



**INSURANCE
AND SAFETY
CONCERNS
FOR OUR
VALUED
CUSTOMERS
AND
INTERESTED
PARTIES.**

**CONTACT RICK JOYCE FOR
ANY TOPICS OF INTEREST
YOU WOULD LIKE
DISCUSSED AT:**

**TRANSURE SERVICES, INC.
P.O. BOX 100
BURLINGTON, NC 27216**

(336)584-9494

EMAIL:VOLLEY@TRANSURESVC.COM

Trucker Horror Stories

Everyone hears the horror stories of what can happen in court. The following are a few cases from one insurance company in 1992. (Reprinted from "Inside the Chubb Market")

The definitions of verdict, judgment, award and settlement are somewhat confusing to the average person. To review:

- A verdict is a decision reached by a jury in a court of law.
- A judgement is a ruling/decision made by a judge. For instance, a jury may reach a verdict to award a plaintiff \$5,000,000. The judge can then increase or decrease this jury award, and apply the percentage of fault attributable to the defendant/defendants/plaintiff and inter the judgment.
- An award is given by arbitrators or mediators who are bound by the principles of the law.
- A settlement is a decision that is reached by the interested parties outside of a court of law. A settlement can be determined at

any time, before or after a verdict, judgment or award, or during the appeal process.

Adjudicated-Michigan

A 51-year-old male truck driver suffered the loss of one kidney, the loss of his spleen, and several fractured ribs when a front tire on his truck blew out and caused him to lose control and strike a tree. The plaintiff was unable to return to his job as a long-haul truck driver but was not totally disabled. The plaintiff contended that the defendant tire manufacturer was negligent for designing the tire so that excessive heat built up causing the tire to explode through the side-walls. The defendant maintained that the plaintiff was negligent for not keeping the tires properly inflated, which allowed the buildup of heat. The defendant further contended that the plaintiff failed to maintain control because of his excessive speed, and that was negligent for not keeping up proper maintenance. The plaintiff was found nine percent negligent. VERDICT - \$1,300,000 for the

loss of kidney and spleen.

Adjudicated-Missouri

A 41 year old male suffered a fractured leg when the motorcycle he was operating collided with a truck driven by the defendant truck driver. The plaintiff argued that the defendant truck driver was negligent for making a left turn onto his path and that the defendant motorcycle manufacturer designed a defective windshield that caused more severe injury.

VERDICT- \$1,600,000 For leg fracture.

BE CAREFULL. IF YOU HAVE WRITTEN RULES, PLEASE FOLLOW THEM.

Adjudicated-New York

The New York Transit Authority says it will appeal an "excessive and ludicrous" \$9.3 million damage award to a man whose left arm was cut off last year when he fell onto a New York subway track and was hit by a train. Both sides acknowledge that the injured man was drunk when he fell onto the tracks. Plaintiff's lawyer argued at trial that the transit authority was liable because employees at the subway station did not follow agency procedures. Agency rules say that "passengers appearing unable to care for themselves by reason of intoxication... and liable to injury must be placed in the charge of a transit employee or official." Jurors

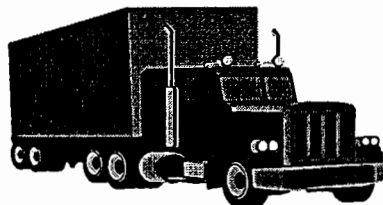
"indicated...that had it not been for clearly written rule they would not have found" for the plaintiff. The award will likely be reduced on appeal, predicted a defense attorney.

AWARD - \$9,300,000

Adjudicated-Missouri

A 30-year-old male dump truck driver was killed when he raised the dumper on the back of the truck and it came into contact with an uninsulated wire. The decedent's plaintiff claimed that the wire was below the height requirement according to national safety standards. The wire was on the defendant contractor's residential development property, and the decedent had cut a road through a vacant lot on that property. The road ran under the wire in question. The defendant contractor and the defendant utility company claimed that the plaintiff had raised the grade by his dump truck operation. The defendant contractor claimed that the grade was never changed and the defendant utility company knew how low it was. The verdict was reduce by 40 percent.

VERDICT - \$3,000,000 For Death, Single Male



Recent Developments in Transportation Insurance Law
 (Excerpts from Central Analysis Bureau)
 In *United States v. Gunther*, 134 F.3d 365 (4th Cir.), the court affirmed the criminal conviction of the president of a trucking company for conspiracy to violate the highway safety regulations. In *Abrams v. Tunzo*, 129 F.3d 1174(11th Cir.), the court concluded that the question of whether the United States was an insured under a policy issued to an Air Force Colonel who was involved in an accident while within the scope of his government employment, did not involve a question of federal law. The policy provision at issue excluding a vehicle lessee was enforceable under state law and no coverage was afforded to the government.

