

THOUGHT LEADERSHIP

News

COURT OF APPEALS CONCLUDES THAT EQUIPMENT SHIPPER OWED DUTY TO THIRD-PARTY MOTORIST TO SAFELY LOAD EQUIPMENT ONTO TRAILER

Newsbrief

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Last week, Court of Appeals of Texas, Dallas, concluded that shippers owe a duty to third-party motorists under the general negligence theory of recovery. In *United Rentals N. America, Inc. v Evans*, No. 05-18-00665-CV, 2020 WL 4783190 (Tex. App.—Dallas, Aug. 18, 2020, mem. op.), United Rentals arranged to transport (1) a forklift with a boom arm and (2) a Genie S-125 boom lift, from its branch in San Antonio to its branch in Irving. The forklift was considered an ordinary-sized load and could be transported on a flatbed trailer without a permit. The boom lift was considered an “oversized” load if transported on a flatbed trailer and, in that case, would require a permit providing a route to safely transport the cargo. To transport the boom lift without a permit, it needed to be transported on trailer with a lower deck, such as step-deck trailer.

United Rentals hired one company to transport the forklift (with boom arm) and another company to transport the boom lift. Martinez, the driver assigned to the forklift, arrived at United Rentals’ office first, with a flatbed trailer, stating that he was there for a “boom.” The driver did not have a bill of lading, so United Rentals’ operations manager contacted United Rentals’ region equipment manager and told her that a driver was there to pick up a “boom” to take to Irving but did not have a bill of lading number. The equipment manager pulled the bills of lading and found one boom lift, the Genie S-125, leaving the San Antonio location for Irving. She printed the bill of lading for the boom lift and sent it to the operations manager, and the boom lift was subsequently loaded onto Martinez’s flatbed trailer. Neither Martinez nor United Rentals measured the boom lift upon loading. Martinez, having at this time received the bill of lading number (for the forklift) on his cellular phone, showed it to United Rentals’ operations manager. The operations manager wrote the number down on the bill of lading received from the equipment manager, but he did not notice that the numbers did not match. Martinez signed the bill of lading not realizing he had been given the wrong piece of equipment, and he left with the boom lift between 9:00 and 9:30 a.m.

At 10:45 a.m., the driver assigned to the boom lift arrived at United Rentals’ office with a “step-deck” trailer to pick up the boom lift, and a bill of lading for the boom lift. However, no one at United Rentals notified anyone that Martinez was given the wrong equipment.

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At about 11:15 a.m., Martinez was driving north on I-35 approaching a construction zone in Salado, Texas. There were multiple signs warning that the upcoming under-construction bridge was low and that loads over 13 feet, 6 inches needed to exit prior to the overpass. Martinez, apparently unaware that his load was 14 feet, 7 inches, did not heed those warnings, and his load struck the bridge. Consequently, the bridge beams collapsed across the northbound and southbound lanes of the highway just as Clark Davis, driving south in a pickup truck, reached the bridge. One of the beams fell on the hood of Davis's truck, crushing the truck's engine and entire occupant compartment into a space about a foot and a half in depth. Davis died at the scene from multiple blunt force trauma and mechanical compression.

Davis's mother and son filed a wrongful death and survival action against United Rentals, among others. Following a trial, the jury found United Rentals negligent under the general negligence theory (assigning 30% of responsibility to United Rentals), and awarded, among other damages, \$5 million to Davis' estate for Davis' conscious pain and mental anguish prior to death.

On appeal, United Rentals contended that it, as a shipper, did not owe a legal duty to safely secure, measure, or transport the boom lift; rather, it was the carrier and driver who owed such duties. United Rentals further contended that it had no duty to see that the carrier or Martinez shipped the cargo safely, even if United Rentals participated in the loading process. According to United Rentals, the claims against it should have been confined to a negligent-undertaking or negligent-control claim, and it could not be liable under a general negligence theory.

The Court of Appeals disagreed and concluded that United Rentals owed a duty of reasonable care to Davis under the facts presented. The court further concluded that "a party, other than the carrier, [under a general negligence theory] may owe a duty to third-party motorists for dangerous conditions created by that party and that it could reasonably foresee." The court reasoned that although the applicable federal safety rules and the Texas Transportation Code impose a statutory duty on carriers (as opposed to shippers) regarding safely securing and transporting their loads, the statutes do not relieve a party who breaches a common law duty of care from liability for its own negligence. "While common law rules regarding a carrier's liability to a shipper . . . govern the rights and liabilities among carriers and shippers, those same rules do not govern a case involving personal injury to an innocent party with no connection to the trucking industry."

In a second issue on appeal, United Rentals argued that, to the extent Davis suffered conscious pain and mental anguish prior to his death, that pain and anguish lasted no more than ten to fifteen seconds, and such a short duration, regardless of how extreme, could not support a \$5 million verdict. United Rentals requested that the award be remitted to no more than \$400,000. The Court of Appeals, noting that there are no objective guidelines to assess the monetary equivalent of pain and suffering, and that juries are given a great deal of discretion in awarding an amount of damages it deems appropriate, concluded the evidence was legally and factually sufficient to support the \$5 million dollar award. The court reasoned that the award was not "flagrantly outrageous, extravagant, or excessive that it shock[ed] the judicial conscience."