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## SELECTING THE RIGHT LAWYER FOR A TRACTOR-TRAILER ACCIDENT

By Richard Eddington<sup>1</sup>, Esq. and Wesley Eddington, Esq.<sup>2</sup>

Boss: Sorry Luke. I'm just doing my job. You gotta appreciate that.

Luke: Nah, calling it your job, don't make it right, Boss.

Paul Newman in "Cool Hand Luke"  
(1967)

While the individual at the wheel of a tractor-trailer is just doing their job, it is not just any job. Their job involves great responsibility and specialized training because of the dangers associated with putting these big rigs on our highways where they share our roads with smaller, more vulnerable vehicles. Accidents are inevitable. When these big rigs get into accidents the consequences can be devastating.

The sheer size of the trucking industry in the United States can be difficult to grasp. It is said that each person living in the United States requires the delivery of 40 tons of freight each year. Of this, 30% is transported by truck. This results in approximately 12 tons of freight being moved by truck for each and every individual in the United States. It is a mind boggling number.

Make no doubt about it that trucking is a business, a very big business. As with any business, the success of the trucking industry depends upon turning a profit. Profit can be thought of as revenue subtracted by expenses. Some industry expenses are quite obvious: the cost of the

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tractor-trailer, fuel, drivers, taxes, insurance – to name just a few. Motor vehicle accidents are also a cost to the trucking industry; an unfortunate part of that industry.

Accidents in the industry are so commonplace that statistics concerning truck safety are regularly kept by, among others, the United States Department of Transportation (“USDOT”), the National Center for Statistics and Analysis (“NCSA”) and the National Highway Traffic Safety Administration (“NHTSA”).

The statistics are grim. Some 98% of accidents involving tractor-trailers and smaller automobiles result in at least one fatality. Taking into account only these fatal tractor-trailer accidents, the cost of accidents alone to the trucking industry is more than 20 billion dollars each year. The total cost of all these accidents far exceeds that number. The average cost of a commercial truck accident whether involving fatalities, physical injury or just property damage is \$59,150.00. Approximately 130,000 drivers and their passengers per year are injured in collisions involving tractor-trailers.

Crashes involving “18 wheelers” or other large, commercial vehicles differ from auto collisions in many ways. The most obvious difference is the extent of the injuries and damages that naturally occur when a large, commercial vehicle strikes a smaller, passenger vehicle. These large “18 wheeler”, tractor-trailer combinations often weigh in excess of 80,000 pounds. As a result, trucking accidents almost always result in significantly greater injuries to the victims than other motor vehicle accidents.

In response to the dangers posed by commercial vehicles, the federal government and states across America have implemented rules and regulations designed to protect the public from the negligent actions of truck drivers and trucking companies. For example, federal and state “hours of service” regulations require truckers to have adequate rest to minimize driver fatigue on the highway. Other specific rules for trucks include the proper loading of the materials the truck is carrying, safety rules as to traveling speeds and safety regulations when passing other vehicles. Many modern trucks have devices that allow for the reconstruction of the trucker’s actions just before an impact. All truckers are required to keep logs of their time.

An attorney who can quite ably represent a client in a passenger car case may not be able to effectively prosecute a trucking case. Why is that?

Knowing how and when to assemble the evidence in a trucking case is the key to success. Often, a lawsuit must be filed immediately to prevent the destruction of crucial evidence such as the electronic control module (“ECM”) on the truck which may be downloaded to provide evidence of the 18-wheeler’s actions just prior to the collision. Case preparation includes the participation of an accident reconstructionist to examine the mechanics of the crash sequence and calculate impact speeds. A trucking operations expert may be helpful to review driver records and help identify the causes of the driver’s negligence. A biomechanical expert may shed some light on how the vehicle occupants moved inside the vehicle during the crash sequence and describe how

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this movement likely resulted in specific injuries. Collaboration with these experts requires special skills of your lawyer.

Trucking companies are required by law to carry large insurance policies. The actual size of these insurance policies can depend upon whether travel is intrastate (within a state only) or interstate (across state lines). Regardless, trucking companies typically carry large insurance policies. Insurance companies as part of their duty to their shareholders try to pay as little as possible on every claim. That is because they are in business to maximize profit for the insurance company. It is no surprise there are available, thanks to insurance companies, tremendous financial resources to defend trucking cases. In an effort to reduce costs, insurance companies will spend an inordinate amount of time and money trying to minimize the amount paid to injured persons and their families as a result of these tractor-trailer accidents. This business practice is not a result of insurance adjusters being evil people, it's simply the nature of their business. In an industry where the occurrence of serious accidents is an absolute certainty, it is the nature of the trucking business and the insurance company paying accident related claims to minimize the amount paid on any claim. That is their job.

