

WINTER 2014 NEWSLETTER

COMMERCIAL TRUCKING LITIGATION UPDATE

By Gerald B. Lotzer

***U-Haul Int'l, Inc. v. Waldrip*, 380 S.W.3d 118 (Tex. – Aug. 31, 2012)[10-0781].**

Talmadge Waldrip suffered catastrophic injuries when a rented U-Haul truck he was exiting began to roll backwards, knocking him to the ground, and rolling over him. The experts agreed that the truck had an inoperable parking brake and damaged transmission, although they disagreed about the extent and cause. After hearing three weeks of testimony, a jury found U-Haul International, Inc. and U-Haul Co. of Texas, Inc. d/b/a U-Haul Co. of Dallas negligent and grossly negligent and East Texas Fork Enterprises, Inc. d/b/a Jot 'Em Down, Inc. negligent and awarded more than \$84,000,000.00 in compensatory and exemplary damages. The trial court reduced the exemplary damage award pursuant to Chapter 41 of the TEXAS CIVIL PRACTICES & REMEDIES CODE and rendered a \$45,000,000.00 judgment. The U-Haul Defendants ("U-Haul") appealed separately from East Texas Fork Enterprises ("JED") and each raised issues related to the legal and factual sufficiency of the evidence to support the liability and damage findings, admission and exclusion of certain evidence, and charge error. The issue was whether Waldrip presented legally sufficient evidence of negligence and gross negligence on the part of the U-Haul entities to support the Judgment.

The Supreme Court affirmed in part and reversed in part, ordering that Waldrip take nothing on his gross negligence claims and remanding the negligence claims for a new trial. The Court held that after reviewing the record, that there was no clear and convincing evidence to support a gross negligence finding against U-Haul International, Inc. The trial court had allowed Waldrip to introduce evidence of certain Canadian reports regarding U-Haul. The Court held that the trial court's admission of the Canadian evidence was an abuse of discretion that led to an improper verdict. There was no evidence that the trucks inspected in Canada were sufficiently similar to the truck that injured Waldrip. The Court therefore remanded the negligence claims against all Defendants for a new trial. Applying the "clear and convincing" evidence standard, the Court further held that Waldrip did not offer legally sufficient evidence of U-Haul's gross negligence. Waldrip failed to establish that U-Haul both had knowledge of an extreme risk and showed conscious indifference to that risk. The Court therefore rendered a take nothing judgment on Waldrip's gross negligence claims.

Justice Lehrmann dissented. The dissent agreed with the Court that Waldrip had offered legally insufficient evidence to support the jury's award of punitive damages but disagreed with the Court's holding concerning the negligence claims. Justice Lehrmann concluded that it was questionable whether the trial court had abused its discretion by admitting the Canadian evidence because that evidence was arguably some evidence of U-Haul's deficient maintenance procedures. The dissent further argued that, even if the trial court did abuse its discretion, the error was harmless because the record contained other evidence of negligence.