will be targeted at avoiding injury, this argument is made regularly. Basic public policy dictates that we should not penalize tractor-trailer companies for providing safety training and requiring that their drivers be aware of Federal Motor Carrier Safety Regulations.

Since *Alfonso*, courts have been reluctant to allow punitive damages where the conduct is not incidental to operating a tractor-trailer. In *Acuna I*, *Boone*, and *Lester*, the courts disallowed punitive damages where the truck drivers were violating basic traffic laws that were applicable to all vehicles: tractor-trailers and passenger vehicles alike. *Acuna I* involved a truck crossing the double yellow line. *Boone* involved a wide right turn at a traffic light and *Lester* involved an illegal U-turn on the interstate. Conversely, in *Acuna II*, *Stanley*, and *Blankenship*, the court allowed claims for punitive damages to proceed where the

¹⁰¹ 257 Va. at 545-46, 514 S.E.2d at 618-19.

plaintiff alleged that the truck driver was in violation of Federal Motor Carrier Safety Regulations for maximum driving hours.

VI. CONCLUSION

Baseless claims of willful and wanton conduct against truck drivers threaten many serious consequences for defendants, unnecessarily drive up litigation costs, and contradict public policy because they seek to use driver training against the driver and his employer. They should be addressed as early in the litigation as possible when the plaintiff neither pleads nor presents evidence of egregious conduct incident to the operation of a tractor-trailer that the driver knew was improper or was trained to avoid.

