



DENTON COUNTY

MOTOR VEHICLE

Tractor-Trailer — Alcohol Involvement — Negligent Hiring

Truck driver who caused crash was under the influence

SETTLEMENT \$2,400,000

CASE Glenn Patrick O'Dell v. Arthur Roy McGee; Frank Bartel Transportation, Inc.; DOT Leasing, Inc.; and Steve Bartel, No. 2003-50220-367

COURT Denton County District Court, 367th, TX

JUDGE Lee Gabriel

DATE 2/14/2005

PLAINTIFF

ATTORNEY(S) Frank Lyle (co-lead), Springer, Lyle & Watt LLP, Denton, TX
 Jeff Springer (co-lead), Springer, Lyle & Watt LLP, Denton, TX

DEFENSE

ATTORNEY(S) Michael P. Sharp, Fee, Smith, Sharp & Vitullo, Dallas, TX

FACTS & ALLEGATIONS At 6:08 a.m., on April 18, 2003, plaintiff Glenn Patrick O'Dell, 68, a landscaping supervisor, was driving southbound on U.S. Hwy. 377 just past FM. 424, in Cross Roads. Arthur Roy McGee, driving a tractor-trailer, attempted a right turn onto southbound 377 from a driveway and collided with O'Dell's Ford pickup. Upon impact, O'Dell's pickup went into a left skid and rolled twice.

McGee was operating a white 1995 International truck and a black 1993 Trail King dump trailer, both owned by

Frank Bartel Transportation Inc. (FBT), which was McGee's employer for purposes of federal motor carrier regulations.

O'Dell sued McGee; FBT, Aubrey; FBT owner Steve Bartel; and an FBT affiliate, DOT Leasing Inc., Nashville, Tenn., for negligence and malice.

O'Dell claimed that McGee, who was in the course and scope of his employment, failed to yield the right of way. Also, McGee was under the influence of alcohol; the plaintiffs' toxicologist opined that, at the time of the accident, McGee's blood alcohol concentration was .16. Under Federal Motor Carrier Safety Regulations, the legal limit is .04.

O'Dell also alleged negligent hiring and retention by FBT and DOT Leasing. FBT had been disciplined in 1996 and 1998 by the Texas Department of Public Safety for failing to investigate drivers adequately before hiring them, failing to maintain adequate hours-of-service records, and failing to perform required drug and alcohol testing on its drivers.

O'Dell claimed that McGee, who was hired in 2003, was a negligent and unsafe driver with a well-documented history of alcohol use and abuse and intoxication on the job, and that FBT and DOT Leasing had a duty, under state and federal regulations, to investigate his employment history, driving record and drug and alcohol use, before hiring him.

The defendants argued that O'Dell was negligent for failing to avoid the collision and failing to wear a seat belt.

Also, FBT's safety director testified that the company sent inquiries to McGee's former employers before hiring him. O'Dell denied that the inquiries were made, and prior employers denied receiving them, said the plaintiff's attorneys.

INJURIES/DAMAGES *amputation, above-the-knee; fracture, leg; knee; pelvis*

O'Dell sustained severe injuries to the left leg, which had to be amputated above the knee several weeks later. He also sustained a dislocation of the right knee, a fracture of the right lower leg, and a pelvic dislocation. His initial hospital stay was three or four months, and he had multiple operations and a long period of rehabilitation. His past medical bills were about \$700,000, and his life care plan probably ranged from \$700,000 to \$900,000, said his attorneys.

O'Dell had sold his landscaping business but was still holding a supervisory position, for which he was receiving about \$15,000 annually plus benefits, before the accident.

O'Dell also sought punitive damages.

The defendants argued that O'Dell's failure to wear a seat belt caused his injuries, and that punitive damages were not appropriate because the defendants' regulatory noncompliance was too remote from the incident.

RESULT The case settled for \$2.4 million before trial.

INSURER(S) Zurich for all defendants (primary)
AIG for all defendants (excess)

PLAINTIFF

EXPERT(S) Alfred P. Bowles, II, M.D.,
biomechanical, San Antonio, TX
Gary H. Wimbish, Ph.D., toxicology,
Milford, TX
Michael L. Nieswiadomy, Ph.D.,
economics, Denton, TX
Catherine J. Walden, LSW, MPA, CLCP,
life care planning, Little Rock, AR

Bill Nichols, regulatory affairs,
Krum, TX

James R. Lock, accident reconstruction,
College Station, TX

Lee E. Jackson, accident reconstruction,
Fort Worth, TX

DEFENSE

EXPERT(S) William D. Miller, Jr., accident
reconstruction, Saginaw, TX

EDITOR'S NOTE Defense counsel did not respond to two phone calls or a faxed draft of this report.

—John Schneider