

2019 WINTER NEWSLETTER

MOTOR VEHICLE LIABILITY

By George L. Lankford

Davis v. International Paper Co., 2019 WL 183904 (E.D. Tex.-Marshall Division, January 14, 2019.)

Pineland Forestry (PF) agreed to sell raw wood from International Paper (IP). PF contracted with JWK Logging (JWK) to cut and transport the wood to IP. JWK contracted with Mancel Sprayberry (MS) to transport PF's wood to IP. MS was driving a load of wood in a truck when it turned left to enter IP's facilities. It hit Plaintiff on a motorcycle. All Defendants were sued for negligence.

The court denied JWK's motion for summary judgment that it was not vicariously liable for the conduct of its independent contractor, MS. A general contractor must retain control over the manner in which the contractor performs the work that caused the damages. It must be more than a "general right to order work to stop and start, or to inspect progress..." In this case, JWK contractually agreed "that all drivers transporting timber pursuant to its contract with [PF] must obey federal, state, and safety regulations. When [PF] warned JWK Logging that several drivers transporting wood to IP repeatedly violated weight limits, JWK Loggings was expected to, agreed to, and had the ability to take corrective action. Since JWK reserved the right to discipline its drivers, JWK implicitly reserve some right of control over its drivers." Thus, a jury could conclude that JWK retained some right to control and direct MS' trucking operations. Summary judgment was denied.

The court granted JWK's no evidence motion for summary judgment that JWK is not the statutory employer of MS. If MS was a statutory employee under federal trucking regulations, then JWK could be vicariously liable for MS's negligence. However, the court noted plaintiff failed to present evidence that the federal regulations applied to the case. Therefore, there was no evidence to support Plaintiff's claim. The no evidence motion was granted.

JWK also argued in a no evidence summary judgment motion that there was no evidence that it was a proximate cause of the accident. At the time of the accident MS's truck was in good working order, JWK had not negligently loaded it, and MS's truck was under its weight limit. Plaintiff argued JWK failed to use reasonable care "to exercise its right of control over MS to ensure MS complied with all federal, state, and safety regulations. If JWK had used reasonable care to exercise its right of control and discipline MS for driving overweight loads, MS would not have been driving the day of the accident or would have been a better driver." The court held "this hypothetical link is too tenuous to be a proximate cause for Plaintiff's injury." The court then granted the no evidence motion for summary judgment because Plaintiff failed to present evidence of proximate cause.