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## **Trucking Companies, Their Drivers and Lawyers: Why Do Juries Hate Us?**

### **I. The Primary Causes of Juror Bias against Truck Drivers and Trucking Companies**

Jurors' preconceived notions regarding truck drivers and motor carriers create challenges to defending trucking litigation. Before addressing how these obstacles may be confronted, we must identify the root of juror biases against trucking companies and their drivers.

#### **Media Coverage of Trucking Accidents and Trucking Safety**

It has become difficult to turn on a television or to read a news article without learning about an accident involving a truck. Even though the plethora of media we are bombarded with comes from sources with varying credibility, some of us continue to believe what we hear and read. Unfortunately, attitudes in journalism about truck drivers and trucking companies tend to be negative and inconsistent with actual statistics. We regularly encounter news stories portraying trucking companies as greedy corporations that put profits before safety. High profile cases, such as the 2014 accident involving actor/comedian, Tracy Morgan, can spark jaw dropping headlines that contribute to biases against truck drivers and motor carriers. For instance, following the incident involving Mr. Morgan, the New York Times published an article titled "Truckers Resist Rules on Sleep, Despite Risks of Drowsy Driving." J. Mowad and E. Harris, *Truckers Resist Rules on Sleep, Despite Risks of Drowsy Driving*, N.Y. TIMES, June 16, 2014, [http://www.nytimes.com/2014/06/17/business/truckers-resist-rules-on-sleep-despite-risks-of-drowsy-driving.html?\\_r=0](http://www.nytimes.com/2014/06/17/business/truckers-resist-rules-on-sleep-despite-risks-of-drowsy-driving.html?_r=0). This article was also printed in the New York Times on June 17, 2014 with the headline "When Mileage Means Money."

Such article emphasizes allegations that the Walmart truck driver involved in the incident with Mr. Morgan and others, had not slept in twenty-four hours. The article also seemingly, attempts to characterize this sort of fatigue as the norm among truck drivers. The authors state: "[f]or decades, federal authorities have tried to ensure that truck drivers get adequate rest. But in a business that lives by the clock, miles mean money. Commercial operators have resisted, arguing, in effect, that Washington cannot regulate sleep." *Id.* In reality, we now that commercial driving is one of the most heavily regulated industries/professions/

Significantly, research from Surveys of 800 Registered Voters conducted between September 2014 and September 2015, demonstrates that as of 2015, sixty percent of those surveyed had favorable impressions of the trucking industry, a decrease from sixty-five percent in 2014. Neil Newhouse, "National Trucking Survey," published with American Trucking Associations, September 2015. Those with the most favorable impressions of the trucking industry were men fifty-five years and older and those who lived in rural areas. *Id.* Regardless, it is unclear whether the aforementioned decrease in favorable impressions of those surveyed was impacted by media portrayals of truck drivers and trucking companies. However, the documented statements of those surveyed suggests that their impressions may be colored by the media, as well as their own experiences.

### **Jurors' Experiences as Drivers of Automobiles**

Most jurors, even if not licensed drivers, have encountered large trucks while passengers in cars or buses. As drivers or passengers, it is no secret that many may be intimidated by the size and weight of trucks. A juror who has had a negative experience with a truck, may be willing to extrapolate that experience to all truck drivers and trucking companies (*e.g.*, I have witnessed a truck driver being reckless, so all truck drivers drive recklessly). The "verbatim comments" of some of those surveyed in the abovementioned "National Trucking Survey" demonstrate that those with less favorable or negative views of the trucking industry, consistently reference safety concerns. For instance, a sampling of comments from those surveyed include:

- "I think there's not enough regulation of drivers"
- "I do not like [trucks] on the freeway with me. They scare me. I do not know if they are tired. They literally scare me."
- "I feel like [truck drivers/trucking companies] try to get around regulations and sometimes they're not safe. They don't follow the rules and put people in danger because they don't keep their equipment up to standard."
- "Too many trucks on the roads. Safety, going too fast."
- "Hogging up all the lanes, creating traffic jams, doing 90 miles per hour on the highway, running you off the road."
- "One thing I don't care for, [truck drivers] drive too fast even along short distances. They drive like they're crazy and they need a slower speed limit." *Id.*

In addition to concerns over driver safety, as well as preconceived notions of commercial vehicles having nonfunctioning or poorly maintained equipment, individuals seem to fault truck drivers and trucking companies for causing traffic congestion, damage to roads and other infrastructure, and for having negative environmental impacts. *Id.*

