Negligence *Per Se:* Leveraging Violations of Statutes, Regulations and Ordinances to a Strategic Advantage

Exploring the Roadmap in *Magna Trust Co. v. Illinois Central Railroad Co.*, 313 Ill. App. 3d 375 (5th Dist. 2020)

by Daniel W. Farroll

Introduction

Personal injury practitioners in Illinois have long relied on statutory and regulatory violations as powerful tools in negligence cases. While most attorneys are familiar with the basic negligence *per se* doctrine, less are aware of the "hidden gems" that can transform statutory and regulatory violations into strict liability claims. The Illinois Appellate Court's decision in *Magna Trust Co. v. Illinois Central Railroad Co.*[1] provides the framework as to how the Illinois negligence *per se* doctrine transformed a violation of the Federal Safety Appliance Act[2] into a strict liability claim. The appellate court concluded the trial court did not abuse its discretion in striking the defenses of comparative fault and assumption of the risk.[3]

This article explores the various theories of liability available when defendants violate safety statutes or regulations, highlights the potential of the *Magna Trust* decision to create a strict liability claim, and demonstrates its practical application through a case study involving violation of Federal Mine Safety Health Act[4] and accompanying regulations. Finally, it considers the broader implications for violations of the Federal Motor Carrier Safety Regulations, building code violations, and other laws governing workplace safety.

I. Theories of Liability for Statutory and Regulatory Violations

When a defendant violates a safety statute, regulation, or ordinance—whether federal or state—resulting in bodily harm, several distinct theories of liability potentially apply under Illinois law. Understanding the elements and applications of each theory is crucial for maximizing recovery and overcoming potential defenses.

A. Private Right of Action

A private right of action exists when a statute or regulation explicitly or implicitly provides individuals with the right to sue for violations of its provisions. This theory is the most direct path to liability but is often unavailable because many safety statutes and regulations focus on regulatory enforcement rather than private remedies.

Elements:

1. The statute or regulation must create a private right of action, either expressly or by implication;
2. The plaintiff must be within the class of persons the statute or regulation was intended to protect;
3. The defendant must have violated the statute or regulation; and
4. The violation must have proximately caused the plaintiff's injury.

In *Metzger v. DaRosa*,[5] the Illinois Supreme Court established the following four-part test for determining when statutes create implied private rights of action: (1) whether the plaintiff is a member of the class for whose benefit the statute was enacted; (2) whether the plaintiff's injury is one the statute was designed to prevent; (3) whether a private right of action is consistent with the underlying purpose of the statute; and (4) whether implying a private right of action is necessary to provide an adequate remedy for violations.

B. Negligence *per se*

Negligence *per se* allows statutory and regulatory violations to establish the duty and breach elements of a negligence claim automatically, eliminating the need to prove the standard of care through expert testimony or other means. Moreover, negligence *per se* can impose strict liability when the legislature clearly intends such a standard. In *Abbasi v. Paraskevoulakos*, the Illinois Supreme Court clarified that "the violation of a statute is not negligence *per se*, which refers to strict liability, but rather only *prima facie* evidence of negligence **unless the legislature clearly intends to impose strict liability**."[6] Thus, the key to imposing strict liability

through a negligence *per se* claim is establishing the legislature's clear intent to impose such a standard. The Illinois Supreme Court noted that courts have found legislative intent to impose strict liability for violations of the Dramshop Act (235 ILCS 5/6-21), the Coal Mining Act (225 ILCS 705/1 *et seq.*), and the Child Labor Law (820 ILCS 205/1 *et seq.*).[7]

Elements:

1. Violation of a statute, ordinance, or regulation designed to protect human life or property;
2. The injured party was a member of the class of individuals the statute, ordinance, or regulation was intended to protect;
3. The injury was proximately caused by the violation; and
4. The statute or regulation was intended to impose strict liability (for the enhanced version discussed in *Magna Trust*).

Case Example: The *Magna Trust Co. v. Illinois Central Railroad Co.*[8] decision, discussed *infra*, remains perhaps the primary Illinois case that applied the common law doctrine of negligence *per se* to the violation of a strict liability statute.

C. *Prima Facie* Negligence

Prima facie negligence based on statutory or regulatory violation creates a rebuttable presumption of negligence, allowing defendants to present evidence that they exercised reasonable care despite the technical violation.

