

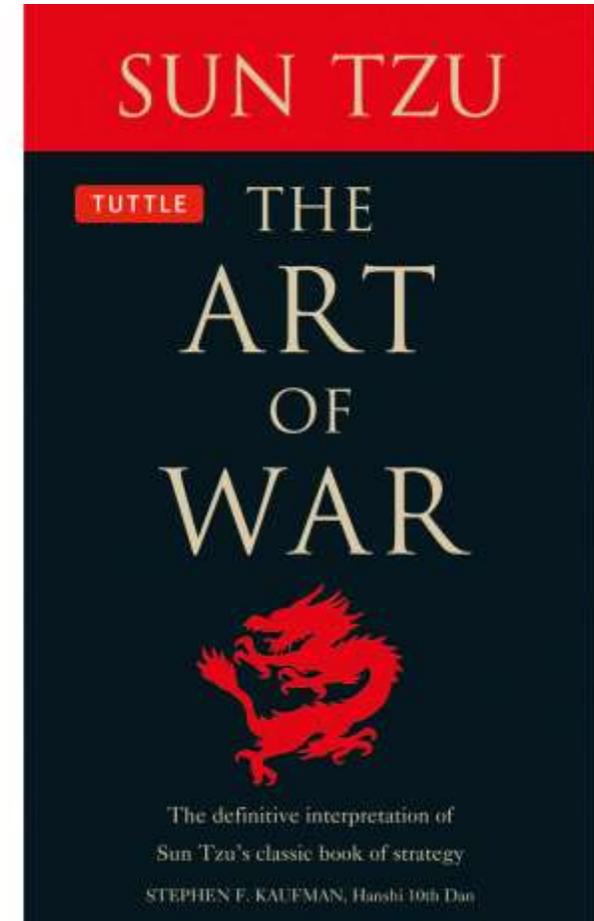
Know Thine Enemy: What is the plaintiff lawyer who is suing you thinking?

Sun Tzu, The Art of War

“So it is said that if you know your enemies and know yourself, you will not be put at risk even in a hundred battles.”

“If you only know yourself, but not your opponent, you may win or may lose.”

“If you know neither yourself nor your enemy, you will always endanger yourself.”



Truck Accident Litigation: It's not just about the accident anymore



The Association of Plaintiff Interstate Trucking Lawyers of America is a national association of committed **lawyers who have joined together to help eliminate unsafe and illegal interstate trucking practices.** ...

Our Mission

Each member of this association has pledged to work aggressively within the law through learning, legislation and litigation to achieve our mission of dramatically reducing the number of traffic accidents, injuries and deaths across America that are caused by those trucking companies who are unsafe.

Our association's members across America **hope to bring about change by educating** the general public, other lawyers, ... **judges and juries about** the hard facts surrounding common **unsafe or illegal trucking practices and procedures** in America today. These unsafe and illegal practices each year cause the deaths and injuries of thousands of innocent men, women and children on America's highways. ...



What is the Lawyer Suing you Thinking?

"Try the Company, not the accident."

"In a particular claim, of course, the industry cannot be put on trial, but the involved trucking company can and should be."

-- APITLA Member in Truck Accident Litigation, Third Edition

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Overview of the Plaintiff Lawyers' Playbook:

1. "Try the Company, not the accident:"
Independent corporate liability:
 - a. Negligent Hiring
 - b. Negligent Retention
 - c. Negligent Supervision
 - d. Negligent Entrustment
 - e. Negligent Training
 - f. Negligent Maintenance

2. "The trucking company's failure to train on, follow, or enforce a FMCSA regulation contributed to the accident."
 - a. "If the Safety rules in the FMCSRs had been followed, the accident could have been prevented"; or
 - b. "Management's acts and omissions pertaining to teaching and enforcing FMCSA regulations contributed to the accident."

3. "Use the Company's FMCSA documents or lack of documents against it."
 - a. 3 Buckets of documents: Driver; Training; Equipment

How do you institute company policies and programs, with corresponding documentation, that counteract the Plaintiff lawyers' playbook?



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3 Company Buckets: Drivers, Training, and Equipment

**“The driver negligently collided with my client”; and
“The trucking company is also independently negligent
because...”**

Drivers

- **Negligent Hiring:**

“[T]he company knew, or should have known, the employee was unfit for the job so as to create a danger of harm to third persons.”

- **Negligent Retention / Supervision:**

“[T]he employer became aware of, or should have become aware of, problems that indicated a lack of fitness for the position, the unfitness was likely to cause the sort of harm that occurred, and the employer failed to take action.”

