

THE TURNER & HAMRICK EXPRESS

Broker Liable in Crash Involving 3rd Party; Jury Awards Victim's Widow \$5.1 Million



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Turner and Hamrick, LLC is an Independent Insurance Agency serving Alabama and the southeastern United States. Protecting you and your business is our only focus. Enjoy the expertise, commitment, and professionalism that assures you will receive not only the best premiums, but also the finest service throughout your policy year.

In the latest case of a freight broker being found liable for the acts of a third part, Heyl Logistics inc. has been found guilty of negligence in a 2008 fatal accident.

An Oregon jury on March 5 awarded about \$5.1 million in punitive damages, including \$1.68 million against Heyl and the rest against truck driver Daniel Clarey.

The case arose from a load Heyl brokered to trucker Forrest Rangeloff, who in turn brokered the load to Clarey.

Clarey was operation for a company called Washington Transportation, which lacked insurance and operating authority. His truck struck a trailer attached to fellow drier Kelly Linhart's tractor while he was inspecting the brakes, killing him.

Clarey who was cited for driving under the influence and reckless driving, served a prison term.

The plaintiff, Danielle Linhart, wife of the slain trucker, argued that Heyl was negligent by failing to check Washington Transportation's credentials before arranging the load.

After the verdict, attorneys for Linhart bean talks with Heyl before the jury award could be challenged, defense attorney Graham Sweitzer said, resulting in a confidential settlement and dismissal of the punitive damages award.

Heyl Logistics, Akron, Iowa, is a division of Heyl Trucking inc. Rangeloff and Washington Transportation were serve from the case

as defendants before it was decided by the jury, according to court documents. "This wasn't just about money, it was about sending a message," plaintiffs' lawyer Rena Samole said. "If the federal government had better regulations for brokers, perhaps this case wouldn't have happened at all."

She also said there was no way to know how many brokers arrange loads without taking steps such as determining whether the carrier's operation authority and insurance coverage are current.

"We don't need better regulation of brokers," Robert Voltmann, president of the Transportation Intermediaries Association, said. "We need the Federal Motor Carriers Safety Administration to develop a clear carrier safety determination for all carriers."

"It is FMCSA's obligation to determine carrier safety, not brokers or shippers," he said. "The agency needs to move on creating a green-light/red-light system for all carriers so that shippers and [third-party logistics providers] can see which carriers are safe. Shippers and 3 PLs have an obligation to check this rating."

Alan Heyl, CEO of Heyl Logistics, said the company 'regrets the loss of Mr. Linhart's life, while disputing the jury's verdict for an award of punitive damages."

In a statement sent to Transport Topics, Heyl said, "Heyl Logistics remains an active participant in the brokerage business, even while implementing modest changes in

methods and scope of applied internal processes prior to the tender of traffic contracted motor carriers."

The plaintiffs, in a statement, said the case "appears to be the first punitive damages verdict against a transportation broker in a case involving a negligent hiring claim."

Samole noted tat the jury determined there was negligence on the part of Clarey and Heyl, which was more serious than a finding of vicarious liability.

In vicarious liability cases, parties such as brokers can be held responsible for the acts of a third party like a driver.

The issue of vicarious liability has been raised in multiple past cases, including one against largest broker C.H. Robinson Worldwide. In that 2004 case, plaintiffs were awarded nearly \$24 million in damages.

Samole also said that the case could lead in the future to negligence cases brought against shippers.

In this case, she said the plaintiff withdrew its negligence claim against the shipper before the jury could rule on it.

Bob Barton, an Oregon attorney who represented the shipper, Nestle Waters North America, declined to comment on the case.

By Rip Watson *Senior Reporter*,
Transport Topics

Provision in Senate's Transport Legislation Would Raise Broker Surety Bond To \$100,000

A provision in the Senate transportation bill would raise the surety requirements for freight brokers to \$100,000 from \$10,000.

The measure also requires trucking companies that broker freight to obtain separate operation authority.

"The language raising the broker bond amount of \$100,000 is the result of a compromise by a number of affected groups," Prasad Sharma, general counsel for American Trucking Associations, told Transport Topics, "and carriers will benefit from the increase in required financial responsibility."