## II. The Impact of Juror Biases on trucking Defendants, their Counsel, and Claims Professionals

### Out of the Gate, trucking companies and their drivers may be at a disadvantage

Juror biases against trucking companies and their drivers may result in a head start for plaintiff and a handicap for defendants. This is among the reasons that trucking cases are highly sought after by plaintiff attorneys. Indeed, there is competition for high-value cases amongst plaintiff attorneys, such as those involving “eighteen-wheeler truck accidents.” S. Daniels and J. Martin, *Texas Plaintiffs' Practice in the Age of Tort Reform: Survival of the Fittest -- It's Even More True Now*, 51 N.Y.L. SCH. L. REV. 285, 302 (2006/2007). In discussing why plaintiff attorneys are drawn to trucking accidents, one such lawyer explained:

Let me tell you. The one area that still has a lot of meat on the bones, is representing folks in accidents with trucking companies. . . . The egregious nature of the number of miles these guys drive, the lack of following the rules, the lying on the logs, driving 80 miles an hour in a construction zone just lead to horrendous accidents and unfortunately, business for me. *Id.* at 311.

Plaintiff attorneys will seek every opportunity to capitalize on the preconceived biases of jurors and endeavor to inflame these notions. The typical theme of the plaintiff in a trucking accident is “David versus Goliath, with Goliath being the trucking company with deep pockets.” E. Nicklaus and A. Perkins, *Frequently Addressed Evidentiary Issues for the Trucking Accident Trial Lawyer*, 41 Tort & Ins. L.J. 105 (2005). Moreover, the plaintiff’s counsel will attempt to garner sympathy for the plaintiff and vilify the defendants. *Id.* In a serious trucking accident, the plaintiff’s attorney will immediately conduct a thorough background check of the defendant driver, as well as seek to discover the safety record of the trucking company. *Id.* Violations related to the trucking equipment even though not involved in the occurrence, may be something the plaintiff’s counsel attempts to emphasize to show the defendants simply do not care about safety. For example, a plaintiff’s attorney may attempt to draw attention to a non-functioning turn signal on a trailer, despite the fact the incident involved defendant’s tractor rear-ending plaintiff’s vehicle.

Even if such violations of the truck driver, trucking company, or equipment have no bearing on the liability issues involved in the case, a savvy plaintiff attorney will seek admission of evidence related to “prior bad acts” in an effort toward vilifying the defendants. Often such testimony is “back doored” by the plaintiff’s expert. Of course, Defendants will make all efforts to bar such evidence, but at times to no avail. Ordinarily, “[e]vidence of specific prior bad acts unrelated to a material issue is prohibited.” *Powell v. Dean Foods Co.*, 2013 IL App (1st) 082513-B, ¶ 88, 7 N.E.3d 675. “However, evidence of prior bad acts may be admitted if relevant to prove modus operandi, intent, identity, motive, absence of mistake, or any material question other than the propensity to commit crime.” *Id.* In *Powell*, the appellate court found that the trial court’s improper admission of evidence of a defendant driver’s prior bad acts, including prior speeding, prior log violations, and a prior fine occurring weeks and months before the accident were substantial errors that may have tipped the scales in favor of plaintiffs. *Id.* at ¶ 117. However, the court reasoned that the truck driver was not clearly at fault for the incident, because it involved a truck driver on a preferential highway colliding with a driver crossing from a non-

preferential road. Moreover, there was no claim for punitive damages. *Id.* The *Powell* majority's opinion certainly suggests that evidence of prior bad acts, such as log violations, speeding, fines, among others, may be properly admitted where there is a claim for punitive damages, creating issues relative to the truck driver's and/or his employer's state of mind (*i.e.*, to prove a wanton disregard for the safety of others or intentional misconduct). *Id.* at ¶ 108.

### **Impacts to the Defense Strategy**

Defendants must recognize their "handicaps" out of the gate and seek to humanize the truck driver. If there are "skeletons" in the truck drivers' closet efforts should be made from the start to demonstrate their inadmissibility. Certainly where there are no witnesses and liability is expected to come down to a credibility contest, a truck driver may be at a significant disadvantage.

