

# TEXAS INSURANCE LAW NEWSBRIEF

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## COURT GRANTS SUMMARY JUDGMENT DISMISSING NEGLIGENCE AND NEGLIGENT ENTRUSTMENT CLAIMS IN WRONGFUL DEATH CASE

Last Tuesday, the U.S. District Court in Austin granted summary judgment in favor of a manufacturer and seller of mobile homes, dismissing negligence and negligent entrustment claims asserted against them after a wheel came off of a trailer while a transportation company was towing the home to a new location. In *Fields v. Cavco Industries, Inc.*, 2018 WL 1177487 (W.D. Tex. March 6, 2018), two halves of a manufactured home were being towed to location when a wheel came off the lead trailer and both drivers pulled off to the side of the road. But the second trailer was still partially blocking a moving lane of traffic and was struck by a vehicle driven by Mrs. Fields who died in the accident. A lawsuit was filed and the transportation company and drivers settled with Mr. Fields. The only remaining claims were the negligence and negligent entrustment claims against the manufacturer and seller of the homes.

The manufacturer and seller then filed a motion for summary judgment. The court analyzed the negligence claim based on an alleged failure to remedy a known tire failure problem when recycled tires are used on trailers towing manufactured homes. The court noted that whether a duty exists is a question of law for the courts. They also noted evidence that a recycled tire was used and, that they frequently fail. But the court found the evidence insufficient to create a duty to avoid recycled tires altogether and, noted that federal regulations permit their use. Finding no duty, the court granted summary judgment to the manufacturer and seller on the negligence claims.

Turning to the negligent entrustment claim alleging the manufacturer and seller “gave a known danger to an unskilled contractor” the court applied Texas law to address the claim. The court outlined the five elements necessary to establish a negligent entrustment claim and turned to Defendants motion asserting there was no evidence that the drivers were “incompetent and reckless.” The court found that the lack of a formal policy on handling loose tires was insufficient, especially in light of the drivers’ significant experience. Accordingly, the court found the evidence was insufficient “to create a genuine issue of material fact” on whether the drivers were incompetent or reckless and granted summary judgment on the negligent entrustment claim, dismissing the claims without prejudice.

## APPELLATE COURT ENFORCES ARBITRATION CLAUSE INVOLVING NON-SUBSCRIBER WRONGFUL DEATH CLAIM

Last Thursday, the Corpus Christi Court of Appeals addressed a challenge to an arbitration clause in a non-subscriber plan and determined that the arbitrator, not the court, was the proper entity to address the challenge. In *Mission Petroleum Carriers, Inc. v. Dreese, et.al.*, 2018 WL 1192773 (Tex. App. – Corpus Christi March 8, 2018), a Mission employee died in a Freightliner truck accident and his heirs filed a wrongful death claim against Mission alleging negligence and gross negligence. Mission is a non-subscriber to workers compensation insurance but provides employee benefits through an employee health and safety plan (Plan). The Plan, however, includes an arbitration clause requiring “all claims or disputes” to be resolved by binding arbitration. Mission filed a motion to compel arbitration which the trial court denied and this interlocutory appeal followed.

On appeal, the court examined the arbitration clause and the heirs’ assertion that the clause was unenforceable because a termination clause rendered the contract illusory and voided the contract as a whole. In response, Mission asserted that the challenge to the arbitration agreement is for the arbitrator, not the courts to decide. The court noted there are two types of challenges to arbitration provisions: “(1) a specific challenge to the validity of the arbitration agreement or clause, and (2) a broader challenge to the entire contract, either on the ground that directly affects the entire agreement, or on the ground that one of the contract’s provisions is illegal and renders the whole contract invalid.” The first type is one for the court to address, but the second must go to the arbitrator. After reviewing the termination clause, the court determined that it was applicable to the entire plan and not merely the arbitration clause at issue. Accordingly, the court reversed the trial court’s decision and remanded the case for the trial court to stay all proceedings and order arbitration.