The provision was contained in the surface transportation bill the Senate passed on March 14. The bill also authorized \$109 billion in transportation spending. The House has not passed its own transportation reauthorization bill, but a current proposal contains the measure.

Raising the requirement is the result of an agreement among ATA, the Transportation Intermediaries Association and the Owner-Operator Independent Drivers Association, said Robert Voltmann, TIA president.

"The Senate bill is our exact language, and we fully support it," Voltmann told TT.

After two bills to raise the surety requirement previously failed in the Senate, TIA agreed to support the move if the other groups supported the separate authority provision.

However, one company that issues surety bonds to brokers cautioned that the measure, if approved, would put 75% to 85% of the nation's freight brokers out of business.

"On the face of it, it's preposterous," said James Sanders, a consultant at the Pacific Financial Association Inc., which provides bonds for about 25% of brokers in the United States.

The measure is designed to put small brokers out of business by requiring them to obtain surety that no bond company would give them because small brokers rarely have the collateral necessary, Sanders said.

The premium for a \$100,000 bond is typically less than \$5,000 per year, but that's not what would push brokers out of business, Sanders said.

The surety requirement would remain the same for brokers of all sizes, no matter how many separate offices or agents they have. Sanders said that this provision benefits large brokers and probably would encourage small brokers to become agents of the larger ones.

Voltmann rejected Sander's arguments.

"These are specious arguments by fearmongers," he said, "and they're being spread by the people who this legislation is designed to stop—the cheats, the churners and the thieves."

The legislation may put brokers out of business, but those are the ones trying to cheat the system, he said. It also will stop underfunded brokers from operating.

In addition, the legislation's authority requirement will prevent carriers from re-brokering freight, Voltmann said.

The new financial requirements on brokers are justified because the companies handle other people's money, essentially action like a bank, he said.

"If you cannot afford \$5,000 a year to protect \$100,000 of someone else's money, then you don't belong in the business," he said.

The new surety level will help ensure that carriers get paid by brokers, even if brokers close down, said ATA's Sharma.

KEY EMPLOYEE: JIM HARRELL

Turner & Hamrick would like to congratulate Jim Harrell, key employee of the quarter. Jim is in charge of claims—handling and Bonds at Turner & Hamrick. Hopefully, most of you have not had to use the claim services, but if you have, you know he's a great person to have help get your claims reported and paid quickly and efficiently.

Jim graduated from the University of Alabama in 1964 and has worked in insurance ever since. He worked for Liberty Mutual in sales for eight years. After that, Jim was an independent agent and vice president of an independent agency in Mobile for a period of 11 years. Jim was elected as chairman of the year for the Commercial Lines Committee in 1992. The six years following, Jim worked for Pinnacle, after which, he

came to become a part of the team at Turner & Hamrick.

When asked what he enjoyed most about working in claims, Mr. Harrell replied, "I enjoy helping customers get the full value of their insurance and helping them through rough times."

Jim is married to Bonnie and has two sons; Ed and David as well as seven grandchildren, Dexter, Sandy, AJ, Libby, Joey, Emme, and Wyatt. Jim's favorite thing to do is to spend time with his children and grandchildren.

Thanks, Jim, for all your hard work and dedication.



CLIENT SPOTLIGHT:



*Thinking Ahead
Moving Forward~*

Turner & Hamrick would like to congratulate ASF Intermodal for being selected as the client spotlight of the quarter.

ASF Intermodal exceeded 100 trucks in January, 2012, which it calls a major milestone in the intermodal drayage industry.

The company reached this number less than one year after beginning operations. ASF Intermodal opened with two locations in February 2011 and began moving freight the following month. They haven't slowed down since.

"While it took us less than a year to grow to the point where we are operating over 100 trucks through six facilities strategically placed in key locations throughout the southeast, we have plans for further expansion," says president Michael Smith. "We expect to add even more trucks in the near future and plans are also in place to open more locations to better meet the needs of our customers."



In addition to the overall growth in intermodal transportation, company leaders attribute the rapid growth of ASF Intermodal to the company's commitment to safety, service and excellence. Smith explains, "We completed a Department of Transportation audit at the end of 2011 and received a satisfactory rating with no violations, an accomplishment we are quite proud of."

Turner & Hamrick thanks ASF Intermodal for their dedication to safety and service as well as the opportunity to partner with them in servicing their risk management needs.

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