

Loading Dock Cases

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Trailer Separation Accidents

- Trailer pulling away
- Trailer creep
- Landing gear failure

Forklift Accident: Another Off the Dock

[CH 32] 09-29-2008 0



0:00 / 0:59

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Typical Dock Without Lights or Restraints



Dock Safety Systems

Wheel Chocks

- Wheel safety chocks should be required before a trailer can be unloaded or loaded.
- Facility should provide these and not simply rely on truck drivers to supply their own
- Problems with typical chocks
 - Inconvenient and time consuming
 - Missing or cannot be found
 - Can slide (creep) and run over

Dock Communications Systems

- LED lighting systems available; some are automated while some are manually operated
- The Smart Chock has a sensor on the chock that communicates with a light on the dock that tells the forklift operator when the vehicle is safely chocked
- Restraint Systems

Simple Dock Chock



Chocks with Sensors



Typical Lighting Format



Typical Interior Dock Lighting Control



Dock Communication System



Lighting System Only



Dock Lock Attachment to RIG



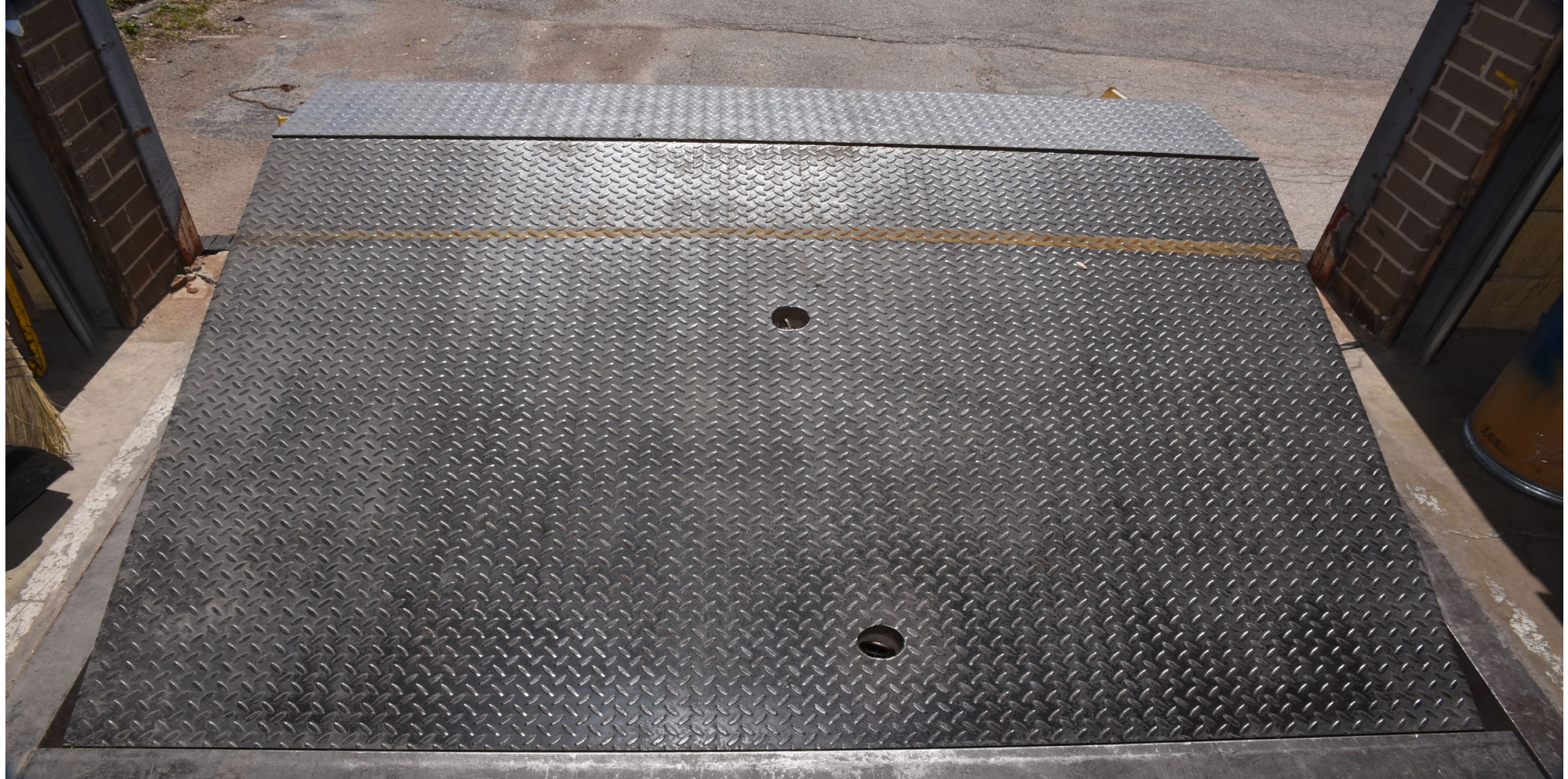
Dock Lighting System and Lock



Dock Communication with Restraint



Typical Dock Leveling Plate



Dock Leveling Plate



Forklift Falls From Dock



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Dock Safety Systems

Mandatory Visual Inspection

- Mandatory visual inspection and “lock-out” procedures should be adopted and employed to force the truck driver to get out and check that the chocks are in place.
- The parking or spring brake is set, and the trailer is in the correct position before any loading or unloading is allowed
- Driver should further check to see that any loading ramp used is properly secured and the door(s) of the trailer is properly secured open or shut as required

Check and Recheck

- Double-check system in place. A manager with receiving company should be required to inspect the trailer and chocks before loading

Dock Safety Systems

Rules to Minimize Distractions

- Forklift operators should have as many distractions removed as possible.
- Listening to music and wearing headphones should never be permitted.
- Cell phone use should be forbidden and enforced.
- Warehouse should have a written policy for forklift drivers/workers.