Elements:

1. Violation of a statute, ordinance, or regulation designed to protect human life or property;
2. The injured party was a member of the class the statute, ordinance, or regulation was intended to protect; and
3. The injury was proximately caused by the violation.[9]

Case Example: In *Kalata v. Anheuser-Busch Co.*,[9] the plaintiff fell as he was descending a snow- and ice-covered staircase while exiting the defendant's warehouse. The plaintiff alleged, as *prima facie* evidence of negligence, that the staircase was 48 inches wide with a single handrail despite the City of Chicago building code requiring handrails on both sides of staircases that exceed 44 inches wide. The Illinois Supreme Court concluded that the violation of the building code did not constitute negligence *per se*. However, as *prima facie* evidence of negligence, the court acknowledged that a defendant may prevail by showing that it acted reasonably under the circumstances.

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Even then, the plaintiff still must establish that the violation was a proximate cause of the injuries.

One benefit of using *prima facie* evidence to establish negligence based on the violation of a statute, regulation or ordinance is that the "plaintiff is not required to show [a] defendant's awareness of the violation since the violation itself is *prima facie* evidence of negligence."[10]

II. The *Magna Trust* Decision: A Hidden Gem

The Illinois Appellate Court's decision in *Magna Trust Co. v. Illinois Central R.R.*[11] represents a significant and perhaps underutilized application of negligence *per se* in Illinois. The decedent was killed due to the defendant railroad allegedly violating the Federal Safety Appliance Act.[12] He had positioned himself between two rail cars because the coupling was not functioning properly. The nonfunctioning couplers violated the Federal Safety Appliance Act. Because the plaintiff was not a railroad employee, making him ineligible to pursue a claim under the Federal Employers' Liability Act, the court analyzed whether the plaintiff in this case could utilize the Illinois common law doctrine of negligence *per se*.[13]

A. Background and Facts

In *Magna Trust*, the plaintiff sought to hold Illinois Central Railroad liable for injuries resulting from alleged violations of the Federal Safety Appliance Act. The Federal Safety Appliance Act imposes strict liability for violations that cause injury to railroad employees, but does not create a private right of action for violations that cause injury to non-employees. This presented a common dilemma: clear federal safety violations with no direct federal remedy.

The court reasoned that when Congress or the Illinois legislature creates strict liability for safety violations, the Illinois courts can recognize that strict liability standard in state common law negligence *per se* claims.[14] This approach respects both federal and state safety policies while providing injured parties with a meaningful remedy under state law.

B. The Strict Liability Standard

Under *Magna Trust*, when a federal or state safety statute or regulation imposes strict or absolute liability for violations, Illinois courts can apply strict liability in negligence *per se* claims rather than the traditional negligence standard. This eliminates common defenses such as:

- Lack of knowledge of the violation;
- Reasonable efforts to comply;
- Industry custom and practice; or
- Comparative fault based on the defendant's overall conduct.[15]

III. Case Study: Application of Illinois Negligence *per se*: Federal Mine Safety and Health Act[16]

Consider the application of Illinois negligence *per se* principles to defective or malfunctioning underground mining equipment.

A. Factual Background

Underground mining equipment is frequently damaged in the regular course of mining activities. It is not uncommon for hydraulic systems to be modified contrary to manufacturer specifications and recommendations. In one case, the manufacturer had warned that the specific modification would make the equipment more difficult to control while "tramming" or transporting it underground. In addition, the equipment's right crawler track was out of adjustment and the hydraulic system for the right tram operated only at marginal levels which caused the equipment to drift unpredictably during tramming. Finally, the individuals responsible for tramming this equipment had not been provided specific task training as required before operating the equipment in its modified and defective condition.

One challenge in underground mining cases is establishing liability against a defendant which is not an injured party's employer. It is quite common in the underground mine industry that a mine owner or mine operator surrenders operational control to an independent contractor. That independent contractor may be judgment proof due to undercapitalization or immune from civil liability because of worker's compensation.

B. Federal Mine Safety Act

The Federal Mine Safety and Health Act (FMSHA) imposes comprehensive safety obligations on mine operators with strict enforcement mechanisms amounting to strict liability in a civil enforcement context on operators for safety violations.[17] The notion of strict liability extends to mine owners being "strictly liable for the actions of independent contractor violations."[18] Moreover, the safety standards promulgated under the Mine Safety and Health Act had

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long been interpreted as assessing liability for civil penalties without regard to fault.[19] This also means that an operator is not required to have knowledge of the existence of dangerous conditions.[20] In addition, the strict liability principles underpinning the FMSHA extend to mine owners.[21]

C. Federal Mine Safety and Health Act Regulations

The regulations governing use of "machinery and equipment" in underground mines require mobile and stationary machinery and equipment to be maintained in safe operating condition and that machinery or equipment in an unsafe condition shall be removed from service immediately.[22] Consider the situation where a right crawler track caused underground mobile equipment to drift during forward movement and a hydraulic system was rigged in a way that made the equipment more difficult to control with forward movement. Each such issue would violate regulations prohibiting continued use of unsafe equipment.[23]