What if you, a family member or friend are involved in a tractor-trailer accident? There are certain things that ought to be done and others that should not be done if you are involved in an accident with a tractor-trailer or other commercial truck. Firstly, think medicine and not law. Your health is more important than any lawsuit. Make sure that emergency medical assistance is immediately provided for all injured persons as soon as possible. Follow up with proper medical treatment thereafter. Be consistent in your approach to all medical treatment. Remember, often these violent accidents result in permanent injury. Secondly, report the truck accident to law enforcement and to your insurance carrier. These incidents, when serious, will always be fully investigated. Accidents that do not initially appear to be serious sometimes are not investigated as thoroughly as their more violent sisters. Make sure all accidents are adequately investigated by the authorities. If you are able to use your cell phone, take pictures. Remember to place insurance adjusters on notice of your claim. Thirdly, contact legal counsel as soon as possible. As we have already pointed out, many lawyers that are quite capable of representing a client in a car accident does not have the necessary skill set to represent individuals in a tractor-trailer accident. Make sure to hire the right lawyer and law firm.

There are certain things that you do not want to do after a truck accident. Be very careful about what you communicate to others, including that on social media sites like Facebook. These statements made by you can be taken completely out of context by insurance adjusters and insurance defense attorneys and later used against you. Do not be shy about seeking medical treatment if you are injured. Also, do not engage in lengthy discussions with investigators without first seeking legal advice. You should always consult a qualified and experienced trucking attorney prior to talking with insurance investigators or giving recorded statements.

As we have already emphasized it is important that if you, a loved one or friend is involved in such an accident to not only hire a lawyer, but to hire the right lawyer. Why is that? Again, accidents from the point of view of the trucking company are business transactions. Many

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adjusters working for insurance companies specialize in these types accidents. Experienced adjusters have not only handled hundreds of trucking accidents, but often thousands of them. Those representing the insurance industry are just doing their job, which is minimizing the amount paid to satisfy claims. While this sentiment could be said for any adjuster as to a motor vehicle accident, it is even more so involving the trucking industry. As mentioned, the average cost of a commercial truck accident is approximately \$59,150. That is more than the average American earns a year. Mind you that is merely the average. That is why it is important to hire the right lawyer before statements are made to insurance representatives. Keep in mind, these interviews are not being taken for the benefit of the victim or victims, but the insurance company. That nice lady or gentleman asking you the questions has often taken hundreds if not thousands of interviews. Innocent answers can sometimes be turned on their sides to minimize the value of your claim. Remember, once a statement is made it is almost impossible to ever take it back.

It is also important to remember that the right lawyer can help you with certain other aspects in addressing these accidents. Most importantly, it is important that you receive good medical care. This care includes not only emergency care at the time of the accident, but other treatment that may be needed in the period after the accident. This treatment can last for several months; even years. Your benefitting from better doctors is important to not only your recovery, but securing a better legal result. Your lawyer can be helpful here.

There are also going to be insurance issues. These insurance issues deal not only with automobile insurance, but working with your health insurance carrier. We have already discussed interviews with insurance representatives, but lawyers that are well versed in matters pertaining to tractor-trailer accidents will assist you in working through these complicated health insurance related issues. They can also assist with payment of benefits by the Social Security Administration and others.

Lastly, there are the legal issues. Remember, from the point of view of the trucking company their goal is to get your claim settled as inexpensively as possible. It is important not take this position personally; it is just a job to those representing the trucking companies and their insurance carriers. It is often the case that the difference between a good legal result and something far less acceptable involves the retaining of top quality experts such as doctors, engineers and others that can provide fair and balanced testimony to present your claim. Experts will include not only those to testify about your medical issues. They include engineers, economists, vocational therapists, accident reconstructionists, trucking safety professionals and others. Hence, there are a host of expert witnesses that do much more than to make sure that initial investigations are correctly undertaken and the mechanics of your accident are fully explained. An attorney with experience in these tractor-trailer accidents knows not only about the strengths and weaknesses of experts you are using, but those used by the trucking industry. A good lawyer will also help you make important decisions early on in your case. While investigations by local law enforcement and other government entities can be performed for a lengthy time after the instant of an accident, the best time to secure the most accurate

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information is immediately after an accident. It is necessary to mobilize an investigation without delay.