Written Truck Driver Education

- Company where the loading and unloading occurs needs to communicate its own proper procedures to all drivers
- Checklist or instruction manual, for each dock should be communicated to all drivers
- Never assume that the truck drivers know or understand your requirements



Investigation & Preservation

Investigation & Preservation Checklist

Examine the scene as soon as possible

Send spoliation letters to the facility so evidence will be preserved

Hire an expert with trucking and safety experience

Check and document the yard and dock for signage

Check for security cameras at facility, nearby businesses, or homes

Did the facility make an incident report?

Were there any witnesses to the incident?

Was the incident recorded, even inadvertently, by an individual's cell phone?

Investigation & Preservation Checklist

Determine if properly working safety lights are installed

Determine if bridge plates were utilized and if they were functioning properly at the time of the incident

Verify if the forklift driver was required to be licensed to drive the forklift

Did the forklift have a seatbelt and was it properly used by the driver?

Was training provided to the forklift driver?

If training was provided, did the forklift driver follow such training?

Investigation & Preservation Checklist

Are there written procedures regarding how the truck driver and dock workers interact?

Determine if chocks were utilized and determine whose responsibility it was to place them

Does the facility permit the tractor driver to exit the tractor during unloading or loading?

Verify if the bill of lading was signed

If the bill of lading was signed, determine when it was signed and given to the tractor driver as evidence that the loading/unloading process was complete, and the driver was free to pull away from the dock



Evaluating Liability





Themes

- Loading docks are dangerous
- Giant trucks are coming and going with no time to waste
- Rushed, chaotic environment

Causes of Action

Duty of care owed may be dependent on the status of the claimant on the property

- Premises liability (slip/trip and fall; falling items/unsecured loads; falling off dock)
- Motor vehicle negligence (pedestrian vs. truck; vehicle vs. vehicle)
- Products liability
- Negligent security / inadequate security