D. Application of Negligence *per se* using the *Magna Trust* Framework

The FMSHA contains a number of strict liability principles beginning with the prohibition of unsafe machinery and requiring any unsafe equipment to be removed from service. Consider that knowledge has long been rejected as a defense for this condition. Similarly, consider that the strict liability principles of the FMSHA extend to strict liability of a mine-owner (as operator) being vicariously liable for the conduct of an independent contractor that it has contracted to operate the mine's day-to-day activities.[24]

Despite the fact that FMSHA does not contain any language that would create a private right of action, the statute and its regulations clearly establish and articulate that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner."[25]

The framework of *Magna Trust* applied to injuries caused by unsafe equipment that has not been removed from service meets all the requirements of the Illinois negligence *per se* doctrine.

E. Strategic Advantages

The *Magna Trust* framework provides several strategic advantages:

1. Elimination of Fault-Based Defenses: Any defendant would be foreclosed from any defense based on exercising reasonable care.[26]

2. Vicarious Liability: Mine owners and operators face strict liability

even for independent contractor violations, eliminating the protection typically afforded by independent contractor relationships.

3. Proximate Cause: Aside from damages, the only proof required in this strict liability context is that the violations of the safety statute or regulations were a proximate cause of the damages.

V. Implications for Other Federal and State Safety Statutes and Regulations

The framework of *Magna Trust* and negligence *per se* allows for extension beyond the Federal Safety Appliance Act (railcar safety) and the Federal Mine Safety and Health Act (underground mining).

One area ripe for consideration is whether the violation of one or more Federal Motor Carrier Safety Regulations[27] has the potential to utilize negligence *per se* principles.

At first glance, this is an area that would seem to qualify under the *Magna Trust* framework to apply strict liability. After all, these regulations aim to improve safety to drivers and passengers of other vehicles on the highways. However, Illinois reported caselaw does not reflect the pursuit of negligence *per se* liability theories for violations of Federal Motor Carrier Safety Regulations.

Another area ripe for consideration is building code violations. Of course, not all building code provisions may be considered "safety" provisions for *prima facie* or negligence *per se* to apply. On the other hand, certain building code provisions do involve the safe use of a structure. This might involve the structural integrity of floors, walls, ceilings and roofs that could collapse and cause personal injury. The requirement of dual handrails on a staircase was evaluated by the Illinois Supreme Court in *Kalata v. Anheuser-Busch Companies, Inc.*[28] One can imagine the electrical code violations that might cause fires, electrocution, and other electrical injuries. Similarly, a plumbing code could be called into question for gas lines that leak and cause fires or explosions. General building code requirements as well as plumbing codes could be challenged for improper drainage of water, snow or ice.

Pursuing a negligence *per se* claim for a violation of the Occupational Safety and Health Act[29] ("OSHA") could prove difficult. The OSHA standards typically place the responsibility of eliminating workplace hazards on employers for the protection of its employees. As such, an employee who sustains an injury in the course of his employment would be limited to his workers'compensation remedy. However, an unusual situation might

