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Family gets \$2.2M for trucking accident

By SARAH STANLEY

The estate of a woman killed by a tractor-trailer driver who was high on methamphetamine has settled its negligence suit for \$2.2 million.

A portion of the case hinged on whether a poultry company was negligent for contracting with a trucking business that had a poor public record of drug testing compliance.

Glen Allen attorney Jonathan E. Halperin, who represented the plaintiff along with Andrew Lucchetti, was prepared to argue a negligent hiring of an independent contractor theory at trial. A Verdicts & Settlements Report on the case was published in the Nov. 23, 2015, edition of Virginia Lawyers Weekly.

The accident occurred on Nov. 27, 2013, the day before Thanksgiving. Sixty-year-old Karen Ann Whitaker, a day-care teacher at Four Mile Creek Baptist Church in eastern Henrico County, was leaving work to begin preparations for a Thanksgiving meal for her family.

Whitaker had just pulled out of the church parking lot when tractor-trailer driver Clarence E. Risher lost control of his empty rig and jackknifed, crossing the center line and colliding with Whitaker's vehicle. Whitaker was killed instantly.

Risher was charged with multiple driving-related offenses, including DUI involuntary manslaughter. According to Halperin, Risher was high on methamphetamine at the time of the crash, and had been awake for the previous five days. Police also found alcohol and drug paraphernalia in the truck.

Additionally, Risher was operating the commercial vehicle without a valid driver's license. At the time of the crash, he was facing drug and theft charges in his home state of South Carolina, Halperin said.

Four hours before the crash, Risher had delivered a load of frozen chickens



HALPERIN



LUCCHETTI

from a plant in South Carolina to its destination in Virginia. Between the delivery and the accident, Risher took a four-hour break to shop and do drugs, Halperin said.

Risher pled guilty to all charges and was sentenced to four years in prison, according to court records.

Whitaker's estate brought negligence claims against Risher and his employer, CER Trucking, in Henrico County Circuit Court. The trucking company, owned by Risher's father, had been deemed an "imminent hazard" and shut down by federal order shortly after the accident.

The estate also filed suit against the South Carolina chicken producer and shipper of the load, House of Raeford Farms, alleging negligent hiring of an independent contractor.

Halperin and Lucchetti demonstrated during discovery that House of Raeford did not due diligence to determine the safety of its regularly used carrier.

"Any carrier that is licensed has a rating," Halperin said. "As industry standard, most shippers subscribe to services that monitor these carriers."

Halperin noted that the Federal Motor Carrier Safety Administration has a public website that provides carrier safety data free of charge. He said there are also private companies, such as Carrier411, that provide detailed safety history of a motor carrier for a nominal fee.

House of Raeford admitted that they did not use either of these sources to ensure that CER Trucking complied with federal law, Halperin said.

Halperin retained experts who would have opined that 95 percent of shippers do use monitoring services to determine a carrier's SAFER score.

Had House of Raeford checked, Halperin said, it would have learned that CER Trucking was in the lowest 3 percent for drug testing compliance and drug and alcohol issues.

"In other words, 97 percent of other motor carriers did better on this critical safety issue," Halperin said.

House of Raeford filed a summary judgment motion, arguing that the contract for hire had ended when the delivery was made, four hours prior to the accident. Henrico Circuit Judge Richard S. Wallerstein Jr. denied the motion. He found that while a "frolic and detour" might be a defense in a respondeat superior case, it did not apply to a negligent hiring claim.

Whitaker was survived by her husband and four adult children. Her husband, Philip Whitaker, was the primary plaintiff in the case.

"His grief was palpable," Halperin said. "He conveyed his loss in a very moving way."

Philip Whitaker also died under tragic circumstances, from injuries he suffered during an altercation with a VCU Medical Center security guard in August 2015.

Halperin said the death of their father influenced the surviving children to push for a resolution in their mother's case.

Whitaker's estate settled with Risher and the trucking company after mediation, for their combined policy limits of \$1,000,000.

The case against the shipper was scheduled for a three-day trial beginning Oct. 6, 2015. On Oct. 1, House of Raeford agreed to pay an additional \$1,200,000 to settle the case.

According to records from the Henrico County Circuit Court, Risher and CER Trucking were represented by Richmond attorney William J. Pfund, and House of Raeford was represented by Richmond attorney James R. Watson.