Who is Who? Relationship Between Parties

- Warehouse employee
- Third-party truck driver
- Employee truck driver
- Third-party invitee (visitor, security guard)
- Trespasser

Status of Plaintiff on Property

Establish relationship between injured party to alleged tortfeasor / the status of the claimant on the property

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graph TD; A[Establish relationship between injured party to alleged tortfeasor / the status of the claimant on the property] --> B[Invitee]; B --> C[Licensee]; C --> D[Trespasser];
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Invitee

Licensee

Trespasser

Duty of Care – Plaintiff Theory

Business Invitee

Mutual benefit test

Entering a premises at the express or implied invitation of the owner for a purpose connected with the owner's business or for some purpose serving mutually beneficial interest

Economic benefit test

Claimant purpose for being on the property is economically (pecuniary or business interest) beneficial to the owner

Duty of Care

1. Maintain the premises in a reasonably safe condition
2. Warn of concealed perils known or that should have been discovered but was not known or readily observable to the invitee

Duty of Care – Defense Theory

Licensee / Trespasser

Not authorized to be on the property

Exceeding scope of invitation (in an area unaccustomed to, not expected to be, not necessary to be)

Duty of Care

1. Avoid/refrain from inflicting willful or wanton injury
2. Avoid/refrain from willful or wanton negligence or misconduct

Common Loading Dock Allegations

1. Fall protection
2. Powered industrial trucks (forklifts)
3. Lockout/tagout procedures

Fall Protection

1. Fall protection

- Unstable dock edges
- Wet surfaces
- Lack of guardrails or other physical barriers
- Lack of visual indicators that mark the edge
- Unsecured dock plate
- Lack of education on fall hazards and recognizing potential threats
- Failure to perform safety audits and inspections
- Lack of wheel chocks and trailer locking devices
- Failure to have wheel chocks and trailer locking devices

Powered Industrial Trucks

2. Powered industrial trucks (forklifts)

- Lack of training for safe operation
- Unsecured loads; shifting loads
- Failure to conduct routine checkups, maintenance, and inspections
- Failure to remove forklift from service that is not in safe operating condition
- Failure to perform safety audits and inspections
- Failure to mark/identify safe walkway for traffic and exits
- Failure to have adequate lighting
- Use of uncertified forklift operator
- Failure to have dock plates that are capable of supporting maximum intended load, to keep from moving out of safe position, or to prevent vehicles from running of side edge

Lock-out/Tagout Procedures

3. Lockout/Tagout Procedures

- Failure to have lockout/tagout process to protect against danger posed by electricity hydraulic, pneumatic, and mechanical sources
- Failure to implement and enforce procedures
- Failure to train employees on procedures
- Failure to perform safety audits and inspections

Liability Defenses

Plaintiff was licensee/trespasser; no duty of care breached

Claimant knew of alleged dangerous condition and assumed the risk

The alleged hazardous condition was open and obvious

The defendant had no actual or constructive notice of the alleged dangerous condition

No proximate cause in fact

Worker's compensation immunity

Nonparty fault

Comparative negligence

Case Study

- Plaintiff truck driver alleges Memphis Processors was negligent for failing to maintain its loading dock in a safe condition and failing to make safe or warn him of slippery, hazardous condition
- The plaintiff was employed by Charles G. Lawson Trucking Co., a common carrier that maintained a trucking company on the yard of a meat packing facility in Alabama.
- The meat packing facility would utilize the trucking company's drivers to deliver animal hides, meat, and entrails to Memphis Processors
- Plaintiff had been driving loaded trailers to Memphis Processors 7 days per week for five months
- On date of the incident, in the late afternoon or evening, the plaintiff picked up a loaded trailer and arrived to Memphis Processors between 3:30 – 3:30 a.m.
- No Memphis Processors employees were present. They would arrive at 7:00 a.m.
- There was only one light turned on that gave off a little glow.
- Backed trailer to loading dock and left 2 feet between dock and rear of trailer
- Exited tractor, walked around perimeter of trailer, unhooked straps to tarp covering the trailer and walked up a set of stairs onto the loading dock, placing one foot on the loading dock and one on the edge of the trailer to remove the rear end rails of the trailer, which required him to walk around on the dock for 5-10 minutes
- He went to step onto the back of the truck but slipped and fell
- Plaintiff testified the dock had salt water on it from unloading cow hides that are in water and it was slippery
- Three coworkers told the plaintiff about slippery nature of loading dock

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Did the court grant or deny the motion for summary judgment in favor of the defense?