The testimony of responding and investigating police officers, as well as eyewitnesses who were not involved in the accident are ordinarily viewed as unbiased and may be accepted as "true" by jurors. However, Defense counsel must also be cautious of the "plaintiff friendly" witness, who maintains an attitude regarding truck drivers parallel to those of jurors. This witness may base his or her testimony on these notions rather than facts (*e.g.*, defendant driver must have been speeding, because all commercial truck drivers speed).

Defense counsel must also be cognizant that jurors may use cognitive "short cuts" in determining who is at fault for an accident. That is, they look for evidence that the defendants committed several actions that "automatically" make them at fault in the minds of the jurors. For instance, a jury may be unable to forgive a defendant for having faulty brakes, even if this was unknown to the defendant and could not have been easily discovered or if the same was not pertinent to the incident (*i.e.*, brakes were never applied, due to lack of time).

Regardless, in addition to defense counsel needing to stay alert of the probable juror biases, the claims professionals handling transportation cases must do the same. For instance, he or she must balance his or her defense strategy to account for the anticipated biases of jurors. For instance, in setting reserves, bias must be considered in addition to the facts impacting liability and damages issues.

### **III. How Verdicts May be Impacted by Jurors' Disdain for Trucking Companies and their Drivers**

**There was an accident + the Plaintiff was injured = the Defendant truck driver must have been a proximate cause**

It is repeatedly said that Hindsight is 20/20. Once jurors hear the facts and learn the outcome was an accident, Jurors will look to the truck driver's pre-incident actions and inactions to find something he or she should have done, or refrained from doing, to avoid the accident. Indeed, jurors may be willing to ignore holes in the plaintiff's case, where they cannot filter out their own biases about truck drivers.

Where a plaintiff's comparative fault is not at issue, trucking defendants must recognize that jurors may feel more threatened. This is because they may feel the incident was completely outside of the plaintiff's control and the plaintiff was an "innocent victim." In this scenario, jurors may fear that the same thing could happen to them. Conversely, when the plaintiff's actions are at issue, jurors may believe they would not have made the same "mistakes" as plaintiff, contributing to the accident.

### **Excessive Damages awards**

Again, there is a reason that plaintiff attorneys are competing for cases involving trucking accidents. Sympathy for Plaintiff's involved in catastrophic incidents may result in large awards and guilty verdicts, even where the liability picture favors defense. Where a minor is seriously injured or killed, verdicts may be significantly higher. One plaintiff attorney explained that even in conservative counties juries may be willing to award substantial damages in trucking cases that involve significant injuries, this attorney stated "[e]verybody seems to be able to connect with an eighteen-wheeler that's out of control." S. Daniels and J. Martin, *supra*, at 311-312. This may also have to do with individual's flawed notions about truck drivers (*i.e.*, that they are all poor, uneducated, single, unprofessional, etc.). If these views of truck drivers are accepted, it may be easier to enter a significant judgment against them. This is contrary to other professionals, such as doctors and nurses, who typically are respected by jurors, making it more difficult to find they were negligent.

Even where punitive damages are not at issue, large verdicts may be intended to punish the deep pocket trucking company and its driver "that put profits before safety," even where there is no evidence to support an award of punitive damages. By doing so, jurors often remark that they are "trying to send a message." If a plaintiff's attorney is able to introduce evidence of a defendant's "checkered past" and that the trucking company ignored the same, this evidence may inflame damages. Further, jurors may be trying to "send a message" related to more than just trucks' impacts on safety, in light of their perceptions that trucks damage infrastructure, cause traffic congestion, and negatively impact the environment. At least one survey demonstrates that certain individuals who look upon the trucking industry unfavorably, tend to believe that trucking companies are not paying their fair shares for causing damage to highways. "National Trucking Survey," *supra*, at 16-18.

Additionally, in cases with multiple defendants, represented by separate counsel, "finger pointing" between defendants may anger jurors, resulting in a situation where all defendants are "punished" by the verdict and damages award.

Damages awards for plaintiffs allegedly injured by trucks may also be inflated due to jurors' anxieties relative to the weight and size of trucks. Namely, such jurors may be unable to conceive of a situation where a plaintiff was not seriously injured in an incident involving a truck. Personal injury lawyers may attempt to prey on this, even where a plaintiff has not suffered a significant injury. Nonetheless, the potential for excessive damages may lead defense to refrain from going to trial where liability is clear, even though the plaintiff's injuries are questionable.