

The Driver and Safety Director at Trial

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Treating A Trucking Case Like A Simple Car Crash



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THE 3 DEFENSE NUMBERS

- 1 Million
- 1.5 Million
- 3 Million
- THEY ARE PLAYING THE PLAYER, NOT THE CARDS!

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The 10K Saddle On a \$50 Horse



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STACK O' FACTS V. STORY

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WHERE DOES THE STORY START?

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IF Only's

- Every Unwise Choice compared to norm
- Every branch not taken

Goal is to be in closing and saying:

If only they had _____, or if only a few days later they had _____, and if only in the minutes before he had _____

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DON'T FORGET! TWO FACT FINDERS

JUDGE/APPELATE FACTS

- Duty
- Breach
- Damages
- FMCSR APPLY
 - Inter v. Intra
 - Commercial Motor Vehicle
 - Client a member of the public

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DON'T FORGET! TWO FACT FINDERS

Jury Facts

- Why they should care
- How they can make it better
- Job and how to do their job
- Moral blame and total justice
- Why its OK to punish

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EVEN IN NUMBERING EXHIBITS

JUDGE/APPELLATE NUMBERS:

1, 2, 3, 4, etc...

JURY NUMBERS:

- 1
- 411
- 911

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THE COMPLAINT

- ALWAYS CONSIDER ALLEGING THE BIG 6:
 1. Negligent maintenance
 2. Negligent hiring
 3. Negligent Entrustment
 4. Negligent supervision
 5. Negligent training and
 6. Negligent retention
- Joint Enterprise
- Negligent Undertaking/Safety Management

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WHY IS THE JURY HERE?

WHAT IS THE JURYS JOB?

WHAT ARE THE RULES?

You Don't Have to Call Them Rules:

- Minimum Standard
- Common Industry Practice
- Custom
- Tradition
- Guideline
- Policy
- Procedure
- Ground Rules

WHY ARE THE RULES FAIR?

1. Easy to comply with:
 1. Time
 2. Money
 3. Effort
 4. Ability
 5. Tools
2. Other trucking Co/Driver easily comply - daily
3. Balance between industry needs and public safety
4. Found for FMCSR in NPR's

WHO ELSE USES THE RULES?

Establish Defendant as an Outlier, not the norm

LEARNED TREATISES

- Most drivers and safety directors will admit that JJ Keller materials set forth the minimum safe standard for a professional driver and qualify them as learned treatises.
- Get copies of industry training materials and JJ Keller materials ASAP.

Any Moral Issues?

Anyone Else at Fault?

REPTILE

CDL/Authority allows driver/trucks into every:

- City
- Town

FMCSR – PROPOSED RULEMAKING

- 393.11 – Conspicuity Tape
- Tape reduces side and rear impacts into heavy trailers by 41 percent. (2011 Study say 60%)



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THE DRIVER

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THE DRIVER: CASE FACTS v. STORY FACTS

Case Facts:

1. Failed to Yield
2. Client had Right of Way

Story Facts:

1. Kindergarten
2. Parents
3. DMV

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OTHER EVIDENCE OF SOC

- OTR DRIVER – LISTS ALL STATES DRIVEN THROUGH ON APPLICATION
- LISTS STATES DRIVEN THROUGH ON LOGS
- WHAT DO THE OTHER STATES SAY THE LAW IS?

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DRIVER LIFE (Pre-Trip)INSPECTIONS

- The Pre Trip Inspection
- Every element prevents catastrophic Injury
- NOT Required on a car
- Four Main Elements
 1. Engine Compartment
 2. In-Cab Checks
 3. Outside of Vehicle
 4. Air Brake Test

DON'T CARE QUESTIONS - TRAINING

1. Did you receive training?
2. Were you trained the same way as all the other drivers?
3. Were you trained to company standards?
4. Did you drive the truck the way you were trained on the day of the wreck? Any deviations?
5. Given company standards and training, do you have any criticism of the company training policy?

