

SPRING 2013 NEWSLETTER

COMMERCIAL TRUCKING LITIGATION UPDATE

By Gerald B. Lotzer

***Pedro Arizola, Sr. v. Tuttle & Tuttle Trucking, Inc.*, No. 04-11-0067-CV, 2012, Tex. App. Lexis 4858 (Tex. App. – San Antonio, June 20, 2012, pet. denied).**

Robert Ferguson was driving a Tuttle & Tuttle's tractor-trailer through La Salle County when he crossed a median, struck an oncoming car, and killed Manuel Arizola, his girlfriend, Joanna Sandaval, and their son, Romen Arizola. The accident also left Manuel's sister, V.A. Arizola, permanently injured.

There were claims brought based on "negligence" and wrongful death causes of action by V. A., a permanently incapacitated ward, and the Estates of Manuel and Romen Arizola against Tuttle & Tuttle Trucking, Inc. and Robert Ferguson. The Parties agreed to a settlement and the La Salle County District Court rendered a Final Judgment approving the settlement and signed an Agreed Order Dismissing With Prejudice the negligence and wrongful death claims.

Pedro Arizola, Sr., Manuel's father and Romen's grandfather, and the biological father for V.A., brought suit to set aside the Judgment. Pedro, Sr.'s parental rights had been terminated over a year prior to the accident as to V.A. Pedro Arizola, Sr. appealed the District Court's Judgment and Order contending that the Court erred (1) in dismissing the claims against Tuttle & Tuttle Trucking, Inc. and Robert Ferguson because the Dependent Administrators of the Estate were without authority to compromise the claims of the Estate, and (2) to render a Final Agreed Judgment approving the settlement agreement because the appointment of the Ward's Guardian of the Estate was void. Alternatively, he requests a remand for new trial in the interest of justice.

A few weeks after the accident, the Webb County Court appointed Manuel's brother, Rogelio Arizola as Dependent Administrator of Manuel's Estate. A month later, the Bexar County Probate Court appointed David Balmer as Guardian of V.A.'s Estate. Several months after the accident, the Webb County Court appointed Dora Sandoval, Romen's maternal grandmother, as Dependent Administrator of Roman's Estate.

Romen and Manuel's Estates as well as V.A. and others sued Tuttle & Tuttle in La Salle County District Court. Before trial, Rogelio, as the Administrator of Manuel's Estate, Sandoval as Administrator of Romen's Estate, and Balmer, as Guardian of V.A.'s Estate, entered into settlement negotiations with Tuttle & Tuttle. On November 9, 2010 the Bexar County Probate Court signed an Order approving the proposed settlement between V.A. and Tuttle & Tuttle and on December 15, 2010, the La Salle County District Court signed a Final Judgment approving of the settlement and an Order Dismissing With Prejudice the claims of the Estates and the Ward against Tuttle & Tuttle.

The Administrators of Manuel and Romen's Estates failed to obtain the Webb County

Court's approval of the settlement prior to the La Salle County District Court's Final Judgment and the Court's dismissal of the claims against Tuttle & Tuttle, however, the Webb County Court approved and ratified the settlement on January 20, 2010.

The trial court found that the Dependent Administrators' unauthorized compromise and settlement of litigation was cured by the Webb County Court's *ex post facto* approval of the settlement agreement. They further held that Pedro, Sr. failed to show that the Bexar County Probate Court lacked jurisdiction to appoint the Guardian of V.A.'s Estate and that the interest of justice does not require a remand for a new trial. Accordingly, they affirmed the La Salle County District Court's Final Agreed Judgment and the Court's Order dismissing V.A.'s and the Estate's claims against the Appellees.

Lexington Insurance Company, as Subrogee of Burr Computer Environments, Inc., et al v. Daybreak Express, Inc., No. 11-0597 (Tex. Sup. Ct.)(per curiam), January 25, 2013.

Burr Computer Environments, Inc. hired J. Supor and Sons Trucking and Rigging Co. to transport Burr's equipment from New Jersey to Texas. Supor issued a Bill of Lading for the shipment, which referred to Daybreak Express, Inc., a New Jersey trucking company. Supor's personnel loaded the equipment onto Daybreak's truck and Daybreak transported the equipment to Daybreak's New Jersey terminal. Daybreak transferred the Bill of Lading to its sister company which then transferred it to T. Orr Trucking, Inc. Orr transported the equipment to Texas and it arrived on August 15, 2002. Burr claimed that the equipment was damaged and presented a written claim to Daybreak on September 11, 2002. Daybreak hired an independent adjuster from Cunningham Lindsay to investigate the claim. The adjuster submitted a report to Daybreak reflecting that the adjuster and Burr had agreed to value Burr's claim at \$166,655.00. Burr contends that this valuation was a settlement agreement. Daybreak contacted Burr on February 6, 2003, and informed Burr that Daybreak would pay only \$5,420 for this claim.

Burr also filed a damage claim with Supor and Supor paid Burr \$5,000.00 on November 13, 2002 which met its insurance policy deductible and Supor's insurer, Lexington, paid Burr \$87,500.00 to settle the claim on November 18, 2003. Lexington Insurance Co. subsequently bought a subrogation action against Daybreak Express, Inc. in connection with property damages that occurred during the interstate shipment of electronic equipment owned by Burr Computer Environments, Inc.

The trial court found that (1) Lexington proved all elements of a Carmack Amendment claim under 49 U.S.C., Subsection 14706 (2006); (2) the claim was not time-barred under the applicable New Jersey statute of limitations; and (3) Lexington sustained damage of \$85,800.00. The trial court signed a Final Judgment awarding damages and attorney fees and Daybreak appealed.

The Court of Appeals reversed and rendered the Take-Nothing Judgment in favor of Daybreak because Lexington's Carmack Amendment claims were barred by limitations under Texas law.

The Supreme Court further held that an interstate carrier's responsibility for goods it

transports is governed by the Carmack Amendment. Congress intended for the Carmack Amendment to provide the exclusive cause of action for loss or damages to goods arising from the interstate transportation of those goods by common carrier.

The Texas Supreme Court, in its opinion delivered January 25, 2013, held that under Section 16.068, Lexington's cargo damage claim was not barred by limitations and they granted Lexington's Petition for Review. Without hearing oral argument, they reversed the Judgment of the Court of Appeals and remanded the case to the Court for further proceedings.