

Book Notes

THE LAW OF COMMERCIAL TRUCKING: DAMAGES TO PERSONS AND PROPERTY: DAVID N. NISSENBERG, The Michie Company Law Publishers, 1994, \$105.00.

Wendy Katherine von Wald*

To this writer's knowledge, no treatise like THE LAW OF COMMERCIAL TRUCKING: DAMAGES TO PERSONS AND PROPERTY has ever been published. Unlike many other treatises, this text discusses areas of tort, contract, warranty, repairs, damages, insurance and federal regulation in single volume. Rather than focusing on any one legal area, the treatise provides a comprehensive overview of this "long-overlooked area of law".¹ Nissenberg contends that while the industry may not have received the scholarly attention it deserves in the past, its size and importance to the national economy demands it receive attention now.²

Nissenberg is no stranger to the trucking industry. The author graduated from Brown University and the University of Miami Law School and has since established a substantial trucking law practice in the Southern California area. He has authored many columns for various national trucking magazines. Nissenberg also founded the La Jolla Bar Association and served as its president from 1984-1986.

The treatise is divided into seven parts. Parts I through III are discuss the Uniform Commercial Code (U.C.C.); relating to truck acquisition, warranties, and maintenance and repair. Part IV completes a thorough discussion of negligence, strict products liability, employer's liability and governmental liability. Part V discusses insurance issues and their implications for drivers, owners and employers, and Part VI provides an overview of damage issues for interstate and intrastate cargo. The author concludes in Part VII with an examination of the liabilities involved in carrying abnormally hazardous materials, including discussion of applicable federal regulations. The treatise leads the researcher

* Wendy Katherine von Wald graduated from Denison University in 1990 with a B.A. in English. Ms. von Wald is an Associate Articles Editor for the TRANSPORTATION LAW JOURNAL and expects to graduate in May of 1996.

1. DAVID N. NISSENBERG, THE LAW OF COMMERCIAL TRUCKING: DAMAGES TO PERSONS AND PROPERTY v (1994) [hereinafter NISSENBERG].

2. *Id.* at v.

through each area of law; providing examples and citations to recent cases.

Part I addresses the purchase and sale of commercial trucks and trailers, specifically the rights and obligations of each party. Chapters one and two of this part cover the sections of Article 2 of the Uniform Commercial Code dealing with most every aspect of the acquisition of a truck or trailer. Framed by a discussion of the applicable sections of the Code, the reader is introduced to contract formation, indefiniteness, a buyer's right to reject, seasonable notice, revocation of acceptance, and risk of loss, as each applies to commercial trucking. While not a complete guide to the Code, the author does an excellent job of giving the reader a clearer definition of terms such as "seasonable notice" and "reasonable time," as commonly understood within the industry. The chapter concludes with a brief introduction to damages.

Chapter two addresses damage issues arising out of the purchase of a nonconforming truck or trailer. Tracking the developing law in this area, Nissenberg presents the reader with insight into the courts' interpretation of the Code specific to this industry, as well as the code's effects on these transactions. Under the applicable sections of Article 2, the chapter outlines the appropriate standards for: rejection of a nonconforming vehicle, revocation of acceptance, the buyer's obligations under the Code to notify the seller, and the seller's right to cure and damages. This chapter concludes by addressing the issue of redhibitory actions, their elements and obligations placed on the buyer, and damages in the case of a successful action.

Given the importance of secured transactions to the industry, Nissenberg devotes all of chapter three to discussing Article 9 of the U.C.C., Secured Transactions. Nissenberg leads the reader through the Article, illustrating the importance of the obligations of each party, and the significant power held by the secured party. The secured party's ability to repossess without action of law so long as there is no breach of peace,³ that party's responsibility for third party reposessor's actions, conversion of property, and the debtor's rights responding to these acts are presented clearly and concisely. As disputes over secured transactions in the trucking industry have generated over 30 years of case law,⁴ Nissenberg devotes appropriate attention to the issue.

Warranties are the subject of Part II which outlines the various protection afforded under the U.C.C., as well as the Magnuson-Moss Warranty Federal Trade Commission Improvement Act.⁵ Nissenberg defines

3. *Id.* at 62-64.

4. *Id.* at 58.

