

TEXAS' BEST LAWYERS

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EXCEPTIONAL CASE

SAFER HIGHWAYS

How safe are Texas highways? A little bit safer, hopes attorney Frank L. Branson, after landing a \$20.7 million jury verdict last year against a trucking company and a driver who admitted he smoked crack the day before a 2004 accident that killed a man.

The Dallas Morning News featured the fatality in a three-part investigative series on truck accidents in Texas caused by convicted felons, including those who received their commercial drivers' licenses through prison employment programs. Branson hopes that the verdict and the media's interest given to it catch the attention of the trucking industry and place a public spotlight on its hiring practices.

In most instances, it is not illegal for trucking companies to hire drivers with criminal records. But Branson convinced a jury that Dallas-based EnviroClean Management Services, which transports medical waste including blood and body parts, was negligent in hiring Turner Yarbrough, a convicted felon who plowed his 18-wheeler into a line of cars on the LBJ Highway in North Texas, severely injuring 76-year-old Robert Bohne, who died five months later.

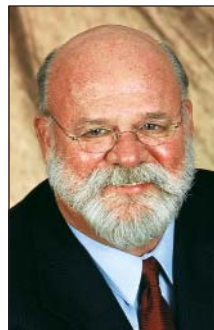
The 2007 verdict is believed to be the largest ever in a Texas truck accident and is particularly large given that both the deceased and his widow were elderly, Branson says. The case settled several months ago for a confidential amount, with both sides agree-

ing to forgo appeal of the verdict. "I think the jury did the only thing we as citizens can do to effect change," says Branson, whose offices are in Dallas but represents clients throughout the state. "This man should never have been hired to drive any kind of commercial vehicle. He had a proven history of not being a trustworthy driver. The jury said enough's enough."

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The day before the wreck, Yarbrough testified that he smoked crack for six hours. Although he claimed he was no longer under the influence of drugs when the accident occurred, cocaine was found in his system



after a drug test required by the Department of Transportation was conducted later that day. Police had ticketed Yarbrough at the scene of the accident, in which three other people besides Bohne were injured, but did not test him for drugs or alcohol or charge him with any crime.

Bohne sustained serious injuries including broken ribs, a collapsed lung, and a traumatic brain injury. He never left the hospital and died from his injuries 162 days after the accident. The lawsuit was brought on behalf of his widow, 84-year-old Kathleen Bohne, and his estate.

The plaintiffs contended that EnviroClean was negligent in not conducting a background check of Yarbrough, who had also caused a wreck several years earlier, when he was driving a Dallas city bus and ran into a utility pole, injuring a passenger.

At his deposition for the Bohne case, Yarbrough said he had cocaine in his system during the earlier bus accident. He also had numerous criminal convictions including driving with a suspended license, driving without insurance, larceny by check, and marijuana possession. He testified that he disclosed his criminal record on his job application with EnviroClean but they didn't ask him about it. The plaintiffs also claimed that EnviroClean should have but did not perform random drug tests on Yarbrough.

The defense contended that the accident was caused by another truck which fled the scene. An anonymous 911 call was placed at the time of the accident, describing a different truck with a particular logo, says defense attorney Tom Fee of Fee, Smith, Sharp & Vitullo in Dallas.

"Our defense going in was causation of the accident," says Fee, "and the key evidentiary component of that was a 911 call supporting the fact there was another truck involved, which we felt was consistent with the evidence. The judge felt it was unreliable hearsay. I'm not attacking the judge and whether his ruling was right or wrong, and there was no current case law in Texas that addressed the admissibility of an unidentified 911 call."

Fee notes that there is no legal requirement that force trucking companies to conduct criminal background checks before hiring drivers.

However, he concedes that EnviroClean should have conducted a check of Yarbrough's driving record, which would have revealed the earlier bus accident. "That was a big deal to the jury, which kind of inflamed

them, which is consistent with their award," says Fee.

At trial, to counter the defense claim that a different truck was to blame, Branson relied on a paint compound expert who linked paint smears on the plaintiff's car to Yarbrough's truck. Branson also used computer graphics and animations to demonstrate the pain and suffering Bohne endured before he died.

