



THE TRUCK DRIVER: THE LYNCHPIN OF THE CASE

By: [Mitch Hedrick](#)

Oh my God, what just happened? Where did that car come from? That was a really hard impact...Is the driver okay? Were there any passengers? Oh God, did I just hurt a kid? Do I need to do any first aid? Do I need

to call 911? Did I do anything wrong? Am I going to get a ticket? Will I lose my commercial drivers license? Will I lose my job? Is there anything I can do to make this right?

These are just some of the thoughts running through a truck driver's mind after an accident. Many others will follow. I know. Twelve years ago I turned my Class B straight truck in front of a Cadillac. The moment of impact is as vivid in my mind now as it was on the day of the accident, down to the most minute detail.

A truck driver experiences a moment of acute stress just before an accident, sometimes known as the fight-or-flight response, which he will remember for the rest of his life. The

stress of that moment and the moments that follow will stay with the driver. That stress stays with him in post-accident discussions with eye witnesses, medical personnel, investigating officers, insurance company investigators, accident reconstruction experts, and eventually his attorneys. That is why it is so important for the defense attorney to build a rapport with the truck driver as soon as possible. The truck driver needs to be confident the attorney will answer his questions and address his fears. He needs to know he has a counselor and an advocate at his side.

For attorneys, this can present a significant challenge. We are often called to represent the driver and carrier after an accident – at a time when the relationship between driver and carrier is strained. Sometimes the driver's initial thoughts are correct and the carrier ends the employment relationship. Even in those instances, or perhaps especially in those instances, defense attorneys should use that opportunity to show that they are not just *an* advocate, but *his* advocate. The driver must

believe that the attorney is not *just* the carrier's counsel, but *his* counsel as well.¹ When the driver understands that his interests are aligned with the carrier's, the likelihood of cooperation and, ultimately, a successful result is far greater.

During depositions and trial, the truck driver will be the most visible representative of the motor carrier. Whether he still works for that carrier at the time of trial or not, the jury will associate him with the carrier – and vice-versa. In many cases, the truck driver is the most important witness for the defense of the claim. Ultimately, it is the trucker's actions directly before and after an accident which the jury will be asked to judge.

Commercial trucks are an inescapable part of nearly every American's daily life. They are everywhere, people see them all the time, and jurors

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bring their pre-conceived notions of truckers and the trucking industry with them into the jury box. The days of truckers being perceived as the "Knights of the Road" are long gone.

Most stereotypes of the industry are negative. Fair or not, most people think of Snowman from Smokey and the Bandit, or the Rubber Duck from Convoy, or even worse – Furiosa from The Road Warrior. Plaintiff's attorneys will most likely attack the credibility and character of the truck driver to establish or reinforce common trucker stereotypes in the jurors' minds.

To combat this, the defense attorneys will seek to build and bolster the driver's bona fides and character. Drivers must conduct themselves in a professional and responsible manner – on duty and off. This goes for both pre-litigation or during the case. The defense attorneys will help tell the story of who the driver is – the story of his or her life in the trucking industry – to help the jury identify and empathize. The defense attorney and truck driver must work as a team to build the strongest defense possible. Most truck drivers are eager to do so because they take pride in their work. They often feel genuine remorse for any injuries that

¹ Attorneys should consult applicable ethical rules regarding common representation to be sure that they can ethically represent both driver and carrier. See [ABA Model R. Prof. Conduct 1.7](#). Some trucking accident cases involve strained relationships between the driver and carrier, but in most cases those potentially adverse interests can be reconciled without undue effect on the attorney's ability to maintain client confidences or zealously and loyally defend both parties.

have resulted from an accident, even if they are not at fault. Most view themselves as true stewards of the road. The jury has to decide whether or not they like, trust, and believe the driver. If the driver's conduct reinforces any pre-conceived notions about truckers or the trucking industry, then a large verdict becomes far more likely. However, if the driver confounds those pre-conceived notions, the likelihood of a sizeable verdict drops accordingly.

The motor carrier has an important role to play in building not only its own defense, but the truck driver's defense as well. Their interests are aligned in most instances. If the trucker is perceived as professional and responsible, then it is far less likely that carrier will be perceived as unsafe as well. The carrier should provide everything that FMCSA regulations require for the truck driver's Driver Qualification file, Safety Performance History investigations, and Drug & Alcohol testing. The truck driver's daily vehicle inspection reports, daily driving logs, manifests, invoices, and bills of lading will help illustrate the driver and the company's commitment to professionalism and safety. The carrier should provide any and every document that addresses the training given to the driver. Records of the carrier's safety program are invaluable. If the jury believes the carrier is professional and safety-conscious, the likelihood of a large verdict is reduced.

Statistics can also play a vital role in a case. Plaintiffs' attorneys often allude to a rising problem of commercial trucking accidents in the United States or their individual state to illustrate the truck driver and his carrier are "just another trucker" or "just another company." Defense attorneys often allude to the importance of the trucking industry to illustrate that the truck driver and carrier play an integral role in the nation's economic health. Both should consider using statistics gathered by the U.S. Department of Transportation to illustrate their themes. See <https://ai.fmcsa.dot.gov/CrashStatistics>. Such statistics will help the jurors put the individual accident in a broader context. However, attorneys should be aware of how

statistics can be misrepresented or misinterpreted. Attorneys should address the same via pre-trial *in limine* motions and/or trial objections to be sure that the statistical information leaves the jurors both better informed and better equipped to determine the issues of liability and damages in their individual case.

Just as truckers and carriers are subject matter experts in the trucking industry, the attorney is a subject matter expert in the legal process. Most truck drivers are unfamiliar with the broad concepts, let alone the fine intricate points of tort law, civil procedure, or evidence. That is not to say they lack the capacity to understand, but it simply does not come up in their line of work very often. It is critical to both the trucker and the carrier's defense that both understand exactly how their actions will affect the merits of the case. The driver must be professional and conscientious at all times, particularly in his deposition and at trial. He should provide every piece of information he can find or remember. He should not discuss the accident or post his thoughts about the accident on social media sites. The attorney should explain the legal process in clear terms and outline the best strategy for a successful defense. The attorney should explain the purpose of each strategic decision and gather information from the truck driver to strengthen any facts and arguments.

The best way to prepare the truck driver for his new responsibilities is to build a strong rapport early. As the case progresses, the truck driver, the attorney, and the carrier's relationship should grow closer through regular communication. Teamwork early in the case will ultimately lead to a more successful resolution down the road. Because ultimately that is what the trucker and the carrier want to accomplish – to get down the road. ⚖️

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