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The Driver AKA The Pilot



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The Driver AKA The Pilot



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The Driver AKA The Pilot

- No one can guarantee 100% Safety
 - We are all human
 - Folks make mistakes
- This is why:
- Must show Driver/Company is an outlier
 - Everyone else does it
 - Easy to do if properly trained
 - Not like Jury

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The Safety Director

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NONDEGLEBLE DUTY

- 390.11 - Whenever a duty is prescribed for a driver or a prohibition is imposed on the driver, it SHALL be the DUTY of the carrier to REQUIRE observance of such duty or prohibition

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SAFETY FACTS

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WHAT IS SAFETY?

HAZARD:

A Hazard is a condition or changing set of circumstances that have the potential for injury or damage.

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WHAT IS SAFETY?

RISK:

The percentage of chance or probability of exposing a human being to a hazard.

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WHAT IS SAFETY?

UNSAFE:

An unreasonable combination of hazard and risk.

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CONSERVATIVES LOVE CONTRACTS

- Carrier contracts w/Govt to be allowed to operate
 - Agrees to follow the FMCSR and State Regs
- Carrier requires driver to sign onto above contract
- Driver “contracts” to follow FMCSR/law to get CDL
- Driver “contracts” to follow policies of carrier
- Policy manual as contract
- Employee manual as contract
- Training manuals as contracts
- You get the point

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THE CONTRACT

GOVERNMENT AND TRUCKING COMPANY

OP1 - COMPANY MUST CERTIFY:

1. Has in place a system and an individual responsible for ensuring overall compliance with FMCSRs;
2. Has in place a driver safety training/orientation program;
3. Is familiar with DOT regulations governing driver qualifications and has a system for overseeing driver qualification requirements (49 CFR Part 391);

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THE CONTRACT

4. Has in place policies and procedures governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair, and maintenance (49 CFR Parts 392, 395, and 396);
5. Is familiar with and will have in place on the appropriate effective date, a system for complying with U.S. DOT regulations governing alcohol and controlled substances testing requirements (49 CFR Part 382 and 49 CFR Part 40).

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DON'T CARE QUESTIONS - TRAINING

1. Was driver trained the same way as all your other drivers?
2. Was the driver trained to company standards?
3. Did he drive the truck the way he was trained by your company the day of the wreck? Any deviations?
4. Given company standards and training, do you have any criticism of the driver?
5. Any criticisms of the company training policy?

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MY APPROACH

Extreme caution means using the greatest degree of care in order to avoid risks or dangers that could cause injury or death



TRUE




FALSE

Of all the space around a truck, it is ~~the area ahead of the truck~~ ^{not} the space being driven into--that is most important for a safe truck driver to be aware.

TRUE FALSE

I DON'T KNOW

PHILLIP MILLER'S APPROACH



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Safety Policy

No U-Turns Allowed on Public Roadways

Effective immediately, no Long Foundation Drilling Company employee shall make a U-turn in a company vehicle that has more than 3 axles.

 Bruce Long, President

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THE CONTRACT

GOVERNMENT AND TRUCKING COMPANY

OP1 - COMPANY MUST CERTIFY:

1. Has in place a system and an individual responsible for ensuring **overall compliance with FMCSRs**;
2. Has in place a **driver safety training/orientation** program;
3. Is familiar with DOT regulations governing driver qualifications and has a **system for overseeing driver qualification** requirements (49 CFR Part 391);

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THE CONTRACT

4. Has in place policies and procedures governing **driving and operational safety of motor vehicles**, including drivers' hours of service and vehicle inspection, repair, and maintenance (49 CFR Parts 392, 395, and 396);
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THE FIRST QUESTIONS

1. Was driver trained the same way as all your other drivers?
2. Was the driver trained to company standards?
3. Did (driver) drive the truck the way he was trained by your company the day of the wreck? Any deviations?
4. Given company standards and training, do you have any criticism of the driver?
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