CASE NOTE:

Florida Courts in the National Spotlight: Motor Carriers May Rely on Third-Party Repair Facilities

Lesley B. Sachs and Kristen M.J. Johnson*

The Florida First District Court of Appeals has been asked to certify a question to the Florida Supreme Court that all eyes are watching around the nation. In the case of *Tuong Vi Le v. Colonial Freight Systems, Inc. et al*,[1] the question for certification is "whether federal trucking regulations establish a non-delegable duty on the part of motor vehicle carriers (truck owners) to safely maintain and operate their vehicles."[2] The key phrase in this question is "*nondelegable duty*" because in this case the plaintiff-appellants would like the court to hold that a motor carrier may *never* delegate responsibility to a qualified mechanic or inspector to repair and maintain vehicles.

The request for Supreme Court review originates from the court of appeal's December 4, 2019 decision rejecting the plaintiff's novel theory that would have held a motor carrier fully liable for the negligent acts of an independent repair facility. In dismissing the theory that a motor carrier owes a nondelegable duty for the negligent repairs of third-party repair facilities, the court held that, "to accept [the] argument that [the motor carrier] should be held liable for [a repair facility's] negligence would essentially impose a theory of strict liability upon [this motor carrier] and other motor carriers. *This we decline to do.*"[3] Appellant's motion for certiorari is pending with the Florida Supreme Court as of January 27, 2020.

While pending on appeal, amicus briefs were submitted by the American Trucking Associations and the National Association of Small Trucking Companies. These industry groups emphasized that the draconian concept of requiring all motor carriers to be directly liable for the negligence of third-party repair shops, even when the carrier did not act negligently in any manner, would throw the industry into turmoil. Trucking companies, as a matter of necessity, rely heavily on third-party repair shops because many repairs will be beyond their ability to carry out in house. Oftentimes prudence and necessity require the use of third-party repair shops, using heightened skills or unique equipment that are not within the motor carrier's possession.

At issue in the case was whether the motor carrier, Colonial Freight Systems, could be held fully liable for the damages caused when a tire dislodged from a trailer that was previously inspected and repaired by third-party repair facility, TA Operating Systems, LLC. Colonial Freight Systems hired TA Operating Systems to repair damage to the trailer's axle and wheel hubs following a brake fire in the trailer's rear axle. Once repaired, the motor carrier performed all required routine trailer inspections consistent with federal requirements, but did not detect some unrepaired damage within the wheel hub. Subsequently, a tire dislodged from the trailer and collided with another vehicle causing injuries to the plaintiff/appellant Tuong Vi Le.

Le claimed that Colonial Freight Systems owed her a duty under the Federal Motor Carrier Safety Regulations (FMCSRs) to periodically inspect its vehicles to ensure that all parts and accessories on commercial vehicles are maintained or promptly repaired to meet minimum standards pursuant to 49 CFR §396.17(g), among other FMCSRs, and that it failed to meet this duty. Le argued that the motor carrier could not delegate that duty to third-party repair facilities, relying primarily on law defining the liability of motor carrier for actions of an independent operator. Le's argument relied extensively on *Vargas v. FMI, Inc.*, 233 Cal. App. 4th 638 (Cal. App. 2015), which turned upon the "statutory employer" rule specific to the relationship between motor carriers and independent owner-operators who lease their equipment and services to them. Le argued that the court should expand the *Vargas* theory of liability for independent operators to independent repair facilities. Under the theory, motor carriers would have a nondelegable duty to inspect and repair its vehicle, trailer, and equipment, and would be fully liable for the negligence of third parties repair facilities that

* Taylor & Associates, PL (Winter Haven, Florida)

failed to properly perform the repairs.

In affirming the lower court's ruling, the Florida First District Court of Appeals found that the motor carrier satisfied its duty to maintain the vehicle by performing all of the required periodic inspections pursuant to 49 CFR §396.17 and by promptly sending the trailer to a qualified repair facility for repairs after the brake fire. The court recognized that federal regulations allow motor carriers to use qualified mechanics and inspectors and do not require a carrier to dissemble a wheel or hub during an inspection to verify that a qualified mechanic performed appropriate repairs. Thus, the court reasoned that Colonial Freight Systems satisfied its duty to inspect and repair the trailer.