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Case Study

- Plaintiff alleged Next Day Cargo was negligent for failing to maintain the premises in a reasonably safe condition and failing to warn him of a dangerous condition
- Plaintiff brought a package to Next Day Cargo for shipping.
- He walked through the parking lot and into the loading dock area.
- A Next Day Cargo employee met the plaintiff, and they exited the loading dock area and returned to the plaintiff's vehicle.
- The same employee instructed the plaintiff to wait by his car until he returned with paperwork.
- Third-party truck driver stopped his truck in parking lot and proceeded to lower the truck's lift-gate.
- The truck driver asked the plaintiff for assistance in lowering the package, which was a 300 lb. hospital bed.
- The box fell from the lift gate onto the plaintiff's left ankle.
- The truck driver testified that in the past boxes had obstructed the loading dock, forcing him to unload his deliveries in the middle of the company's entranceway, and he had notified Next Day Cargo of this problem

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Did the court grant or deny the defense's motion for summary judgment for the defense?

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Case Study

- Publix employees, Mr. Ramos and the decedent, worked at a distribution center. Their jobs involved using Ottawa tractors to move trailers to loading bays to load/unload merchandise.
- After hooking up a trailer, Mr. Ramos returned to the tractor, looked in his mirrors, and released his air brakes.
- He knew the decedent was working in the same area and believed he went to talk to another employee in the yard
- He backed the trailer flush with the warehouse door and felt a bump against what he thought were dock pads, so he set his brakes.
- The decedent had been crushed between the rear of the trailer and the warehouse dock pad after the decedent walked behind the trailer.
- The backup alarm on the tractor was not working, but Mr. Ramos never reported this to maintenance nor did he fill out an inspection report, which violated Publix policy. However, the truck had been in for other maintenance but the backup alarm was not checked.
- OSHA cited Publix for failing to have an operative backup alarm.
- Worker's compensation benefits were paid for the death
- The plaintiff filed suit against both Mr. Ramos and Publix, asserting that Publix committed an intentional tort and Mr. Ramos was grossly negligent.

Worker's Compensation Immunity

- **Intentional tort exception:**

- Employer commits intentional tort that causes injury or death
- Requires proof by clear and convincing evidence that the employer engaged in conduct that it knew, based on prior similar accidents or on explicit warnings specifically identifying a known danger, was virtually certain to result in the injury or death and
- Requires that the employee was not aware of the risk because the danger was not apparent, and the employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.
- This requires a “virtual certainty” standard, requiring the conduct be virtually certain to result in injury or death to overcome immunity

Worker's Compensation Immunity

- **Gross negligence exception**

- Fellow employee acts with willful and wanton disregard or gross negligence
- Gross negligence - act or omission that a reasonable, prudent person would know *is likely* to result in injury to another
 - Compare: Simple negligence - course of conduct a reasonable and prudent man would know *might* possibly result in injury
- Composite of circumstances constitute imminent or clear and present danger amounting to more than normal and usual peril
- Requires chargeable knowledge or awareness of the imminent danger
- Act or omission must occur in a manner evincing conscious disregard of consequences or from the more extreme willful or wanton disregard, meaning culpable or criminal negligence
 - Compare: Simple negligence - careless disregard

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Did the court grant or deny (1) Publix's motion for summary judgment directed to the intentional tort exception to worker's compensation immunity and (2) Mr. Ramos' motion for summary judgment directed to gross negligence exception?

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QUESTIONS?

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