

Negligence and The Emergency Vehicle Operator

FIREHOUSE MAGAZINE ARTICLE AUG 18, 2003

This month, I will investigate negligence, its relationship to driving with due regard for the safety of all other users of the highway and how due regard and negligence affects you, the emergency vehicle operator. Negligence is "the habitual failure to do the required thing; careless in manner or appearance; neglectful indifference." The legal definition of negligence is described as; "Failure to use a reasonable amount of care, when such failure results in injury to another."

Now, we will take the legal definition of negligence, break it down further and define it. To the emergency vehicle operator, "failure to use" could encompass vehicle and traffic laws, SOPs, policies or actions that should have been used, but were not. An example would be driving without due regard. Next we have "a reasonable amount of care." Reasonable care is defined as the action that can be expected from a reasonable, prudent person with regard to a situation. When the situation involves human life and safety, only the highest degree of care against foreseeable danger is reasonable.

An example of an emergency vehicle operator not driving "with reasonable care," would be speeding through a red light and striking another vehicle while responding to a call. One might argue that the emergency vehicle operator could not have foreseen the danger. However, we know statistically that the vast majority of major apparatus accidents occur at intersections. You must come to a complete stop at red-lighted intersections. You must wait until the privilege of the right of way is granted to you. Make no mistake about it, being granted permission by the motoring public to cross a red-lighted intersection is a privilege, and a privilege we can ill afford to lose, due to our recklessness or negligence.

When you have been granted the right of way, and safely negotiate the intersection, then, and only then, have you satisfied the definition of reasonable care. To achieve your goal of getting the right-of-way at an intersection, you must drive aggressively, yet defensively, particularly in an urban environment. How do you accomplish this task? When I drove the fire apparatus in New York City, I frequently encountered a very busy intersection at the corner of Webster Avenue and Fordham Road in the Bronx. If I waited at this intersection for the right of way, I could be there forever. When confronted with this situation, you must nose out into the intersection aggressively, to let your presence be known and to define the seriousness of the situation, yet temper your actions with safety, common sense and defensive driving skills to satisfy the definitions of reasonable care and due regard.

Due regard is defined as how a "reasonably careful person, performing under similar circumstances would act in the same manor." These definitions are how you will be judged in a civil court of law.

Continuing with our breakdown of the negligence definition, we look at "when such failure." Failure is a negative result. This negative result is obvious in a major apparatus accident. The last part of the definition, "to another," means that the failure, that

negative result, caused by you, the emergency vehicle operator, caused another person to have property damage, be injured or die.

We are living in the age of the lawsuit. Today there seems to be a widespread belief that the best way to get ahead in life is to sue someone. Even if the accident is the person's own fault, someone else has to pay for it. Here lies the deep pocket theory. The deep pocket theory is based on the mistaken belief that insurance companies, fire districts, municipalities, cities, public owned utilities and large corporations have deep pockets full of money ready to hand out to the public, every time the public wants to sue them. We know that this simply isn't the case. The money paid out in civil liability cases results in higher insurance premiums, higher taxes or higher utility rates for everyone. Every time someone goes to liability court and wins, it affects you and me.

What must be proven in civil court? In a lawsuit, the plaintiff (the person you hit) must prove the "defendant" (the emergency vehicle operator) was in some way negligent. This is some of the criteria that must be proven:

- The defendant had a duty to the plaintiff.
- The defendant breached that duty.
- The plaintiff suffered some injury or loss.
- The defendant's breach of the duty was the actual cause of the plaintiff's injury or loss.

Now, let us take a closer look at what must be proven in a negligence case as it relates to you, the emergency vehicle operator.

- The defendant (the emergency vehicle operator) had a duty to the plaintiff (all other users of the highway). The vehicle and traffic laws state that emergency vehicle operators have the duty to drive with due regard for the safety of all other users of the highway. So, yes you do have a duty to the plaintiff.
- The defendant (the emergency vehicle operator) breached that duty. If you get into a major apparatus accident, you probably have breached that duty.
- The plaintiff (the other users of the highway) actually suffered some injury or loss. If you have ever witnessed or seen pictures of a major apparatus accident, you know that the plaintiff probably suffered some injury or loss.
- The defendant's breach of duty was the actual cause of the plaintiff's injury or loss. In other words, the plaintiff's broken leg was a direct result of the defendant's breach of duty, and that the leg wasn't broken prior to the accident.

As you can see, a lawyer for the plaintiff would have a fairly easy time in civil court proving negligence on the part of the emergency vehicle operator. When you are brought into civil court by someone, they feel you were in some way negligent. They feel you breached your duty to them, and as a direct result of the accident, they were injured or suffered some loss. No jury can replace lives, but they can try to compensate the injured or their families with money.

Here is a case study that I have taken from the United States Fire Administration's Emergency Vehicle Operations Guide, that illustrates the importance of understanding

due regard, reasonable care, rue emergency and negligence. The headline reads, "Firefighter, Volunteer Fire Company and County Sued in Vehicle Accident."

While responding in the emergency mode (red lights and sirens) to a non-emergency wash down, a pumper attempted to pass a car stopped in the east bound lane, the fire engine's direction of travel. In the west bound lane, two cars were approaching the fire engine. When the first west bound car stopped, the car behind it skidded and the fire engine struck the skidding car, driven by a 17-year-old boy, killing him. The driver of the pumper, an eight-year veteran, was removed from driving duty following the crash. The parents of the victim have filed a lawsuit against the county, the volunteer fire company and the volunteer fire department's driver seeking damages in the sum of \$24 million. The parents of the victim have requested a jury trial, claiming the following in their eight count indictment:

Part 1: That the volunteer fire department's driver was driving in a negligent manner, and they are charging him with the failure to give full attention to the operation of his vehicle at a speed greater than reasonable and prudent. The failure to operate the vehicle within the proper lane of travel. The operation of his vehicle as an emergency vehicle when unnecessary to do so. Failure to maintain control of his vehicle. Failure to avoid striking the vehicle being operated by the deceased.

Part 2: The county failed to properly train and supervise firefighters who operate emergency fire trucks and equipment prior to and on the date of the accident. This resulted in the deceased being deprived of his life and his right to travel safely upon the public road. Damages are also being sought by the victim's parents (plaintiff) for the "great mental anguish, emotional pain and suffering," since the experience of their son's death.

The vehicle and traffic laws state that you may exceed the maximum speed limit, so long as you do not endanger life or property. As you can see, once you violate this provision of the law, it will be used against you as stated in this suit. As stated in the case study, the call the driver was responding to was a non-emergency washdown. The driver, whether it was his own choice or a department SOP, used his lights and siren (when it was not necessary to do so) on this non-emergency call. The definition of a true emergency is quite clear - a situation in which there is a high probability of death or serious injury to an individual or significant property loss and action by the emergency vehicle operator may reduce the seriousness of the situation. No portion of this fire call fits the criteria for a true emergency.

In lawsuits involving emergency vehicle operation, the vehicle and traffic law says that you have a duty to drive with due regard for all other users of the highway. This section of the law has come back to haunt many an emergency vehicle operator after an accident. Do you know what your state law says? Maybe you should take the time to look at it. If you read it, you will see that the second you get involved in an accident, you have more than likely violated one of the conditions of the law.