The Florida First District Court of Appeals then rejected the argument that a motor carrier cannot delegate the duty to a qualified repair facility to conduct the inspections and repairs. Perhaps most detrimental to Le's argument was that neither Le nor the court could identify any specific federal regulation that imposes the nondelegable duty on the motor carrier to perform inspections and repairs. The court stated that Le's argument, if accepted, would "create blanket liability for motor carriers whenever an accident occurs because of a faulty repair."

The court also reasoned that the repair facility owes a duty to the person who paid for repairs and to third parties who are injured by negligent repairs, citing *Craft v. Graebel-Oklahoma Movers, Inc.,* 178 P.3d 170, 178 (Okla. 2007) ("One who undertakes to repair a motor vehicle owes a duty not only to the party requesting the repair but also to any person who `might reasonably be expected to be endangered by probable use of the chattel after repair.'").

The court was careful to explain that the ruling does not absolve the motor carrier of any responsibility for maintaining its vehicles. Instead, the court stated that the jury's assignment of 23 percentage of fault attributed to Colonial Freight Systems, with the remaining 73 percent assigned to TA, was appropriate as the motor carrier may have avoided the accident if it had scrutinized the TA repair invoice and questioned the repair facility about the extent of the repairs. Therefore, the court affirmed that liability is appropriately apportioned according to the fault of the parties and that the motor carrier is not solely responsible for the negligence attributed to the third-party repair facility.

Taylor and Associates filed an amicus brief on behalf of the American Trucking Associations, Inc. ("ATA") in support of Appellee, Colonial Freight Systems, Inc. The ATA was particularly concerned about the outcome of the Florida case because of its far-reaching consequences for the trucking industry should the court accept Plaintiff's novel theory. Richard Pianka, Deputy General Counsel of ATA, notes that many trucking companies must use third-party repair shops. It is often necessary–as well as wise and safe–to use a third-party mechanic who has specialized knowledge and skills to conduct repairs. Many motor carriers are small businesses that do not specialize in mechanics. Many motor carriers want to entrust their repairs and maintenance to certified specialists in fleet maintenance.

Requiring motor carriers to hold full responsibility for repairs also throws the proverbial wrench in emergency repair situations. Transportation is a spread-out business, and carriers need to use a network of resources to maintain their fleets. Restrictions on use and reliance upon third-party repair shops inhibits the business of trucking and goes against the nature of providing services throughout a geographic network.

To hold motor carriers strictly liable when those third-party shops and mechanics behave negligently could wreak devastation on the industry. Also, within the legal field, where nuclear verdicts are seemingly on the increase and major carriers are often the targets of litigation, imposing full liability for the work of mechanics serves to fuel the problem and jeopardize the hard-working truck companies of America.

To impose a non-delegable duty on trucking companies for the repairs of third-party repair facilities would essentially require trucking companies to also become skilled mechanics while creating the perverse effect of absolving independent repair facilities of any liability for their negligent repairs, Pianka explains. The Plaintiff's theory, if accepted, would potentially paralyze the trucking industry and create very significant risks to motor vehicle safety. Pianka said that ATA is very pleased that the District Court of Appeals affirmed the trial court's ruling rejecting the novel nondelegable duty theory and affirming the legal norm that holds accountable repair facilities for their work. The ATA expects that the Florida Supreme Court will decline to Appellant's motion to overturn the District Court of Appeals and trial court decisions.

Endnotes

1 No. 1D18-39 (Fla. 1st DCA).

2 Motion to Certify Question of Great Public Importance to the Florida Supreme Court, Le v. Colonial Freight Systems, Inc., No. 1D18-39 (Fla. 1st DCA January 27, 2020).

3 Le v. Colonial Freight Systems, Inc., No. 1D18-39, 2019 WL 6519440 (Fla. 1st DCA December 4, 2019) (emphasis added).