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FHWA - 97 - 2427 - 50

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

In the Matter of :
EAST FLORIDA HAULING, INC. : FHWA
Respondent. : Docket No. 92-FL-027-HM

REPLY BRIEF

The FHWA shows that East Florida Hauling's (EFH) Brief fails in form and substance to rebut the evidence of the FHWA, and does not provide a reason to prevail. The EFH Brief argues issues already established against it by summary judgment, that are unsupported by any evidence, and are without any discernible meaning or consequence.

In spite of the administrative law judge's clear instructions to the contrary, EFH persists in arguing a standard different than provided by statute for knowing violations of the Hazardous Materials Transportation Act. Rather than the "knowing" standard stated specifically in 49 U.S.C. App. §1809, and again in the Second Summary Judgment against EFH, and finally, by this court at the beginning of the hearing, Counsel for EFH insists on a "voluntary, intentional" standard. EFH Brf, 2. This is quite simply wrong.

EFH's brief tries to cloud the obvious by arguing that the evidence presented at hearing was not enough when frankly, there need be no more. The shipping paper presented by EFH at the time of the violation match the bill of lading presented by EFH during the course of this litigation. The shipping paper does not contain the required information, as established by summary judgment, and it does show hazardous material is being transported. Through the course of this 4-year litigation, the FHWA has presented all the evidence surrounding these violations. It

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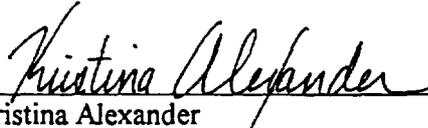
and adds up the same way. The violations occurred; EFH committed them.

Once again, EFH attempts to show that although they were commissioned to transport a container from A to B, and did so with a tractor identified as EFH East Florida Hauling, because the trailer and the container may have been owned by someone else, EFH is not the responsible party. This simply is too clever by half. By summary judgment this tribunal has rejected this argument before. EFH claims its connection to the violations is by accident or mistake, when every bit of evidence points to the contrary. EFH knew they were accepting this load: they produced the bill of lading identifying EFH as the carrier. EFH knew hazardous material was being transported: the shipping paper shows it on its face. The fact that EFH may have attempted to avoid all liability by leasing and re-leasing vehicles to various third parties shows only that they knew they were liable. Their very efforts to evade responsibility shows that they are quite aware of their obligations under the Hazardous Materials Transportation Act.

Nothing presented by EFH contradicts the evidence presented by the FHWA during this lengthy litigation. EFH, whether or not a carrier, is a person operating under the Hazardous Materials Regulations and has violated them. The acts they committed were knowing in that any reasonable carrier exercising due care would have known that violations existed. EFH is responsible for the four violations of the HMR.

Respectfully submitted this 8th day of April, 1996.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was mailed via United States mail with adequate postage to the following parties on the 8th day of April, 1996.

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