Stubbs Oil Company v. Price: Recent Georgia Court of Appeals Decision on Shipper Liability

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The Georgia Court of Appeals recently issued an opinion that may make its way to the Georgia Supreme Court in the coming months. Notably, the opinion focuses on the issue of statutory employment under the Federal Motor Carrier Safety Regulations and the classification of an entity as a shipper vs. a motor carrier. The opinion may be one to watch in the coming year.

The case of *Stubbs Oil Co. v. Price*, 2020 Ga. App. LEXIS 580 (Oct. 19, 2020), stems from a June 2015 accident in which Stubbs Oil Company hired Southern Oil Company to deliver fuel to retail sales customers. The Plaintiffs sued Stubbs under multiple theories of statutory employment, vicarious liability, and a theory that Stubbs was required to "ensure Southern Oil's carrier status." *Id.* at *2-3. The Plaintiffs also sued Stubbs' insurer under the Georgia Direct Action Statute, alleging that Stubbs acted as a motor carrier in controlling the time, method, and manner of Southern's operations in such a way that made Southern and its drivers statutory employees of Stubbs. It is unclear from the opinion, but it stands to reason that due to the existence of multiple wrongful death claims stemming from one accident, Plaintiffs were attempting to hold Stubbs vicariously liable in an effort to increase the insurance pool of their potential recovery.

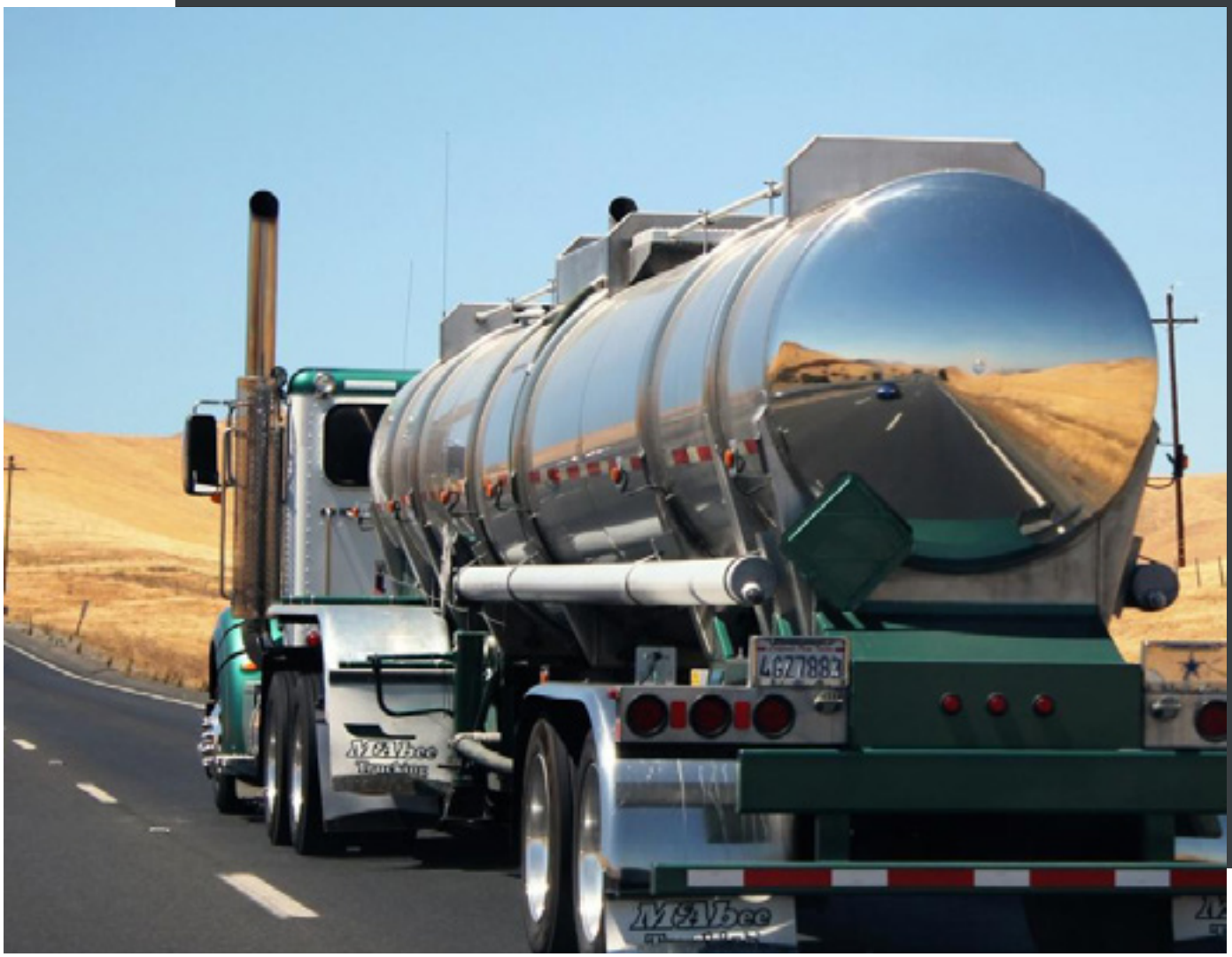
The trial court denied motions for summary judgment filed by Stubbs and its insurer, finding that Southern's status as a "private motor carrier" meant that Stubbs must be the statutory employer of Southern. On appeal, Stubbs stressed that its relationship with Southern was a typical shipper/independent contractor relationship. Stubbs would contact Southern, ask if they could make a delivery and if so, email Southern a "loading ticket designating the terminal, supplier, volume of fuel, window of time for delivery, and destination." *Id.* at *4. After that point, Stubbs left the route, method of delivery, driver assignment, and other particulars up to Southern. *Id.* at *5. Stubbs had its own DOT operating authority, something which the trial court used in ruling that there was an issue of fact as to whether Stubbs was a statutory employer of Southern.