5. 15 U.S.C. §2301 et seq. (1988).

the Code sections within the context of the commercial trucking industry, and provides specific examples. The chapter concludes by addressing warranty damages.

Part III focuses the reader on issues relating to the maintenance and repair of commercial trucks and trailers. As with any other industry relying on its ability to transport cargo, the trucker's livelihood is often dependent on the maintenance of his truck. Individuals who repair commercial trucks also present relevant issues to this area of law. Nissenberg offers numerous examples of cases where conflicts arose between owner and mechanic, and finds most are resolved through the application of bailment, contract or negligence law, and often include the interpretation of statutory lien laws.⁶

Tort law is a major concern for the trucking industry. As such, Nissenberg devotes Part IV of the treatise to an examination of negligence issues. As the size of commercial trucks creates greater potential for accidental injuries and damage, truckers, employers, and truck owners face uncommon liability situations.⁷ Accordingly, courts are more likely to arrive at an inference of negligence when an accident involves a commercial truck.⁸ Whether the concern is an employer's liability for its employee's actions, or an individual's failure to act with reasonable care on his own behalf, the area of negligence has resulted in a substantial body of law for commercial trucking. The strength of the treatise continues in Part IV as Nissenberg draws broad concepts of negligence down to specific situations and explanations.

Nissenberg appropriately follows his section on negligence with one devoted to insurance issues. Part V focuses on providing the practitioner with a clearer view of inclusion and exclusion clauses, the construction of "use" clauses, loading and unloading clauses, and "arising out of" clauses. As these terms often determine whether coverage will be afforded an injured party involved with a commercial trucker, their importance is obvious. Courts use many tests to define these terms, and Nissenberg directs considerable attention to these definitions and their application within the courts.

Part VI provides a comprehensive overview of the Carmack Amendment to the Interstate Commerce Act⁹ and an examination of carrier liability where transported property is damaged or lost. The chapter answers questions regarding the obligation of the carrier to establish proof of delivery, provide sufficiently safe equipment, and duty to prove a lack of negligence.

6. Nissenberg, *supra* note 1, at 172.

7. *Id.* at 208.

8. *Id.*

9. 49 U.S.C. § 11707.

As damage from a hazardous substance spill or the explosion of a flammable material is often catastrophic, property loss and personal injury issues are greater than with the transportation of standard cargo. This reality provides the basis for the text's final pages. While Nissenberg admits this part does not provide an exhaustive look at the federal legislation regulating the transportation of hazardous substances, it does provide an overview of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA)¹⁰, and the Hazardous Materials Transportation Act¹¹. Refusing to limit his coverage to federal regulation, Nissenberg also provides the reader with discussion centering around what constitutes an "abnormally dangerous activity". Providing examples where carriers were held liable due to injury occurring during repair to the truck, or during loading and unloading of a hazardous material, Nissenberg is careful to point out the split in the courts and specifics leading to liability.

THE LAW OF COMMERCIAL TRUCKING: DAMAGES TO PERSONS AND PROPERTY succeeds in presenting a general overview of the many areas of law affecting this industry. Demonstrating the manner in which the Uniform Commercial Code, various federal regulations and areas of tort law apply specifically to this industry, Nissenberg provides the researcher with a single volume text addressing the complex and emerging area of commercial trucking law.

10. 42 U.S.C. §§ 9601 et seq.

11. 49 U.S.C. app. §§ 1801 et seq.

TRANSPORTATION SAFETY LAW PRACTICE MANUAL: William E. Kenworthy. Butterworth Legal Publishers, 1989, 2 Looseleaf Volumes, 1994, \$175.00.

Christopher R. Eng*

The TRANSPORTATION SAFETY LAW PRACTICE MANUAL, is a two volume set fully updated in October of 1994. The manual addresses most major issues in surface transportation law from tort liability of common carriers, to federal regulations concerning hazardous substance transport. The author, William E. Kenworthy, is a member of Rea, Cross & Auchincloss in Washington D.C. and specializes in transportation law. In addition, Mr. Kenworthy served as counsel for a major common carrier and a motor carrier rate bureau. Drawing from his experiences, the author has compiled an extensive look at the major issues involved in ground transportation safety law.

