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TRUCKING LITIGATION UPDATE

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COURT ADMITS EVIDENCE THAT DRIVER USED MARIJUANA BEFORE ACCIDENT

Dear Trucking Industry Professional:

The Federal Fifth Circuit Court of Appeals held that evidence that a truck driver smoked marijuana eight hours before a traffic accident was admissible as evidence of negligence. The case arose from a fatal accident that occurred when the driver of an industrial sweeper truck swerved to the left onto a grassy median to avoid another vehicle and struck a pedestrian that was standing there from the prior accident. An investigating officer on the scene who observed the driver of the sweeper truck saw him swaying back and forth, prompting the officer to ask whether the driver had been drinking.

The deceased's wife sued the sweeper truck company and the driver and sought to introduce evidence of the driver's marijuana usage, which had occurred eight hours prior to the accident. The truck driver admitted that he had taken five or six hits of marijuana around 5:30 or 6:00 p.m. on the evening of the accident before reporting to work and that he smoked until he got high.

The trial court excluded all evidence of the truck driver's marijuana usage prior to trial and rejected the testimony of Plaintiff's toxicology and accident reconstruction experts on the effect of marijuana usage based on Daubert standards because their opinions were not reliable. The court based its decision on its conclusion that the experts could not establish any causal connection between the driver's marijuana usage and the accident. The court also concluded that the experts did not know the quantity or quality of marijuana the driver ingested prior to the accident. Therefore, the experts could not reliably testify that the truck driver was actually impaired by the marijuana at the time of the accident.

The Court of Appeals reversed the decision of the trial judge and held that evidence of the truck driver's marijuana usage, as well as the testimony of the experts, was admissible. The Appellate Court based its decision on the fact that Plaintiff's experts relied upon extensive scientific literature showing that impairment of mental and cognitive functions from marijuana usage continues to occur for at least twelve hours after an acute high has worn off. Thus, based on the studies and the driver's admission that he smoked marijuana within twelve hours until he reached a high, the court concluded that Plaintiff's experts could reliably conclude that his perception, reaction time and driving ability were impaired at the time of the accident. Moreover, this was confirmed by the observations of the investigating officer at the scene immediately after the accident, who said that the driver's behavior was consistent with impairment.

The Appellate Court also concluded that the trial court erred in excluding the evidence because the experts did not know the quality or quantity of the marijuana ingested. The court stated that it would be rare in any case involving drivers using marijuana that there would ever

be specific evidence of the quantity or quality of the marijuana used. The important factor is that the driver admitted he had smoked until he became high, which is sufficient to trigger impairment without actually knowing the quality or quantity ingested. Therefore, the Appellate Court held that there was sufficient basis in the opinions of Plaintiff's experts to allow the admission of the driver's marijuana usage prior to the accident. Thus, the case was reversed and remanded for a new trial.

This case presents a double edge sword for the trucking industry since it applies to all drivers. However, it has been statistically established that illegal drug usage is far more prevalent by non commercial drivers in accident cases. Therefore, this opinion will be more helpful as a defensive tool against Plaintiffs in claims filed against trucking company defendants.

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