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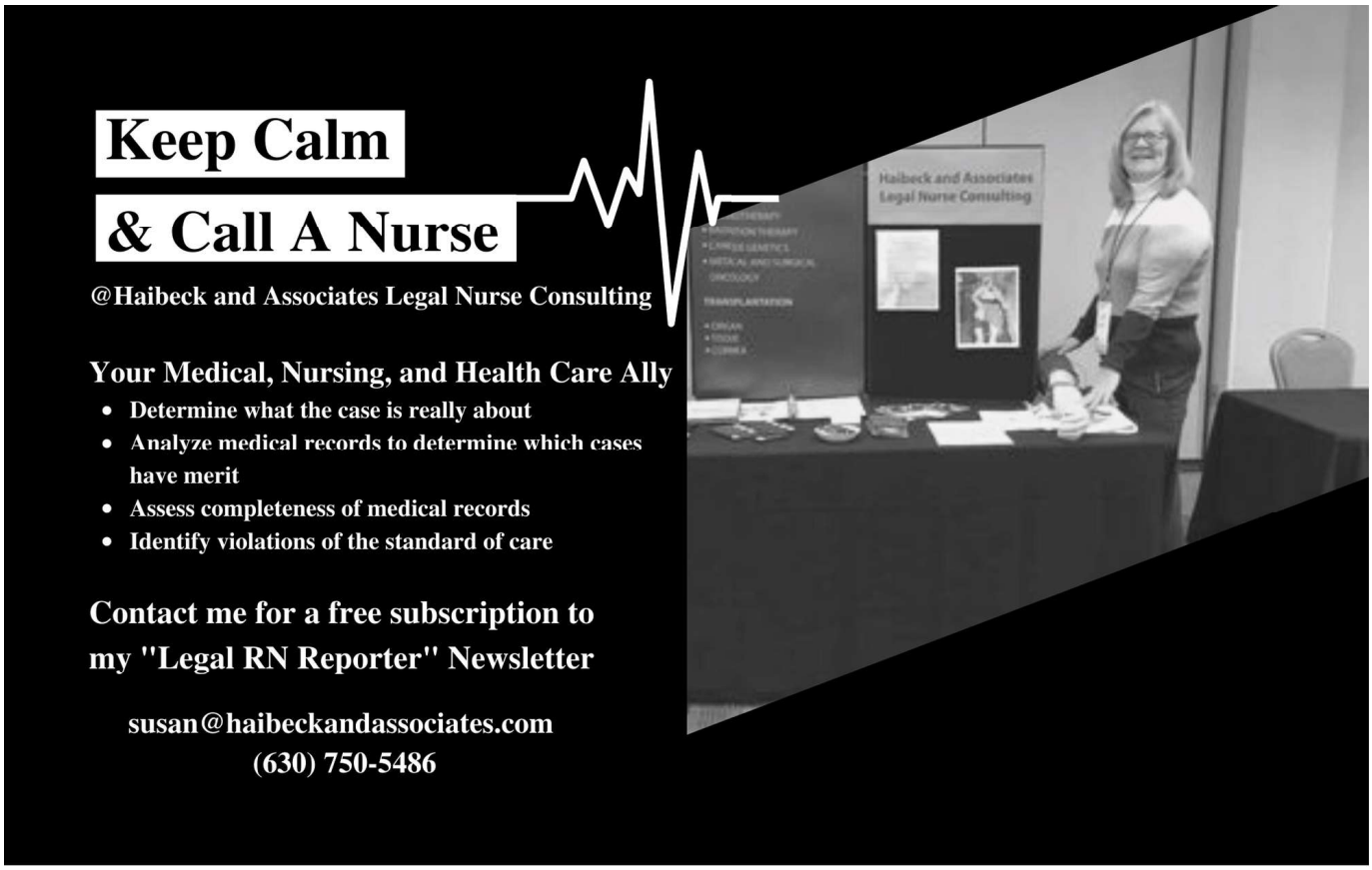

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present itself where a nonemployee who is reasonably anticipated to be on a jobsite might sustain an injury due to an OSHA violation. The pertinent issue is whether the nonemployee is within the class of individuals intended to be protected by the OSHA regulation. In this situation, it may be worth pursuing a negligence *per se* theory of liability.

VI. Practical Considerations for Practitioners

Successfully employing the *Magna Trust* doctrine requires careful attention to pleading, discovery, and trial strategy.

A. Pleading Considerations

Pleading *prima facie* negligence and negligence *per se* in different counts will preserve all theories of liability. For negligence *per se* counts, explicitly allege that the statute, regulation or ordinance imposes strict or absolute liability for violations. Where there are clear authorities imposing strict or absolute liability, one might cite such authorities in the pleadings.

B. Discovery Strategy

Conduct thorough written discovery regarding applicable federal and state safety statutes, regulations, ordinances and any other policies, procedures or guidelines that may be intended to reflect industry standards. Retain experts familiar with both federal and state regulatory enforcement to establish the strict liability nature of the applicable statutes and regulations.

C. Trial Strategy

Be mindful that the Illinois jury instruction IPI 60.01 ("Violation of Statute, Ordinance, or Administrative Regulation") does not specifically identify either negligence *per se* or *prima facie* negligence. Request jury instructions that eliminate fault-based defenses for strict liability claims. Illinois Supreme Court Rule 239(a)[30] allows a jury to be instructed on a subject that is not addressed by an IPI instruction.

The absence of a specific IPI instruction for strict liability negligence *per se* claims is logical when properly understood. Because strict liability in negligence *per se* claims derives from the specific statute that imposes such liability, the jury should be instructed on the elements of the specific statute at issue. If the statute is not included in the IPI Civil section for "Actions Based on Statutes," practitioners should craft a non-IPI instruction identifying the statute's elements, potentially modeling it after existing IPI instructions for statutory violations. After all, in true negligence *per se* claims where

the legislature clearly intends strict liability, the defendant's liability derives solely from the statutory violation.

