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COMMERCIAL TRUCKING LITIGATION UPDATE

by Dean Foster

***U-Haul International, Inc. v. Waldrip*, 322 S.W.3d 821 (Tex. App. – Dallas 2010, no pet. h.).**

Talmadge Waldrip suffered serious injuries when a rented U-Haul truck he was exiting began to roll backward, knocked him to the ground, and rolled over him. Experts agreed that the truck had a non-working parking brake and a damaged transmission. After three weeks of testimony, a jury found U-Haul negligent and grossly negligent and awarded more than $84 million in compensatory and exemplary damages against U-Haul and the other defendants.

Among other issues, on appeal U-Haul challenged the legal and factual sufficiency of the jury's gross negligence findings against them. A corporation is liable for gross negligence only if the corporation itself commits gross negligence. The jury was instructed that for U-Haul to be grossly negligent it had to find the person or persons responsible for the act or omission was employed by U-Haul in a managerial capacity and was acting in the scope of that managerial capacity.

Upon review of the record, the court of appeals found that plaintiffs had not produced any evidence that the U-Haul employee that managed U-Haul's repair database was a corporate officer or otherwise had any authority to constitute clear and convincing evidence he was employed in a managerial capacity. The court went on to note that another U-Haul employee clearly was a corporate officer, but there was no evidence he had any knowledge of the mechanical problems with the truck at issue prior to the accident.

As a result, the court determined that a reasonable juror could not have formed a firm belief of conviction U-Haul acted with gross negligence with regard to the truck at issue. The court therefore reversed the award of exemplary damages as to U-Haul.

***Canal Ins. Co. v. Coleman,* 625 F.3d 244 (5th Cir. 2010).**

This coverage dispute arose from a truck accident. The relevant facts were undisputed. Timothy Briggs, a driver and employee for P.S. Transport, was backing a truck into his driveway when he collided with a Toyota Camry driven by Coleman. At the time of the accident, Briggs was returning home from work. He was driving the truck "bobtail" when the accident occurred. The parties stipulated that Briggs was not transporting property when the accident occurred.

An MCS-90 endorsement to an automotive insurance policy obligates an insurer to cover an insured's negligence involving "vehicles subject to the financial responsibility requirements of . . . the Motor Carrier Act." The Motor Carrier Act creates minimum levels of financial responsibility "for the transportation of property by motor carrier . . . within the United States." Canal Insurance Company sought a declaratory judgment that the MCS-90 endorsement did not cover an accident where the truck involved was not engaged in the transport of property at the time of the accident. The district court granted summary judgment in favor of Canal and the court of appeals affirmed. The court noted, however, that it was taking no position as to whether driving a truck "bobtail" constitutes "not transporting property," because the parties had stipulated to that effect.