- **Negligent Entrustment:**

The company knew or should have known that this driver presented a danger in a truck. “One who supplies ... [a vehicle] for the use of another whom the supplier knows or has reason to know because of his youth, inexperience, **or otherwise**, to use it in a manner involving unreasonable risk of physical harm... is subject to liability for physical harm ...” (Restatement)

Training

- **Negligent Training:**

“The company failed to conduct adequate training, and that lack of training contributed to this accident (or, had that training been conducted and followed, this accident could have been avoided)”

Maintenance

- **Negligent Maintenance**

“[E]very motor carrier shall systematically inspect, repair, and maintain . . . All motor vehicles subject to its control.”
Every motor carrier shall “repair any defect or deficiency listed on the [DVIR] which would be likely to affect the safety or operation of the vehicle”

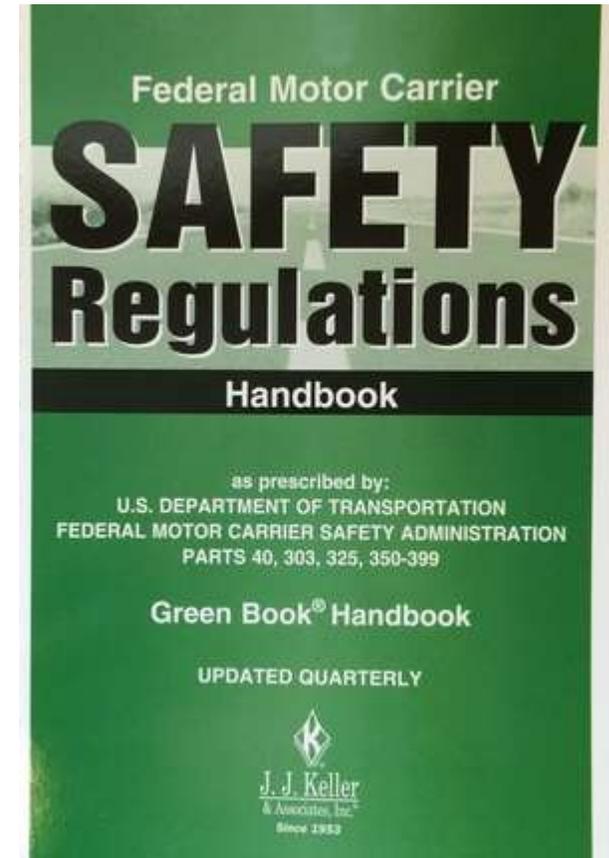
- **Therefore I allege that:**

- **The driver is negligent; and**
- **the Company is vicariously liable for the driver's acts and omissions; and**
- **The trucking company is also independently liable for acts and omissions of the company's managers for negligent hiring, retention, supervision, entrustment, training, or maintenance..”**

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Negligence Per Se

- **Negligence Per Se**
 - (1) violation of a regulation or statute;
 - (2) plaintiff was a member of the group intended to be protected by the rule;
 - (3) injury is of the kind the rule was designed to prevent; and
 - (4) the violation of the statute or regulation was the cause of the injury.
- **Negligence Per Se Plaintiff's Playbook**
- **Plaintiff's lawyer's plan to tell the jury:**
 - "These safety rules exist to protect the motoring public."
 - "The trucking company is required to ensure that these regulations are complied with by the driver to protect the public."
 - 49 CFR 390.3 (e); 49 CFR 390.11;
 - "Every employer shall be knowledgeable of and comply with all regulations...."
 - "Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations..."
 - "[I]t shall be the duty of the motor carrier to require observance of such duty or prohibition."
 - "The trucking company's acts and omissions pertaining to teaching and enforcing these regulations contributed to this accident."



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3 Company Buckets: Drivers, Training, and Equipment

Plaintiff Lawyer's Playbook on Independent Negligence Plaintiff Lawyer's plan to tell the jury:

**"The driver negligently collided with my client"; and
"The trucking company is also independently negligent because..."**

- "The owners and/or managers of the trucking company knew or should have known that ..."
 - "The driver was not qualified or was otherwise inadequate."
 - "The driver's training was inadequate."
 - "The equipment was inadequate."
- "The trucking company's own documentation demonstrates its independent negligence or negligence per se:"
 - (1) "The company has inadequate records as required by the FMCSRs"; or
 - (2) "The company has good records, but failed to teach and enforce the regulations."
- "The owners and/or managers of the trucking company failed to do anything about 'it':"
 - "Management failed to follow and enforce the FMCSRs in hiring and retaining drivers";
 - "Management failed to conduct proper training on the FMCSRs or its own policies";
 - "Management failed to adequately document driver hiring, retention, training, and equipment maintenance."

- "Because of the trucking company's acts and omissions, you, the jury should conclude that ..."
 - "The accident would not have happened if the company had done more to be safer";
 - "Things the company did not do that are required by the FMCSA safety regulations contributed to this accident";
 - "Company owners and officers placed profits over safety";
 - "This is an unsafe trucking company that poses a danger to the public (and by inference, to you, the jury)."
- **How do you institute company policies and programs, with corresponding documentation, that prevents these arguments from presenting any serious risk to your company?**