

BEHIND THE CURTAIN – A PLAINTIFF’S PERSPECTIVE

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Driver Responsibility

How to Evaluate the Driver:

1. What is the Driver's Background?
2. Is there evidence of recklessness?
3. How are the driver's FMCSR trucking records?
4. Driver's appearance and other trial considerations (including intelligence).

Evaluating the Driver: What is his/her background?

- ⦿ Driver Qualification File
 - What is the driver's background
 - Goal: Discredit the company: "Why did they hire this guy?"
- ⦿ Prior MVAs and violations
 - Inconsistencies between company records and an internet search
 - National search –vs – state by state search
- ⦿ Annual Performance Reviews and Tests

Evaluating the Driver: Recklessness?

⦿ Hand-Held Mobile Devices

- Standards (49 CFR § 392.82(a)(1))
- Preserving mobile device evidence

⦿ Intoxication

- *Per se* reckless

Evaluating the Driver: FMCSR Trucking Records

⦿ Training Materials

- How serious about safety was the driver?
- Reflection on the company for not requiring attendance?

⦿ Daily Driver Inspections for Equipment

- Pre and Post Trip

⦿ Log Book

Evaluating the Driver: Witness Appearance

- ⦿ Does the driver look neat and clean or sloppy?
 - Photos in the file, police report, social media, deposition
 - How will the driver look at trial?
- ⦿ How is the Driver's ability to speak and write
 - Importance of hand-written statements
 - Employment file applications
 - Logbooks and Inspections
 - Charts and diagrams

Evaluating the Driver: Witness Appearance (Cont'd)

⦿ Deposition Performance

- Articulate
- Demeanor
- Long or concise answers
- Coachable
- Facts –vs– arguments

Trucking Company Responsibility: Safety First?

- ◎ Is there a culture of safety?
 - Appearance of the company representative
 - Demeanor
 - FMCSR Knowledgeable
 - Relationship with drivers (adverse or family?)
 - Co-employees and supervisors as witnesses

Trucking Company Responsibility: Safety First?

⦿ Driver's File

- Driver Qualification File: What is it?
- Driver Investigation File
 - Plaintiff's counsel will argue that you can always do more
- Annual Driver Updates
- Medical Certifications

Trucking Company Responsibility: Safety First (cont'd)

- Pre-employment screening
- Individual Safety/Training File
- Spoliation Motions: What is spoliation?

Trucking Company Responsibility: Safety First (cont'd)

⦿ Company Training

- Prior training: How complete was it?
- Initial training by the company: Standard of Care?
- Ongoing training

⦿ Company Policies and Procedures

- Industry Standards?
- How are the P&Ps taught and enforced?

Trucking Company Responsibility: Safety First (cont'd)

⦿ Systematic Company Maintenance

- Annual Inspection Report
- Records of Systematic Inspection, Repair and Maintenance
- Record Retention

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