

## Transportation Update: Truck Driver Flips Truck in "S" Curve; Is Shipper Liable?

ATTORNEYS

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On April 4, 2018, the Louisiana Third Circuit Court of Appeal, in the case *Ryan Lee Stroder, et al. v. Hilcorp Energy Company, et al.*, reversed a summary judgment ruling in favor of a shipper of drilling mud in a suit resulting from a single truck accident in St. Landry Parish. The opinion addresses an issue of first impression in Louisiana.

### A. Background

On October 17, 2012, Ryan Stroder ("Stroder") was employed by MyVac, LLC, as a truck driver. Stroder, who had limited experience, was called to a land-based oil rig operated by Hilcorp Energy Company ("Hilcorp") to transport drilling mud for waste disposal. A Thomas Stevens & Associates employee was the "company man" supervising the rig operations. Freddie Grimaldo ("Grimaldo"), an employee of Gulf Coast Brokerage, LLC ("Gulf Coast"), was the solids control operator in charge of disposal of drilling fluids.

Stroder arrived at the rig in an open-ended dump truck, as ordered by defendants. Upon viewing the mud to be transported, Stroder felt that it was too fluid to be held in his truck. Stroder offered to return to MyVac to get a bottleneck truck, but he was assured repeatedly by defendants that the mud was safe to transport in the dump truck.

Grimaldo loaded the mud on to Stroder's truck. While driving through an "s" curve a few miles from the rig, the load shifted in the trailer, causing the truck to overturn. Stroder suffered severe injuries as a result of the accident.

Stroder sued Hilcorp, Thomas Stevens, Gulf Coast and others in state court for negligence. Defendants claimed they owed no duty to Stroder because the cargo load was obvious and apparent. The trial court agreed and dismissed Stroder's suit. Stroder appealed.

### B. Discussion

On appeal, Stroder contended the trial court erred in concluding that defendants did not owe him a duty of care. The parties disputed whether defendants, as the shipper of the mud, owed a duty to Stroder, the carrier. The Third Circuit looked to federal law for guidance because Louisiana courts had not squarely addressed the issue.

Federal regulations impose a non-delegable duty upon a carrier to secure all loads safely. However, when a shipper assumes the responsibility of loading, the general rule is that he becomes liable for defects which are concealed and cannot be discerned by ordinary observation by the carrier; but, if the improper loading is apparent, the carrier will be liable notwithstanding the shipper's negligence.

The Third Circuit reversed and remanded the case. The Court concluded federal law allows liability on shippers who make assurances regarding the safety of cargo they themselves load. The Court held that whether the loading defect at issue was apparent was not appropriately decided by summary judgment in light of defendants' assurances to the carrier.

**C. Why is this important?**

1. A carrier should pause before transporting an unfamiliar cargo loaded by shipper when the shipper insists the cargo is safe to transport.
2. A shipper may be better served by not making any representations whatsoever to a carrier as to the suitability of cargo it has loaded for shipment.
3. In Louisiana, liability for a shipper's defect in loading will likely depend on whether the defect is concealed or apparent to the carrier.