

## **50<sup>th</sup> ANNIVERSARY EDITION: NEWSLETTER**

### **COMMERCIAL TRUCKING LITIGATION UPDATE**

**by Dean Foster**

***Ashton v. Knight Transportation, Inc.*, No. 3:09-CV-0759-B, 2011 U.S. Dist. Lexis 17569 (N.D. Tex. February 22, 2011).**

Before the court in this matter was Plaintiff's motion for sanctions for spoliation or for an adverse inference jury instruction. At issue was whether the Defendants destroyed or otherwise altered evidence that they had a duty to preserve, and if so the appropriate sanction for such conduct.

This action arose out of an automobile accident occurring in Kansas. Plaintiff Kelly Ashton, her husband Don Ashton, and friend William Helton were returning to Texas from South Dakota. While driving through Kansas, their vehicle was struck by a vehicle driven by Jacob Valek, a 15-year old intoxicated driver who ran a stop sign. Don Ashton died sometime during or soon after the initial collision.

Plaintiff contends that Mr. Ashton survived the first accident, crawling out of the Ashton's vehicle and onto the highway where he was subsequently run over and killed by an 18-wheeler operated by Defendant driver, George Muthe. The 18-wheeler operated by Mr. Muthe was owned by Defendant Knight Transportation.

On the eve of pre-trial, Plaintiff filed her motion for sanctions alleging that Defendants had engaged in a bad faith course of conduct by destroying, altering, and concealing evidence, before and after the filing of this suit. Because of the potentially serious consequences of Plaintiff's allegations of spoliation, the court determined that the spoliation issue should be determined before the commencement of trial. Trial was therefore continued and the motion for sanctions was set for an evidentiary hearing, which took three days.

At the conclusion of the evidentiary hearing, the court determined that the circumstantial evidence overwhelmingly indicate that Defendants had engaged in an improper course of conduct, which began with the Defendant driver fleeing the scene of the accident, driving over 1000 miles from the accident before stopping and having parts on the vehicle replaced. In addition, Knight Transportation appeared to have been notified of the accident before the Defendant driver altered the vehicle and ultimately abandoned it in a parking lot in Los Angeles, California. Knight Transportation retrieved the vehicle and kept the vehicle in its yard exposed to the weather for months, all while interfering with and obstructing law enforcement's efforts to investigate the accident. Finally, circumstantial evidence revealed that Knight Transportation had intentionally altered the Qualcomm communications between the company and the driver surrounding the time of the accident.

Having reached these conclusions, the remaining question for the court was to determine a proper sanction for the Defendant's conduct. The court noted that it must determine a sanction that best deters parties from future spoliation, places the risk of an erroneous judgment on the spoliating party, and restores the innocent party to their rightful litigation position. With this goal in mind, the court found that the sanction most suited to Defendants' destruction of evidence was to strike their pleadings and all defenses to liability. Such a sanction had the effect of deeming admitted both that the Defendant driver struck Ashton and that Ashton was alive at the time he was struck. Finally, because the Defendant's conduct led the Plaintiffs to the late discovery of a potential claim for punitive damages, the court allowed Plaintiff to file an amended complaint adding a punitive damages claim.

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