In *United Kingdom v. Northstar Services, Ltd.*, 1 F. Supp.2d 521 (D.Md.), the court concluded that defendant had acted as international freight forwarder rather than a carrier and, as such, bore only the duties set out in its contract, specifically the obligation to hire a reputable trucking company, which it had done.

In *Cochrance v. Schneider National Carriers, Inc.* 980 F.Supp. 371(D. Kan.), the court held that any possible negligence by a trucking company in giving directions to its driver could not be viewed as the proximate cause of an accident that followed in light of the various intervening causes, such as the weather and the driver's negligence in operating the vehicle

in an unsafe manner, which broke any causal connection.

Although the court acknowledged that its ruling appears shocking at first glance, it held in *Fratis v. Republic Western Ins. Co.*, 147 F.3d 25(1st Cir.), that an insurer of a truck rental company which provided only \$25,000 of coverage for lessees and permissive users was held liable to pay, in addition, approximately \$1 million in post-judgment interest charges. Judgment had been entered against the lessee for some \$3 million. Although the lessor's insurer never denied owing the \$25,000, it failed to pay those limits for six years. Since the insurer agreed, under its policy terms, to pay "all interest," the court, following the majority line of cases, concluded that it was responsible for interest on the entire \$3 million judgment.

The decision by the well-respected Judge Easterbrook in *Transport Ins. Co. v. Post Express*, 138 F.3d 1189(7th Cir.), may have been painful for the insurer in that case, which was required to pay in full a \$2.3 million judgment even though its policy had \$1 million limits. Other insurers, though, may benefit from the lesson. The court reaffirmed the "truck driver" rule that provides that it is the trucking company, not the individual driver, that is obligated to report a loss to the insurer. More significantly, the court insisted that the insurer had acted in bad faith when it acknowledged at trial that the insured was liable but urged the jury to award only \$225,000. This constituted an improper gamble by the insurer with the insured's

assets.

This year featured a series of decisions by supreme and appellate courts of the state of Georgia on the issue of the scope of the uniform state motor carrier bodily injury endorsement and filing (known, respectively, as Form F and Form E). In *Ross v. Stephens*, 269 Ga. 266, the supreme court held that where an insurer was exposed solely on the basis of the Form F, its maximum liability was the \$100,000/300,000 state financial security limits, rather than the \$750,000 policy limits.

In response to certified question from the U.S. Court of Appeals for the Eleventh Circuit, the Georgia Supreme Court held in *DeHart v. Liberty Mutual*, ___ Ga. ___, that an insurer which failed to cancel a Georgia Form E filing was liable for damages arising out of an accident that occurred long after the policy expired even though another insurer had, in the meantime, filed a Georgia Form E, and the accident at issue occurred in South Carolina.

National Continental Ins. Co. v. Empire Fire & Marine Ins. Co., 157 F.3d 610 (8th Cir. 1998), involved a loss which occurred during a three week layover period following Christmas which is often a quiet period in the trucking industry. The owner-operator in this particular case completed his final pre-holiday run on December 22 and was not dispatched again for about three weeks. One morning, in early January, he decided to

take advantage of the opportunity and have his front alignment checked at a nearby service station. On route to the station he was involved in an accident. The court decided the issue according to the laws of the state of Oregon where the vehicle was garaged. In line with earlier precedent, the court applied a variation of the test used in Oregon to determine whether an employee is acting within the scope of his employment at the time of the loss. The court held that since maintaining the vehicle was one of the duties set out in the lease agreement (even though it was the lessor's duty), the lessor was engaged in the lessee's business at the time of the loss.

Among other interesting cases during the year were: *Guaranty National Ins. Co. v. Vanliner Ins. Co.*, 1998 U.S. Dist. LEXIS 9505 (E.D.Pa. 1998) (driver remained in the business of lessee when he drove to mall and coffee shop while waiting for trailer to be loaded); *MGA Transport Corp. v. Cain* 128 N.C. App. 428 (driver bobtailing from his home to lessee's terminal was in business of lessee because he was obligated to keep tractor at home before setting out on assignment); *Planet Ins. Co. v. Anglo American Ins. Co.*, 711 A.2d 899 (N.J. App.) (trip to repair shop was in business of lessee and stop at dry cleaner did not change that).