The Court of Appeals reversed the trial court, stressing that the Federal Motor Carrier Safety Regulations only apply to motor carriers, "not to shippers who engage independent contractors to transport goods." *Id.* at *9, *citing Harris v. FedEx Nt'l LTL, Inc.*, 760 F. 3d 780, 785 (8th Cir. 2014). The doctrine of statutory employment is theory of vicarious liability created by the Federal Motor Carrier Safety Regulations and, in the absence of lease agreement between a defendant and an owner of the vehicle involved in the accident, the defendant shipper cannot be a statutory employer. The Court found that there was no evidence of a written or oral lease between Stubbs and Southern.

For motor carriers, it is reasonable to expect that shippers will want to maintain certain barriers with motor carriers as customers to avoid the type of liability sought by the Plaintiffs in *Stubbs*. Requiring a shipper to keep their interactions at arms-length is a best practice that shippers, brokers, and motor carriers will want to follow.

For shippers, there are several lessons to learn from this opinion. First, this opinion affirmed the rule in Georgia that a shipper has no duty to verify whether a motor carrier has operating authority or has complied with the State Motor Carrier Act.

Second, if shippers want to avoid being subject to the Federal Motor Carrier Safety Regulations,



they must make sure they "stay in their lane" and let the motor carriers they hire do the jobs for which they were hired – the for-hire transport of freight. The issue of a shipper's – or freight broker's – control over a motor carrier and driver is often the tail that wags the dog.

For insurers, the edict from *Stubbs* is relatively simple. Insurers looking to limit their liability under Georgia's direct action statute must understand whether their insureds are motor carriers or shippers and, in a given transaction, understand whether there is any room for argument that the insured is acting as a statutory employer. A shipper exercising a heightened level of control over a motor carrier and its driver could subject the shipper's insurer to suit under Georgia's direct action statute. If an insurer does not want to open this potential Pandora's box of liability, then requiring its insureds to maintain boundaries like the Defendants in *Stubbs* is a best practice.