Conclusion

The *Magna Trust* decision represents a powerful but potentially underutilized tool in the personal injury practitione's arsenal. The *Magna Trust* decision is now twenty-five years old, yet there is only one Illinois case that cites it on the issue of negligence *per se* or *prima facie* negligence principles.[31]

Personal injury practitioners should carefully consider *Magna Trust* applications of negligence *per se* and strict liability where violations of statutes, regulations, or ordinances have led to bodily harm. The doctrine's potential to transform regulatory violations into strict liability claims makes it an invaluable tool for achieving justice for injured clients and promoting public safety through enhanced deterrence.

The hidden gems in Illinois negligence *per se* doctrine, exemplified by *Magna Trust*, are a reminder that creative legal thinking and knowledge of federal, state, and local law can unlock powerful new theories of liability. As the regulatory landscape continues to evolve at all levels of government, practitioners who master these concepts will be best positioned to serve their clients and advance the cause of safety in our communities.

Endnotes

1 313 Ill.App.3d 375 (5th Dist. 2000).

2 49 U.S.C. § 20301 *et seq* (1994).

3 *Magna Trust Co.*, 313 Ill. App. 3d at 389.

4 30 U.S.C. § 801 *et seq*.

5 209 Ill.2d 30, 36 (2004).

6 187 Ill. 2d 386, 395 (1999).

7 *Barthel v. Illinois Central Gulf Railroad Co.*, 74 Ill.2d 213, 221 (1978).

8 313 Ill.App.3d 375 (2000).

9 144 Ill. 2d 425, 435 (Ill. 1991).

10 *McCarthy v. Kunicki*, 355 Ill. App. 3d 957, 974 (1st Dist. 2005).

11 313 Ill.App.3d 375 (2000).

12 49 U.S.C. § 20301 *et seq* (1994).

13 313 Ill.App.3d 375, 385 (2000).

14 *Id.* at 383-84.

15 *Id.* at 389.

16 30 U.S.C. § 801 *et seq*.

17 *Freeman United Coal Mining Co. v. Federal Mine Safety & Health Review Commission*, 108 F.3d 358 (D.C. Cir. 1997).

18 *Cyprus Industrial Minerals Co. v. Federal Mine Safety & Health Review Com.*, 664 F.2d 1116, 1119 (9th Cir. 1981).

19 *Allied Products v. Federal Mine Safety and Health Review Commission*, 666 F.2d 890, 893 (5th Cir. 1982) ("there is no basis for reading a fault standard into the statute."); See also *Sewell Coal Company v. Federal Mine Safety & Health Review Commission*, 686 F.2d 1066, 1071 (4th Cir. 1982) ("The legislative history of the predecessor to this section in the 1969 [Coal] Act discloses that it was intended to provide for liability for violation of the standards against the operator, without regard to fault....")

20 *Secretary of Labor, Mine Safety and Health Administration (MSHA)*, 10 FMSHRC 249 (Federal Mine Safety and Health Review Commission, March 22, 1988).

21 *International Union, United Mine Workers v. Federal Mine Safety & Health Review Com.*, 840 F.2d 77, 83 (D.C. Cir. 1987) ("All of the courts that have had occasion to address the question have held that multiple operators are jointly liable under the [Mine Safety and Health] Act. Or, put differently, the owner of a mine is liable without regard to its own fault for violations committed or dangers created by its independent contractor."); *Secretary of Labor v. Twentymile Coal Co.*, 456 F.3d 151, 158 (DC Cir. 2006) ("[B]ecause the Mine Act subjects an owner-operator to strict liability for its contractor's violation … nothing in the statute bars the Secretary from charging an owner-operator even if it was not in the 'best' position to prevent a violation, did not have a 'significant, continuing involvement' in the contractor's work, and did not contribute 'directly' or 'significantly' to the violation.")

22 30 C.F.R. § 75.1725(a).

23 *Id.*

24 See *supra* endnotes 16-23.

25 30 U.S.C. § 801(a) (2000).

26 *Magna Trust Co.*, 313 Ill. App. 3d at 389.

27 49 C.F.R. Parts 390-399.

28 144 Ill. 2d 425 (1991).

29 29 C.F.R. Parts 1900-1999.

30 Rule 239(a) states in part, "Whenever IPI does not contain an instruction on a subject on which the court determines that the jury should be instructed, the instruction given in that subject should be simple, brief, impartial, and free from argument."

31 *Price v. Hickory Point Bank & Trust*, 362 Ill.App.3d 1211, 1216 (4th Dist. 2006).

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