A good result for the injured also involves the financial wherewithal of the legal firm you select to be able to hire experts so that should your case result in jury trial, your case can be well presented by effective witnesses. Even the best attorney without adequate financial resources stands no chance against the commercial might of a trucking industry that includes the tremendous financial backing of the insurance companies who ultimately pay out on these claims.

It is also important to retain an attorney that is well aware of some of the frequent causes of these tractor-trailer accidents. These causes include, but are not limited to: driver error, inattention, equipment failure, failure to heed traffic flows, and improperly arranged loads. It is also important for your lawyer to be experienced in recognizing issues of driver intoxication (drugs and alcohol), inexperience, fatigue, failure to obey traffic laws, the role of poor road and weather conditions, the impact of strict time deadlines, driver incentives to deliver cargo on time or early and vehicle part malfunctions. Your lawyer needs to also understand the role of each of driver logs, applicable Federal Regulations, and event data recorders in properly analyzing the causes of trucking accidents.

All too often evidence of gross misconduct such as texting while driving, exceeding legal driving time limits, driver fatigue, and even truck drivers falling asleep at the wheel are overlooked. These factors can lead to awards of punitive damages. Punitive damages, also known as exemplary damages, are intended to punish companies that do nothing to stop these dangerous activities even though they have knowledge that it is taking place. Punitive damages are designed to deter other trucking companies from allowing conduct which endangers everyone on our highways.

The immediate retaining of an attorney that is experienced in truck accidents is very important because early settlement of a claim can frequently work against the best interests of the injured. It is often the case that your appreciation of serious injuries, particularly to the neck and back, cannot be known in the immediate aftermath of the accident itself. Certainly, there are times when such injuries are obvious. However, in many instances back and neck injuries, not to mention neurological damage, may not be truly known or appreciated for many days or even months after the accident. Sometimes one can be virtually symptom free for many weeks before significant symptoms are experienced. This phenomenon is precisely why many insurance adjusters representing trucking companies will sometimes pay what looks like a premium immediately after the accident. It is because they know that a sore neck or back today can sometimes later turn into a permanent injury that requires surgery and lifetime medical expenses later. In essence, the adjuster wants the certainty of having you sign a release of all your potential claims in exchange for a small check. While this settlement may appear to be a windfall at the time of that compensation, that same compensation can often be quite meager in the face of ever mounting medical bills and your inability to thereafter secure damages

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commensurate with injury. Adjusters are just doing their job of keeping the overall cost of claims at a lower average per accident.

It is an unfortunate reality that tractor-trailer accidents are a product of their sharing of our roads with other passenger vehicles. These accidents can be very serious. They can traumatize not only injured persons, but also family members and others who rely upon these injured individuals for not only financial, but also emotional support. Making sure that the injured are adequately compensated by both the driver and their trucking company employer, typically backed by the endless supply of their insurance company finances, takes a lawyer skilled with a special set of industry specific knowledge covering engineering, physics, medicine, insurance, and law. Make sure if you, your family or a friend are ever involved in an accident with a tractor-trailer that you retain legal counsel that can truly represent your interests. Selecting the correct lawyer can make a huge difference, not only in your securing the best medical services and obtaining for you adequate compensation, but securing a just settlement or a trial verdict. The consequences as to the attorney and law firm you select can radically change the way you and your family live the rest of their lives.

If faced with the misfortune of being confronted with injury or death resulting from a trucking accident make sure that you get the help of an experienced trucking attorney. Ask that attorney questions about their qualifications. Make sure that they have handled and actually tried trucking cases to juries before you hire them. Be aware that it takes special skills and often large financial resources to make sure that your case is handled properly so that you are fully compensated for your losses.

It is a fair presumption that the trucking companies and their insurance carriers are represented by legal counsel and adjusters very experienced in trucking accidents. When you look at the amount of medical bills and the extent of injuries frequently resulting from these tractor-trailer accidents compared to a more common motor vehicle accident, the resulting battle can take on the dynamics of those of David versus Goliath. Make sure you select only an attorney that is capable of fighting the trucking companies and financially well heeled insurance companies.