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## **THE BASSETT BULLETIN™**

### **GROSS NEGLIGENCE ISSUE HEARD BY THE DALLAS COURT OF APPEALS**

The Dallas Court of Appeals recently issued a decision concerning whether a gross negligence award should be upheld. In *U-Haul International, Inc. v. Waldrip*, Dkt. 05-08-01172-CV, 2010 Tex. App. Lexis 7118 (Tex. App – Dallas August 31, 2010, no pet.), the Dallas Court of Appeals reversed and affirmed in part an initial award of \$84,000,000.00 against various U-Haul Defendants. The Court explained situations when a gross negligence award may be held against a corporation and when it may not. This newsletter discusses the gross negligence award issue.

#### **FACTS OF THE CASE**

On September 20, 2006, Waldrip's daughter, Annabeth Boyd rented a U-Haul jumbo hauler from Jot 'Em Down (JED) in Forney, Texas. JED was authorized to rent U-Haul trucks from U-Haul International, Inc. (UHI), the parent company, and U-Haul Co. of Texas, Inc., d/b/a U-Haul Co. of Dallas. (UHT)

The truck, a 1988 International jumbo hauler with a five-speed standard transmission, had logged more than 233,000 miles. Because Annabeth did not know how to operate a standard transmission vehicle, she asked her father to drive.

Waldrip drove the truck to a warehouse where they were going to unload the contents of the truck. While parked, and on a slope, Waldrip turned off the ignition, put the truck into first gear, and set the parking brake. After he stepped out of the truck, the truck began to roll and the open door hit him in the back. Waldrip tried to get back into the truck to stop the rolling, but was knocked to the ground. The 12,000 pound truck then rolled over Waldrip, crushing his mid-section, and dragged him down the slope about 60 feet. He was transported from the scene by helicopter and was hospitalized for eight months with massive life-threatening injuries. He survived the accident, but sustained debilitating injuries.

Various experts agreed that the truck in question had an inoperable parking brake and damaged transmission, although they disagreed about the extent and cause of the problems.

Waldrip, his wife, and two daughters sued Defendants, UHI, UHT, and JED for negligence and gross negligence, alleging the circumstances leading up to the accident were a result of systematic pattern of "mismanagement and poor inspection, conflicting inspection policies and/or practices, negligent fleet replacement patterns, maintenance, repair practices and woeful incompetence." At trial, the evidence focused on U-Haul's policies with respect to the inspection, maintenance, and repair of its vehicles and how those policies were applied to the truck in this case.

## EVIDENCE PUT ON AT TRIAL

The Plaintiffs offered various forms evidence at trial to prove their case. First, they produced various witnesses who had operated this truck before Waldrip. These witnesses testified that the U-Haul truck had parking brake issues. There was testimony that the truck would roll back even when the parking brake was engaged. These witnesses also testified that they had informed the Defendants upon returning the truck of the problems that they had.

## UTI'S GROSS NEGLIGENCE

The Plaintiffs put on evidence alleging that UHI was grossly negligent because one of its employees, who managed a repair database, knew that the truck in question had mechanical issues and did nothing to fix it. Additionally, the Plaintiffs put on evidence that Joe Shoen, Chairman of the Board of UHI, approved trucks being rented without safety certifications and once issued a memo where he advocated making "good repairs" but not "perfect repairs."

## UHT'S GROSS NEGLIGENCE

With respect to UHT, the Plaintiffs put on evidence that a manager, Lynn Buck, hired an incompetent area field manager, Jason Cruz, whose responsibility it was to perform safety certification inspections on equipment at independent dealer locations. An important part of trial was the Plaintiff showing that this area field manager was hired with no prior mechanical experience. This employee had only spent one day training in a U-Haul service shop.

At trial, Cruz testified wrongly that the transmission fluid within the truck was not able to be checked. At trial, the transmission was presented and this witness admitted that he was wrong and the transmission fluid could have been checked. The transmission fluid was an important part of this case because it showed that there was a leak in the transmission which caused some problems to the parking brake.

Both UTI and UHI appealed the finding of gross negligence arguing that there was not clear and convincing evidence to support a gross negligence award.

## THE COURT OF APPEALS' DECISION ON THE GROSS NEGLIGENCE FINDINGS

The Court of Appeals stated that a corporation is liable for punitive damages for gross negligence only if the corporation itself commits gross negligence. *Mobil Oil Corp. v. Ellender*, 968 S.W.2d 917, 921 (Tex. 1998).

The Plaintiffs had to prove by clear and convincing evidence (1) that, when viewed objectively from the Defendant's stand point at the time of the occurrence, the Defendant's act or omission involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others and (2) the Defendant had actual, subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. *See* Tex. Civ. Prac. & Rem. Code Ann § 41.001(11) (Vernon 2008).

### **UHI's Gross Negligence**

The Court of Appeals looked at the Plaintiffs' gross negligence allegations against UHI. First, with respect to the employee who managed UHI's repair database, the Plaintiffs did not produce any evidence that this employee was a corporate officer, had authority to employ, direct, and discharge UHI employees, or that he managed a department or division. Thus, the Court concluded that there was no clear and convincing evidence that he was employed in a managerial capacity.

With respect to Shoen, although he issued a bulletin advocating good repair as opposed to perfect repair, this policy did not encourage, mandate, or otherwise embrace substandard or even negligent repair. Additionally, the Plaintiffs did not introduce sufficient evidence that Shoen approved of trucks being rented without safety certifications.

Thus, the Court of Appeals stated that there was no basis to support a gross negligence finding award against UHI.

### **UHT's Gross Negligence**

The Court of Appeals reached a different conclusion regarding the gross negligence finding against UHT. Specifically, the Court of Appeals focused on UHI's hiring of Jason Cruz, the Area Manager.

The Court stated that the Plaintiffs proved that Cruz had no previous mechanical experience with heavy-duty trucks. After he was hired, he spent limited time learning about properly checking the safety of equipment. Cruz demonstrated his complete lack of knowledge in the area when he testified, wrongly, that there was no way to check standard transmission fluid. When shown a transmission at trial, Cruz conceded that it was possible to check the transmission fluid. This demonstration likely had a profound effect on jurors and their confidence in his fitness to properly perform the required elements of the safety certification inspection.

The Court went on to say that the jury had sufficient information to form a firm belief or conviction that Cruz was unfit and that Buck, the employee that hired him, was reckless in hiring him. Thus, the Court affirmed the jury's finding of gross negligence against UHT.

## **HOW DOES THIS CASE AFFECT YOU?**

It is clear from this opinion that the Court focused on the actions or omissions of employees that maintained a managerial capacity for a corporation. An employee in a managerial capacity is defined as a corporate officer who has authority to employ, direct, and discharge an employee or a person.

Many times Plaintiffs file suit and allege gross negligence. If they have no evidence of such actions by a person in a managerial capacity, move to strike the gross negligence claim or file a Motion for Summary Judgment on this issue.

More importantly, learn from others' mistakes. This case offers insight about the actions of corporations and their employees. When a gross negligence award is upheld, there is usually an egregious act that took place by someone. Systematic and regular training on policies and procedures of the company is a good way to prevent these kinds of problems.



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