The manual is a comprehensive compilation of law regarding major ground transportation carriers. The reader can easily browse through either volume and quickly pinpoint a topic. From beginning to end the manual provides a clear, concise road map through transportation safety law.

Volume I focuses on motor carriers and the railroad industry, emphasizing federal and state regulations. Each chapter gives the reader an overview of the law and, in certain areas, advice on how to proceed should litigation arise. The volume begins by comparing the common law approach to transportation law with affirmative regulation. With regard to common law, the manual only covers the areas of common carriers and personal injury, however, the coverage is extensive. Chapter Two addresses sources of indemnity and contribution. The reader is reminded that as plaintiff or defendant, highway agencies may be liable for accidents. In addition, an agencies' duty to the public is described in areas ranging from highway design to notice of defective conditions.

Consideration of motor carrier safety begins in chapter Four. The chapter provides a history of motor carrier regulation from the Motor Carrier Act of 1935, to the 1966 Department of Transportation Act, to

* Chris Eng is a graduate of Augustana College, South Dakota. He is currently a staff member of the Transportation Law Journal and expects to graduate from the University of Denver College of Law in May 1996.

the Motor Carrier Safety Act of 1990. Chapter Eight addresses enforcement of motor carrier regulations by the Department of Transportation (DOT). The chapter highlights the DOT's power in areas including civil enforcement remedies, criminal penalties, and enforcement proceedings.

Railroad safety is examined in much the same way as motor carrier safety beginning with chapter Five's assessment of Federal Railroad Regulations. Besides covering a wide variety of federal regulations such as, the Safety Appliance Acts, Hours of Service Acts, and the Federal Railroad Safety Act, attention is also paid to the effects of regulations on states. Chapter Nine furnishes an overview of the DOT's Rail Enforcement Powers including emergency orders, injunctive relief, criminal penalties, and rule making authority.

A concern for public safety runs throughout the manual. Chapters Ten and Eleven touch on alcohol and drug policies and transportation of hazardous materials respectively. Mr. Kenworthy examines DOT drug and alcohol testing procedures, and the possible criminal sanctions accompanying failed tests. In chapter Eleven, the regulation of transporting hazardous materials is characterized as a high priority. Focus is given to the Hazardous Materials Transportation Act and other applicable laws including: the Federal Water Pollution Control Act, the Occupational Safety and Health Act, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Volume I also focuses on the Commerce Clause and its authoritative powers, the DOT's historical background, motor carrier safety fitness ratings, transportation equipment and the leasing of such, employee qualifications for motor carriers and railroads, and general safety regulations. Each chapter contains a brief table of contents enabling the reader to quickly find specific topics.

While Volume I offers the reader a textual format with historical contexts, Volume II provides charts, forms, and statutes to guide the practitioner. In conjunction with Volume I, Volume II examines motor carrier and railroad related areas. This second volume offers enough forms, charts, and statutes to give the reader a sense of what action to take in various situations. Each respective form or chart is a reproduction of those used by practitioners or by agencies when filing accident, inspection, or other reports. As with Volume I, Volume II allows the reader to quickly locate a specific section and offers clear and concise language about given topics.

Two of the appendices in this volume discuss discovery procedures for interrogatories and requests for production of documents for motor carrier and railroad litigation. Other appendices cover various topics such as: accident investigation procedures of the National Transportation Safety Board, worker's compensation, hazardous and toxic materials, the

policy statement of the Federal Railroad Administration, accident reporting forms, a checklist for compliance with federal motor carrier safety regulations, safety regulations, fine schedules, truck sizes for motor carriers, and the handling and storage of different types of materials.

The TRANSPORTATION SAFETY LAW PRACTICE MANUAL covers major ground transportation issues except for the areas of tort liability for freight loss and damage. Mr. Kenworthy, nevertheless, informs the reader of the absence and offers two texts pertaining to freight loss and damage claims in footnotes. Unfortunately, the manual does leave a major transportation area uncovered—aviation. By not including aviation law in the manual Kenworthy can be accused of using a slightly misleading title. A more appropriate title might have been, the GROUND TRANSPORTATION SAFETY LAW PRACTICE MANUAL. The exclusion of aviation law does not, however, subtract from the excellent coverage of motor carriers and railroads. This two volume set would be a practical complement to any business or law practice facing ground transportation law issues.