

FALL 2012 NEWSLETTER

COMMERCIAL TRUCKING LITIGATION UPDATE

By Gerald B. Lotzer

Mike and Janet Gaines, Individually and As Next Friends for Martha Michelle Gaines, Non-Compos Mentis v. Joseph P. Pritchett, No. 12-10-00167-CV, 2011 Tex. App. Lexis 5271, (Tex. App.--Tyler, Jul. 31, 2011) pet. denied by Gaines v. Pritchett, No. 11-0734, 2012 Tex., Lexis 904 (Tex. Oct. 26, 2012)

Without explanation, for the second time the Texas Supreme Court denied the Plaintiff's request for reconsideration on October 26, 2012.

In 2006, nineteen year old Michelle Gaines was a popular student at Palestine High School and was preparing to head off to Hill College on a soccer scholarship. On June 11, 2006 Ms. Gaines was involved in an automobile accident with an 18-wheeler hauling an oil rig. The 18-wheeler went through a red light and struck Ms. Gaines' 2000 Buick. Kenneth Woodworth was driving the tractor-trailer transporting the oil rig. Benny Joe Adkinson, Woodworth's employer, owned the tractor-trailer that Woodworth was driving. The Plaintiffs alleged that Woodworth was negligent in operating the vehicle, he did not have a commercial driver's license, the trailer should not have been on the road because it had no brakes, Adkinson was negligent in allowing Woodworth to drive the vehicle and that Joseph P. Pritchett was responsible because he had entered into a joint enterprise with Adkinson related to the oil rig. As a result of the accident, Gaines spent weeks recovering from a broken pelvis, punctured lung, and continues to suffer from a traumatic brain injury.

Shortly before the trial began, Mike and Janet Gaines nonsuited their individual claims, leaving only Martha Michelle Gaines' claims, brought through her parents as next friends, against the Defendants. The case proceeded to trial and, according to Adkinson and Pritchett, Pritchett had no connection to the oil rig. Adkinson was taking the oil rig to Pritchett's equipment yard, and it was believed that the two had agreed to work together to either blueprint or to sell the rig. "Blueprinting" is a process used to copy the mechanical assemblies of the oil rig so that the same designs can be repeated to other rigs. The oil rig eventually made its way to Pritchett's yard many months after the accident and was subsequently destroyed.

The case proceeded to trial. After the conclusion of the evidence, the trial court found that Gaines had proven her case against Woodworth and Adkinson as a matter of law. The trial court asked the Jury to determine the damages sustained by Gaines and whether Pritchett should be held liable for those damages based on a joint enterprise with Adkinson. The Jury awarded damages to Gaines and found that a joint enterprise did exist between Adkinson and Pritchett. The trial court rendered judgment in accordance with the Jury's verdict and Pritchett appealed. Eventually, Gaines was awarded more than 8 million dollars in damages.

On appeal by Pritchett, the 12th Court of Appeals in Tyler overturned the verdict,

determining that there was not enough proof that Joseph Pritchett, the only Defendant with money to pay the damages, was liable in the accident. The Tyler Court of Appeals looked at the elements of a joint enterprise in which the parties (1) enter into an express or implied agreement, (2) with a common purpose, (3) a community of pecuniary interests in that purpose, and (4) an equal right to voice in the direction of the enterprise giving each and equal right of control. *Tex. Dep't of Transp. v. Able*, 35 S.W.3d 608, 613 (Tex. 2000).

The attorneys on behalf of Gaines also argue that there were other events after the accident as to a joint enterprise between Adkinson and Pritchett. Gaines' attorneys argued that Pritchett lent Adkinson a substantial amount of money and that there was evidence that Adkinson was not credit-worthy and that this money led Adkinson to lie for Pritchett. They also argued that it shows a willingness on the part of Pritchett to be dishonest and they were guilty of "spoliation of evidence" therefore, the relevant inferences from this conduct support the finding of a joint enterprise. The Tyler Court of Appeals determined that there was no evidence that Pritchett and Adkinson had an equal right to voice in the direction of an enterprise relating to the oil rig giving each an equal right of control, therefore, the evidence was not legally sufficient to support the Jury's verdict that Pritchett and Adkinson had engaged in a joint enterprise with respect to the oil rig.

The Texas Supreme Court twice refused to hear the Gaines' appeal, therefore, the determination by the 12th Court of Appeals District, Tyler, Texas stands.

***U-Haul Int'l, Inc., et al v. Talmadge Waldrip, et al*, 322 S.W.3d 821 (Tex. App.--Dallas 2010), aff'd in part and rev'd in part by *U-Haul Int'l v. Waldrip*, No. 10-0781, 2012 Tex. Lexis 737 (Tex. Aug. 31, 2012).**

Reversed and rendered in part, affirmed in part. Waldrip suffered catastrophic injuries when a rented U-Haul truck he was exiting began to roll backwards, knocking him to the ground, and rolling over him. Experts believed that the truck had an inoperable parking brake and a damaged transmission, but disagreed about the extent and cause. The Jury, having heard the evidence, found U-Haul International, Inc. and U-Haul Co. of Texas, Inc. negligent and grossly negligent and East Texas Fork Enterprises, Inc. negligent and awarded more than eighty-four million dollars in compensatory and exemplary damages. The trial court reduced the exemplary damage award under Chapter 41 of the TEXAS CIVIL PRACTICES & REMEDIES CODE and rendered a judgment in the amount of forty-five million dollars.

The Defendants filed separate appeals raising issues related to the legal and factual sufficiency of the evidence to support the liability and damage findings, the admission and exclusion of certain evidence, and error in the Jury Charge.

Before Justices Morris, Fitzgerald and Francis, the Court concluded that there was not "clear and convincing" evidence to support a gross negligence finding against Defendant U-Haul and reversed the 11.1 million dollar punitive damage award against them. The Court of Appeals affirmed the trial court's judgment in all other aspects.