"Mr. Bohne received a number of broken ribs in the accident, which makes it very painful to breathe every time you inhale and exhale," says Branson. "Eventually fluid collected in his lungs, and Mr. Bohne died of pulmonary arrest."

As in all of Branson's trials, his wife, Debbie Branson, an attorney with an advanced degree in psychology, handled the jury selection. After deliberating four hours, the jury found that Yarbrough and EnviroClean were responsible for the accident. They awarded Bohne's widow and estate \$20.7 million, including \$11 million in punitive damages.

Defense attorney Fee notes, "We honestly didn't think the verdict would come back that

large, in part because the deceased and his widow were so elderly and had no dependent children. I honestly thought it would come back in the \$3 to \$4 million range." But, he adds, "If you mix a bad driver on drugs hauling medical waste, you get this kind of verdict. I tip my hat to Mr. Branson for doing a good job for his client and maximizing the recovery for his client. Frank teed it up for a message verdict, and the jury went with it. He teed it up, and he hit it a long way."

Branson agrees that he wanted to send a strong message to the defendants. "Hopefully, the size of the verdict will get the attention of the trucking industry and let them know that you can't put profit over safety, which is what they appear to have done in this case," he says. "It's the type of thing where, in my practice as a trial lawyer, I've seen form the seed for change. The moguls who sit in their corporate board meetings and talk about what they need to put as priorities for trucking companies seem to respond to punitive damages and large actual damages, and do not seem to respond to a slap on the wrist from the federal government," he adds.

—Elaine McArdle

METHODOLOGY

This list is excerpted from the 2008 edition of *The Best Lawyers in America*®, the preeminent referral guide to the legal profession in the United States. Published for a quarter of a century, Best Lawyers® lists attorneys in 78 specialties, representing all 50 states and the District of Columbia, who have been chosen through an exhaustive survey in which thousands of the nation's top lawyers confidentially evaluate their professional peers. The 2008 edition of *Best Lawyers*, which was published in November 2007, is based on more than 2 million evaluations of lawyers by other lawyers.

The method used to compile *Best Lawyers* remains unchanged since the first edition was compiled 25 years ago. Lawyers are chosen for inclusion based solely on a vote of their peers. Listings cannot be bought, and no purchase is required to be included. In this regard, *Best Lawyers* remains the gold standard of reliability and integrity in lawyer ratings.

The nomination pool for the 2008 edition consisted of all lawyers whose names appeared in the previous edition of *Best Lawyers*, lawyers who were nominated since the previous survey, and new nominees solicited from listed attorneys. In general, lawyers were asked to vote only on nominees in their own specialty in their own jurisdiction. Lawyers in closely related specialties were asked to vote across specialties, as were lawyers in smaller jurisdictions. Where specialties are national or international in nature, lawyers were asked to vote nationally as well as locally. Voting lawyers were also given an opportunity to offer more detailed

comments on nominees. Each year, half of the voting pool receives fax or email ballots; the other half is polled by phone.

Voting lawyers were provided this general guideline for determining if a nominee should be listed among "the best": "If you had a close friend or relative who needed a real estate lawyer (for example), and you could not handle the case yourself, to whom would you refer them?" All votes and comments were solicited with a guarantee of confidentiality — a critical factor in the viability and validity of *Best Lawyers* surveys. To ensure the rigor of the selection process, lawyers were urged to use only their highest standards when voting, and to evaluate each nominee based only on his or her individual merits.

The additional comments were used to make more accurate comparisons between voting patterns and weight votes accordingly.

Best Lawyers uses various methodological tools to identify and correct for anomalies in both the nomination and voting process.

Ultimately, of course, a lawyer's inclusion is based on the subjective judgments of his or her fellow attorneys. While it is true that the lists may at times disproportionately reward visibility or popularity, the breadth of the survey, the candor of the respondents, and the sophistication of the polling methodology largely correct for any biases.

For all these reasons, *Best Lawyers* lists continue to represent the most reliable, accurate and useful guide to the legal profession in the United States.

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