WINTER 2013 NEWSLETTER

COMMERCIAL TRUCKING LITIGATION UPDATE

By Gerald B. Lotzer

1. *Richard Castillo, et al v. Gulf Coast Livestock Market, L.L.C.*, No. 04-11-00851-CV, 2012, Tex. App. Lexis 10455, (Tex. App. – San Antonio, Dec. 19, 2012).

Richard and Patsy Castillo, husband and wife, sought review of a decision of the 79th Judicial District Court, Jim Wells County, Texas, which granted Summary Judgment in favor of Gulf Coast Livestock Market, LLC, after the husband was injured when a tractor-trailer backed into him on the company's premises. Mr. and Mrs. Castillo brought claims against Gulf Coast for premises liability, negligent hiring of the driver of the tractor-trailer, and negligence. Mr. Castillo was an animal inspector employed by the Texas Animal Commission. On August 5, 2008, he was injured on Gulf Coast premises when a tractor-trailer loaded with cattle backed into him. The tractor-trailer was driven by Charles W. Hellen, III, who was not a Gulf Coast employee. Gulf Coast did not own the tractor-trailer. The cattle and the trailer were owned by someone who is not a party to this case. Mr. Hellen was delivering the cattle to the auction barn for sale by someone else.

The Court of Appeals affirmed the Summary Judgment in stating that the Castillos had to bring forth more than a "scintilla of evidence" that Gulf Coast controlled, operated, or directed the operation of one or more vehicles that transport persons or cargo over a road or highway under Tex. Transp. Code Ann. subsection 643.001(6)(2001). The Court further held that the Castillos presented no more than a scintilla of evidence that the company hired the employee to transport cattle on the day of the accident and as a consequence, the Castillos failed to meet their burden of producing Summary Judgment evidence raising a genuine issue of material fact. The judgment was affirmed.

Under the Federal Motor Carriers Safety Regulation (FMCSR) a motor carrier is vicariously liable for the negligence of its statutory employee drivers. The Texas Department of Public Safety has adopted a majority of the Federal Motor Carriers Safety Regulations, at 37 Tex. Admin. Code Subsection 4.11(a)(2012). An "employee" includes an independent contractor while in the course of operating a commercial vehicle. See 49 C.F.R. Subsection 390.5 (2012). An "employer" is defined as a person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it. See 37 Tex. Admin. Code Subsection 4.11(a); 49 C.F.R. Subsection 390.5. The Texas Supreme Court has not ruled definitely on the existence, elements, and scope of negligent hiring claims, however, the Texas Appellate Courts have generally decided that a negligent hiring claim is a simple negligence cause of action based on the employers' direct negligence. In order to prevail on a simple negligence action, the plaintiff must prove: a legal duty; a breach of that duty by the Defendant; and damages proximately caused by the breach. The basis of responsibility for negligent hiring is the employer's own negligence in hiring an incompetent individual whom the employer knows, or by the exercise of

reasonable care, should have known to be incompetent or unfit, thereby creating an unreasonable risk of harm to others. Generally, there is no duty to control the conduct of third persons unless a special relationship exists between the actor and the third person that imposes a duty upon the actor to control the third person's conduct. Special relationships giving rise to such a duty include the relationship between an employer and employee, and an independent contractor and contractee, provided that the contractee retains the right to control the contractor's work.