

## **SPRING 2018 NEWSLETTER**

### **MOTOR VEHICLE LIABILITY UPDATE**

**by George L. Lankford**

*Elvir v. Brazos Paving, Inc.*, 2017 WL 3769015 (Tex.App.-Corpus Christi-Edinburg August 31, 2017.)

Plaintiff Elvir was injured when her vehicle and a truck collided, and both flipped over. Elvir was rescued from her burning vehicle before it was engulfed in flames.

Brazos Paving was a subcontractor for Construction Enterprises (CEI.) Brazos Paving was a licensed motor carrier under Texas regulations, and had its own commercial drivers and trucks. It also contracted with Henry Jones d/b/a HJ & DJ Trucking. They, in turn, also used trucks from JBP Trucking. JBT was the employer of the truck driver, Galvan.

After the accident, Plaintiff sued JBT Trucking and Galvan (an employee of JBT and commercial truck driver.) They settled. Plaintiff then sued HJ&DJ Trucking and Brazos Paving. The court granted Brazo's Paving's motion for summary judgment because Plaintiff could not demonstrate Brazos Paving controlled JBT Trucking or Galvan, an employee of JBP Trucking (a twice removed subcontractor from Brazos.)

The Court recognized a general contractor normally does not have a duty to see that an independent contractor (like JBT Trucking) performs its work safely. A duty may arise if the general contractor retains "some control over the manner in which the independent contractor's work is performed." "It must have the right to control the means, methods, or details of the independent contractor's work." "Further, the control must relate to the injury the negligence causes, and the contract must grant the contractor at least the power to direct the order in which work is to be done. These rules have been equally applies to subcontractors." The Court recognized that control can be shown by right of contract or actual control.

The Court held that the contract between Brazos Paving and CEI did not provide evidence of the control necessary to impose liability on Brazos Paving, a subcontractor that is two tiers removed from Galvan's employer (JBT.)Plaintiff also points to a pre-existing contract between Brazos Paving and HJ&DJ Trucking, but again there Court held it was insufficient to show "Brazos Paving retained the contractual right to control the means, methods, or details of how HJ&DJ Trucking – and by extension JBT Trucking and Galvan – performed the work that HJ&DJ Trucking retained JBT Trucking to perform."

The Court further held actual control by Brazos Paving over JBT was not shown because it "must be so persistent and the acquiescence therein so pronounced as to raise an inference that at the time of the act or omission giving rise to liability, the parties by implied consent and acquiescence had agreed that the principal might have the right to control the details of the

work.” The insufficient evidence, among other things, was that Galvan’s truck was on the road for the “benefit” of Brazos Paving.