

## **Commercial Vehicle Litigation: Plaintiff and Defense Perspective**

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# **Commercial Vehicle Litigation: Plaintiff and Defense Perspective**

## **I. INTRODUCTION**

There are many different types of commercial vehicles in and around Texas, companies have vast fleets of trucks, 18-wheelers, and buses driving on our roadways. These crashes can be serious.

When retained on a serious injury in a commercial vehicle case by the plaintiff or the defense, a trial lawyer must recognize that while the case may have a great deal in common with a car wreck case, there are substantial differences that must be taken into account. This paper addresses some major issues that a trial lawyer may want to consider.

## **II. WHY JURORS AWARD PREMIUM VALUES IN TRUCKING AND COMMERCIAL CASES**

### **PLAINTIFF:**

We all instinctively know that trucking cases create premium settlements and verdicts, but why? Juries award large verdicts against trucking companies for many reasons including:

1. Expectation of hiring -Companies are required to have safe drivers;
2. Expectation of supervising- Companies are required to properly supervise their employees;
3. Expectation of hiring competent employees- Companies are required to properly hire competent employees;
4. Expectation of Safety – Juries expect companies to be safe because of the potential for harm and may react strongly when those expectations are not met;
5. Preventable Is Inexcusable – The simple argument is that many collisions are both predictable thereby preventable thereby making the failure to take action akin to an intentional tort; and
6. The Desire to Improve Safety – Many jurors believe they can improve roadway safety and compel future responsible behavior with their verdict.

### **DEFENDANT:**

In addition to the factors above, some of the other hurdles you face when defending a trucking company or truck driver are the belief that all trucking companies are wealthy, negative experiences by a juror with a tractor-trailer and stereotypes related to trucking companies. Nevertheless, you can successfully defend trucking companies and truck drivers. Some effective arguments are:

1. Preparation – Take the time to prepare your truck driver and corporate representative for

- depositions and trial testimony;
2. FMCSR – Familiarize yourself with the Federal Motor Carrier Safety Regulations (FMCSR) and be aware of the regulations that are applicable to your case;
  3. Voir Dire – Confront the negative perceptions of the trucking industry and learn about the negative experiences of individuals on your jury panel;
  4. Safety – Emphasize the importance of safety on the road and the importance of safety with your company and drivers; and
  5. Training – Emphasize the importance of driver training and your client’s driver training program.

### **III. INITIAL COLLISION INVESTIGATION**

#### **PLAINTIFF:**

You get hired on a serious crash involving a commercial vehicle, the immediate thing to assess: what are the severity of your client’s injuries? For example, your client had a spinal burst fracture that required immediate surgery and they can’t walk vs. your client went to emergency room was released and told to follow up with a primary care provider.

In the more injury serious case, if hired within a month, you should immediately get a reconstruction expert retained and start working on getting the scene documents, vehicles inspected, and EDR (black boxes) downloaded. Of course, see if a crash report is available so you can make sure you believe the other vehicle is at fault before you invest thousands of dollars into your case.

Of course, send a spoliation letter to the defendant company. *See Exhibit A.*

Review the crash report, talk to your expert, talk to your client to find out if there are other issues you need to be considering? For example, was your client wearing a seat belt? Ask your client; look at box 20 on the crash report; look at the EDR download; and ask your expert.

Do an open records request to the agency that did the crash report. A lot of times your expert will do it, but make sure you get it and review it.

If an 18-wheeler, look at <https://safer.fmcsa.dot.gov/CompanySnapshot.aspx> for the trucking company. Go ahead download it and save it. This gives you an incredible sense of what type of trucking company you are dealing with. It gives you an educated guess on insurance coverage: 20 plus units, then most likely the company has excess policies. It also lets you see if the company has a problem with drivers being out of service or vehicles being out of service.

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