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TRUCKING LITIGATION UPDATE

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TEXAS SUPREME COURT HOLDS EXPERT WITNESS REQUIRED IN TRUCK ACCIDENT CASE

Dear Trucking Industry Professional:

In FFE Transportation Services v. Fulgham, an owner/operator was injured when the assembly on a trailer broke loose causing the trailer to separate from the tractor and overturn. Fulgham, who was an independent contractor of FFE, sued the company claiming that the trailer was defective and that FFE was liable, both on a strict liability and negligence basis. The Texas Supreme Court affirmed the trial court's ruling in favor of FFE, finding that FFE could not be held strictly liable and that there was no evidence to support Fulgham's negligence claim.

The court first determined that strict liability did not apply since the trailer was owned by FFE, was provided solely for the use of its independent contractors and was not sold or provided to the general public. Thus, the court confirmed the principle that a company who gratuitously furnishes a product solely to accomplish its own business purposes can be liable for negligence, but not strict liability. The court also stated that expert testimony was necessary to prove negligence on the part of FFE. The court concluded that because the coupler assembly, king pin and base rail of a refrigerated trailer are specialized equipment, the proper inspection and maintenance of those parts involve techniques that are unfamiliar to ordinary people. Therefore, the court held that because Fulgham failed to provide expert testimony on this issue, the trial court was justified in directing a verdict in favor of FFE and dismissing Plaintiff's claim. The court distinguished this case from other accidents involving equipment failure, such as deteriorating pipe lines that result in leaks or breaks in the line. The court concluded that people who were not involved in the trucking industry would not be familiar with refrigerated trailers, the mechanisms for connecting them to tractors and the frequency and type of inspection and maintenance they require.

This case is important because it defines the legal duty of companies that provide equipment for the use of their contractors and employees and the necessity of expert testimony in specialized situations. However, it also reveals an area of potential exposure to motor carriers who utilize owner/operators. Unlike employee drivers, there is no immunity from suit when independent contractors are injured while in the furtherance of their duties for the company. The failure of equipment provided to these contractors is a frequent source of claims when injuries occur. This opinion reaffirms that the scope of this liability is based upon negligence, and not strict liability, which has a much reduced burden of proof.

For more information about this subject or any legal issues relating to the trucking industry, please contact M. David Frock or Collis A. Broussard, Jr. of Frock & Broussard, P.C. Mr. Frock is Board Certified in Personal Injury Trial Law and Civil Trial Law by the Texas Board of Legal Specialization and as a Civil Trial Advocate by the National Board of Trial Advocacy.

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ABOUT THE FIRM

For the past fifteen years the law firm of Frock & Broussard, P.C. has practiced civil litigation, trial and appellate law in both state and federal court in Texas. Our firm is exclusively engaged in the defense of trucking companies and is involved in transportation related litigation throughout the State of Texas. We are approved as panel counsel by a variety of insurance companies and serve as counsel to many prominent, self-insured trucking companies. Our practice is state wide and specifically tailored to the representation of transportation related clientele.

Frock & Broussard, P.C. has developed an extensive practice related to commercial vehicle accidents and the legal issues which are unique to the trucking industry. We are members of many professional organizations, including the Trucking Industry Defense Association, American Trucking Association, Texas Motor Transportation Association, Houston Safety Council and the Transportation Law Committee of The Defense Research Institute. In addition, Frock & Broussard, P.C. has been instrumental in the development of a rapid response team, which is available for on site accident investigation. The members of our firm can be reached on a twenty-four hour basis to investigate an accident anywhere in Texas. Furthermore, we have the capability to enlist the assistance of qualified accident reconstructions experts, investigators and adjusters, when required.

Frock & Broussard, P.C. is committed to providing highly professional representation to its clients at a fair and competitive fee. We have the flexibility to establish a close personal working relationship with our clientele and be particularly responsive to their individual needs. Frock & Broussard, P.C. is available to assist the transportation industry whenever the need may arise.

Exclusive Legal Counsel to the Trucking Industry