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**Business Decision v. Principle Decision:  
Defending Cases When You're Not At Fault**

**I. The Company does have an interest in the litigation beyond the immediate costs and benefits. Trucking Companies and the carriers who insure them do have an interest in the litigation that exceeds the common analysis (e.g. Probability of adverse outcome x Magnitude of adverse outcome = Approximate Settlement Value)**

**A. Trucking Company**

In addition to the typical concerns regarding efficient and effective claim handling, trucking companies do and should consider an interests which extend beyond the economics of a particular case. As examples, trucking companies are commonly concerned about their reputation within the communities which they serve, their particular industry and the plaintiff's bar. That is, a trucking companies are naturally concerned with its reputation as that reputation affects its business.

**B. Trucking Insurer**

Similar to a trucking company, trucking insurers have a strong interest in the efficient and effective administration of clients, as well as a larger interest in maintaining, preserving and extending their financial health. Because of their size, and the corresponding number of cases they handle, trucking insurers may actually be in a better position to select risks in terms of cases to take to trial because an insurer may well be in better position to withstand an adverse jury verdict. Insurers too are concerned about their reputation within the communities they serve, their particular industry and the plaintiff's bar. Trucking insurers are concerned about their reputation as that reputation affects their business.

**II. The Company's interest in the litigation (beyond the immediate costs and benefits) leads to a conclusion to take the case to trial**

**A. Trucking Company**

Interesting questions arise when consideration of larger issues come into play. For instance, a trucking company may well have a case for which the prospects of a positive jury result are very good, but for which the expense of trial exceeds the costs of a potential settlement. Similarly, a case in which the trucking company and its driver did not do anything wrong, may also lead to a trial, even though only a small likelihood exists of a very negative trial outcome. A trucking company may seek to take a case to trial to establish its own reputation as a safe company, because they choose to stand behind a particular driver or his or her conduct or because they wish to establish or maintain a reputation as vigorously defending instances in which they do not believe they were culpable.

#### **B. Trucking Insurer**

Trucking insurers may often take into consideration the business interests of their insureds when determining whether to take a case to trial but, most often, by the terms of the applicable insuring agreement do have the authority to settle any particular case at their sole discretion. However, even aside from the interests of any particular insured motor carrier, an insurance company too will want to consider its reputation in the community, its reputation amongst insureds and potential insureds and its reputation amongst the plaintiff's bar. As to the community and its insureds, and potential insureds, the insurer will likely want to develop a reputation of integrity and trustworthiness, as well as - - particularly amongst the plaintiff's bar - - a reputation for savvy claim resolution. Therefore, although a trucking insurers interests may differ from a trucking company's interests in any particular instance, a trucking insurer also has larger business interests to consider than just the resolution of any particular case.

### **III. Litigations Patterns Which May Warrant Trial on Principle**

#### **A. Injury-type**

Certain types of injury cases - - particularly those which present a large potential for substantial recovery but which also carry a risk for feigning or exaggeration of the claimed injury - - may present instances for a trucking company or its insurance carrier to decide to try the case based on principle. Examples of such injury-types include claims of closed head injury and claims involving reflex sympathetic dystrophy or chronic regional pain syndrome.

#### **B. Occurrence-type**

In addition, certain types of occurrences may call for consideration as to whether to take a case to trial based on principle. Examples of such occurrence types include low-impact occurrences generally and, more specifically, "bunk buster" occurrences which involve a low-impact contact with the plaintiff's parked tractor in which the occupant claims to have been injured, perhaps by being knocked from a sleeper berth.

#### **C. Plaintiff-type**

Certain types of plaintiff's may also call out for a trucking company or its carrier to take a case to trial. For instance, claims made by owner operators or a team driver may warrant a

greater consideration of trial by a trucking company or its carrier so as to discourage that type of claim. Similarly, claims that involve an intermodal yard employee or another trucking company's driver may warrant consideration of trial based on principle, to discourage an increased volume of unfounded claims.

**D. Particular Plaintiff Attorney or Firm**

Similarly, a trucking company or its insurance carrier may want to note the involvement of a particular plaintiff's attorney or firm. For instance, an insurance carrier may note a particular attorney or firm that files a high volume of low value claims with disputed liability and dubious injury claims. An insurance carrier is also in a superior position to identify potentially fraudulent claims. Either an insurance carrier or a trucking company may elect to try any particular case in order to set a precedent for particular type of injury or with that attorney based on history.

**IV. Hypothetical Scenarios**

**A. Truck on Shoulder**

1. Facts

- a. Driver has mechanical difficulties and pulls to shoulder. Truck is completely off roadway. Drive and tractor leased to trucking company, which had undertaken responsibility to maintain tractor and had performed maintenance shortly before occurrence. After are home on roadway, tow truck has armed for tractor (in front of truck) and second has stopped behind truck. No triangles or flares behind truck as per FMCSR. Second truck is traveling in same direction. Driver is observed one mile before occurrence by another truck driver changing his shirt. Second truck leaves roadway and strikes tow truck and then-stopped truck-tractor killing truck-tractor driver 1, tow truck driver 1, tow truck driver 2 and truck-trailer driver 2.
- b. Court determines that Illinois law applies; Illinois has favorable and long-standing case law to effect that stopped truck on shoulder is merely condition and not proximate cause.
- c. t/t2 has limits of \$2MM which are exhausted by complete settlements with three plaintiffs and high-low agreement for the fourth plaintiff. As sanction for failure to timely provide documents and failure to preserve truck, court enters sanction of neg determination with right maintenance and with right training.

2. Alternative Facts

- a. Per company policy, driver should have undergone additional training after policy violation and before returning to driving (i.e. driver should not have been on roadway.) Trucking company does not fully comply with written discovery and does not produce all maintenance documents or training documents until after depositions of corporate reps.

**B. Family of Five**

Venue: Central Indiana (State Court)

1. Facts

- a. Truck driver traveling southbound on two-lane highway, separated by grassy median. Northbound driver of recently purchased (used) Jaguar with wife and four children in vehicle loses control and crosses median. Truck driver pulls to right auto shoulder and slows. Northbound vehicle crosses two southbound travel lanes and comes to rest with drivers side perpendicular to southbound truck on right shoulder. Driver did precisely what trained to do. No HOS violations, driver has clean driving history.
- b. Trucking company has \$1MM SIR; Total defense costs estimated at \$250K through trial.
- c. Family of five, four died immediately . . .
  - a. Third daughter lingers for 24 hours before death.

2. Alternative Facts:

- a. Third daughter (13 y/o) survives in vegetative state with life care plan of \$30 Million.

**C. Bank Buster**

1. Facts

- a. Self-insured trucking company notes spike in claims and suits from other companies' drivers in which driver claims to have been knocked from sleeper berth.
- b. Low-impact; Disputed liability.
- c. Dubious injuries (e.g. over-treated soft-tissue, CHI or injury types common to truck drivers in the absence of trauma).