



## Recent Cases Illustrate Possibility of Substantial Verdicts Against Transportation Brokers

By Kandice J. Giurintano

Since the *Schramm v. Foster*, 341 F.Supp.2d 53 (D. Md. 2004), transportation companies have been aware of the possibility of suits and verdict against transportation brokers. This is significant because many carriers also broker loads, whether through a separate company or simply another function of their primary business. Transportation companies, therefore, need to be aware of the liability exposure when acting as a transportation broker.

Plaintiffs typically proceed against transportation brokers on theories of negligent hiring and negligent entrustment for retaining carriers that are deficient in some way, typically in their safety standards. Three recent verdicts illustrate the growing popularity of such claims by plaintiffs.

On January 20, 2012, the Illinois Supreme Court affirmed a verdict of \$20.2 million in the case of *Powell v. Dean Foods*. On July 6, 2002, Jamie Reeves was driving a tractor trailer eastbound on US 30 in Indiana. Around 10:30 p.m., Reeves struck a vehicle driven by Christina Chakonas as it crossed the eastbound lanes of US 30. Ms. Chakonas and her two passengers were killed. When the accident occurred, Reeves was speeding, had exceeded his hours of service and still had many miles to go before his destination. The evidence showed that Reeves did not hit his brakes until four seconds after the impact. Reeves was employed by Alco Inc. He was driving a truck tractor Alder Group, Inc., and hauling a trailer owned by Dean Illinois Dairies,

LLC, which was loaded with Dean Foods Company's milk products. There was a verdict against Dean Foods on a theory of vicarious liability. It was difficult for Dean Foods to argue that Alco and Mr. Reeves were not its agents because Alco employees wore uniforms branded with the Dean Foods logo. Although Dean Foods had simply arranged for the load, and here it was held responsible for the accident itself. The case reinforces the lesson that the greater the degree of control the broker takes over the transportation of the load, the more likely the broker is to be found liable for any accident that occurs.

On February 12, 2012, In the case of *Hoffman v. Crane*, jurors awarded \$27 million to a woman who suffered paralysis on Interstate 80 in Cedar County, Iowa. She was struck by a semi truck driven by Dorlan Crane, which was hauling steel coils. The motor carrier for which Crane was under lease was Illinois State Motor Service Inc. The logistics company arranging for the load was State Motor Services. The plaintiff alleged that both the broker and the trucking company were engaged in a joint venture and that Crane was an agent of the joint venture. She also alleged that the truck driver was the agent of all of the corporate defendants regardless of whether or not they were engaged in a joint venture. Based on their answers to the special interrogatories, the jury found in favor of the Plaintiffs on both theories. The plaintiff's attorney said the key to the verdict was that the jury agreed that all the corporate defendants should be linked to the truck driver.

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In *Lynhart v. Heyl Logistics*, on March 6, 2012, a Federal Court jury in Medford, Oregon returned a verdict of \$5.2 million to the family of a man killed by a tractor trailer in 2008. Attorneys for the plaintiff argued successfully that the broker Heyl Logistics failed to perform due diligence when it hired Washington Transportation to haul goods Nestle Waters North America. Washington Transportation truck driver Daniel Clary was coming off a crystal meth high and falling asleep at the wheel when he plowed into the plaintiff on Interstate 5 south of Ashland, Oregon. Mr. Lynhart did not survive the accident. The company hired by Heyl Logistics, Washington Transportation, was without insurance and without operating authority, and the plaintiff successfully argued that Heyl Logistics should have discovered these facts when it hired Washington Transportation. Heyl Logistics failed to document any of its substantial due diligence in selecting Washington Transportation. A jury determined that Clary and Heyl Logistics were both at fault for the accident and awarded compensatory and punitive damages. The plaintiff's counsel claims this is the first punitive damages verdict against a transportation broker

in a case involving a negligent hiring claim. The verdict illustrates the potential liability to a broker when it does not investigate the transportation and company it is hiring.

These cases are but some examples of the recent trend of pursuing claims against transportation brokers. As many transportation companies also act as brokers for transportation loads, it is important to remember the potential liability that it attaches as a broker. If your company cannot transport a load and brokers it to another, you may be responsible for that company's actions. It is important to vet transportation companies before brokering loads to them and to document your companies due diligence in selecting the companies carrying the load. ■



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