



### **The Truck Driver: Keeping Your Most Important Witness Engaged**

*by Brad W. Keller and Andrew T. Bell*



In almost any trucking case, what is the most important component to the litigation? The evidence? The facts? The credibility of the witnesses? Surprisingly, in most cases, success largely hinges on the engagement, participation, and credibility of the truck driver. From the moment of impact, litigation essentially begins and the truck driver becomes fully involved in what will be a very important (and sometimes uncomfortable) part of his career and life.

The importance of the truck driver in defending litigation may seem obvious, but it cannot be overstated. The driver is typically the key defense witness with the most information about the accident. In trucking litigation, plaintiff's attorneys are constantly seeking an angle by which to attack the truck driver and the trucking company. It is crucial that a driver be prepared and engaged throughout litigation. A driver that is able to offer clear and consistent testimony regarding the accident and who is able to withstand the attacks of plaintiff's counsel plays an important role in achieving a successful outcome.

#### **Driver's Role in Litigation**

The truck driver is typically the defense witness who knows the most about what happened in the accident. Based upon his observations and perceptions, the driver will provide important information regarding events leading up to the accident, the impact, and aftermath.

Because of their presence at the scene, the driver becomes the first line of defense. Drivers must deal with law enforcement almost immediately following an accident, many times before they are able to speak to an attorney. These statements, given in the heat of the moment, are extremely important and will stick with the driver for the life of a case. Any subsequent variation to the events contained in the police officer's report will surely be attacked by plaintiff's counsel at deposition and trial. Thus, it is crucial that the driver offer a concise, detailed, accurate, and honest assessment of the events that occurred. This can admittedly be very difficult given the emotions involved.

It is critical that a driver receive training regarding what to expect and what to do following an accident. Drivers must follow their company's rules and guidelines. Any failure to follow company policy will be attacked and exploited, no matter how minor and irrelevant the infraction. Further, drivers must maintain evidence at their disposal following the accident. For example, if photos taken by the driver after the accident are deleted or discarded, opportunistic plaintiffs' attorneys will claim that the driver and/or company destroyed evidence.

After suit is filed, the driver is generally the first witness deposed by the plaintiff's attorney. The driver must be thoroughly prepared for the deposition. Again, variations in deposition testimony and what was reported following the accident, whether to the police officer or employer, will be attacked by plaintiffs' attorneys.

The driver also plays a key role in responding to written discovery. Trucking cases often involve thousands of pages of records, including logs, maintenance records, inspection reports, policy manuals, GPS data, and driver qualification files. The driver is an important source in preparing discovery responses. It is important to ask the driver for any records that he may have about the accident, beyond what may have been provided to the company, as occasionally a driver may have notes or photographs not previously shared with the company.

If a case reaches trial, the driver becomes the face of the company. It is crucial that the driver be adequately prepared to testify. Plaintiffs' attorneys will attack the driver, hoping that the jury will question not only the driver's credibility, but also the credibility of the trucking company. A poor performance at trial by the driver can have a crippling effect on the defense. The attorney involved must work diligently with the driver in order to prepare for trial. It is imperative that the attorney maintain communication with the truck driver throughout the litigation so that a teamwork approach can be developed. This relationship begins from the first interaction, often at the scene of the accident. The driver must be prepared to testify about the accident facts, yet also be familiar with his logs, company rules and policies, as well as pertinent provisions of the Federal Motor Carrier Safety Regulations. The driver must be prepared for all possible areas of examination.

### **Tips for Maintaining an Engaged Driver**

Given the importance of the truck driver in litigation, trucking companies and attorneys must take every step possible to ensure the truck driver remains engaged in the litigation process. A driver who is frequently absent, difficult to contact, or unprepared will be detrimental to the case. Thus, the driver must be made a part of the process early and often. Immediately after the accident, the attorney must not only determine and help shape the accident facts, but must also develop a rapport with the driver, which should establish the foundation for a solid relationship moving forward.

Following the accident, the attorney can be a source of comfort for the driver. The driver needs to be informed of the importance of his cooperation both in the post-accident investigation and beyond. In rare cases, the facts of a case and emotions of the moment may make it difficult for a company to communicate with the driver in a supportive and empathetic fashion. However, it is necessary given the dynamics at play. The attorney and trucking company, to the extent possible, must convey that they are on the driver's side. The driver should be made aware of the seriousness of the investigation and litigation process, and the fact that he is now going to be a defendant in litigation. Moreover, the attorney and company must be up front and honest with the driver about what will be required in the future.

Once the attorney is aware that suit has been filed, the driver needs to be informed. He needs to be aware that a summons will be served, and he needs to understand the importance of contacting his attorney immediately upon being served. The attorney should meet with the driver as soon as possible to discuss the facts of the accident, strategy going forward, and what will be required of the driver. Being honest with the driver from day one will help maintain the driver's engagement. There should be no surprises.

Communication is critical. The driver always needs to be kept informed and prepared. There are occasions where a driver may be uncooperative, and the attorney has to be creative in attempting to engage the driver. Ultimately, the driver needs to understand that the alleged negligent acts giving rise to the accident resulted directly from his driving

and his involvement in the case will allow him to explain his side of the story. With proper preparation, the attorney can make the driver aware of red flag areas that the plaintiff's attorney will focus upon to attack the driver. At all stages, the driver must feel that his attorney is on his side. Therefore, the attorney needs to ensure the driver is always treated with respect. If a driver senses that you are providing him with attention and respect, you are more likely to have a positive relationship throughout the case.

## **Conclusion**

The truck driver is the most important witness in the defense of a trucking case and can be a very effective asset in defending the case. The driver possesses critical accident facts and observations pre- and post-accident. It is his story that the attorney will convey to the jury. Like it or not, the driver also becomes the face of the trucking company. At trial, the driver is essentially put on trial and plaintiff's counsel will do everything in his power to attack the credibility of the driver, hoping to convince the jury to render a large verdict.

In order to ensure that a driver helps advance the case, it is important that the driver be engaged in the process from the beginning. Given their unfamiliarity with litigation and the uncertainty that follows an accident, drivers will not be successful in the process without appropriate counsel and assistance. It is up to the attorney and the trucking company to ensure that the driver is engaged. There is no substitute for maintaining regular communication with the driver to keep him informed of the process and when his involvement will be significant. In the end, it is up to you, as defense counsel, to forge a positive relationship with the truck driver. Developing a teamwork approach early will create the greatest opportunity of achieving the best outcome.

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