

# Federal regs apply to truck used in-state

## Wrongful death case settles for \$925K

BY DAWN CHASE

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Federal regulations governing motor carriers apply to vehicles that are used only in state, a Portsmouth judge has ruled.

That holding was a key element in a wrongful death case of a 16-year-old passenger killed when a pickup truck slammed into the back of a truck used to collect garbage dumpsters.

The case has settled for \$925,000, according to the lawyer for the boy's family, Charles H. Cuthbert Jr. of Petersburg.

The regs applicable in this case required use of reflective warning triangles for a stopped truck; the defendant's truck did not have any triangles. The judge's ruling will be "widely usable" for lawyers litigating auto-accident cases, Cuthbert noted.

Another tactic that worked in the case: Cuthbert persuaded the judge to allow into evidence an invoice that documented corrective action taken by the sanitation company after the accident. The judge determined that the invoice, which was for emergency triangles, was relevant because, in part, it contradicted an implied excuse given by the defense that the triangles could not have been obtained before the accident.

The style of the case is confidential by agreement of the parties. The suit was brought by the victim's estate against



CHARLES H. CUTHBERT JR.  
Ruling will be 'usable'

the company that owned the truck and the company's vice president, both individually and as an officer of the company.

The case settled after one day of a jury trial in Portsmouth Circuit Court. Judge James A. Cales Jr. presided.

### Wreck at night

The case involved a sanitation company's "roll-off" truck — a flatbed with built-in rollers that is used to collect large dumpsters, such as those used on construction sites. To collect a dumpster, the bed of the truck is tipped, a winch hoists the container across the rollers

and onto the bed, and the bed is leveled for transporting.

The accident happened on a Saturday night on a four-lane rural stretch of U.S. 460, where the speed limit was 55 miles per hour. The sanitation truck, which was carrying a construction bin, had run out of gas and was stopped in a travel lane. The truck had no emergency triangles or flares on board. The lights on the truck were obscured by the bin and the underride protector.

The pickup, driven by the victim's father, slammed into the rear of the roll-off truck. The pickup veered to the left just before the collision. The passenger side of the cab took the brunt of the impact. The cab was sheared, killing the boy. The father suffered minor injuries.

### Use of regs

Cuthbert identified a number of issues of interest in the case. Chief among them was applicability of the federal regs.

The Federal Motor Carrier Safety Regulations, at § 393.95(f), require commercial trucks to be equipped with three emergency triangles or three flares. Cales determined that the regulations applied because they are referenced in Virginia Code § 52.8.4 and 19 Virginia Administrative Code § 30-20-40.

There is no written decision on this point, Cuthbert noted, but nonetheless the ruling "a widely usable holding of the judge."

Another issue was whether the facts justified submitting a punitive damages claim to the jury. The driver of the sanitation truck testified that, a day or two before the accident, he had pointed out to the vice president that the truck had no emergency triangles, and the vice president had told him the triangles were on order and to drive the truck anyway.

The Monday after the accident, the company ordered and obtained 12 sets of

"The significance of the invoice was obvious to everyone, including the adjuster who was in the courtroom," Cuthbert reported.

"That was a game breaker. They walked into it by saying they had them on order," he said.

Cales allowed the plaintiffs to pursue claims against the company vice president, both individually and as an officer of the defendant company.

He denied personal liability, arguing that he was acting within the scope and authority of his employment at all times. But the judge decided against him on that issue, based on *Miller v. Quarles*, 242 Va. 343, 410 S.E.2d 639 (1991) and *Sit-Set v. Universal Jet Exchange*, 747 F.2d (4th Cir. 1984).

And the judge was ready to let Cuthbert depose the vice president a second time, in his individual name. He already had been deposed as an officer, but Cuthbert successful used Rule 4:5(b)(6), which states in its last sentence: "This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules."

James E. Brydges of Norfolk, lead defense counsel, could not be reached for comment.

But Cuthbert said the pressure on the defense to settle was aided by the fact that there was a lot of insurance. While he declined to say exactly how much was available, the total was significantly more than the \$925,000 settlement, he said. "The upside potential was awesome," he said. "Very collectible."

The statutory beneficiaries of the award were the victim's parents and two siblings. The defense contended the father was contributorily negligent and could not share in the damages, but that issue was dropped with the settlement, Cuthbert said.