

# EVIDENCE IN TRUCKING LITIGATION

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# OVERVIEW

- ◎ EVIDENCE IN GENERAL
- ◎ TYPES OF EVIDENCE IN TRUCKING LITIGATION
- ◎ CONTENTIOUS ISSUES

# Evidence Generally

- ◎ Standard
- ◎ Types of Evidence
- ◎ Obtaining Evidence
- ◎ Evidence at Trial

# Evidence Generally

## ◎ STANDARD

- Relevance
  - More or less probable
  - Causes of action/Damages alleged
    - Negligence vs. contract
    - Compensatory vs. punitive
  - Facts or Credibility

# Evidence Generally

## ◎ TYPES OF EVIDENCE

- Testimonial
  - Sworn Statements from Person With Knowledge
    - Oral – Written
    - Party – Non-Party
  - Expert
- Documentary
  - Records, Agency Reports, Pictures, Digital
- Physical Evidence
  - An actual object

# Evidence Generally

## ◎ GATHERING/OBTAINING EVIDENCE

- Your Evidence

- Exposure arises – Investigator, Statements, Pictures, Compile applicable records, hire experts, performing inspections
- Actions after exposure can create evidence

- Adverse Party's Evidence

- What do we want from them
- How do we get it - Discovery

# Evidence Generally

## ◎ GATHERING/OBTAINING EVIDENCE

- Discovery
  - Over a year (depending on parties' cooperation, ease of obtaining information, severity of allegations);
  - What's discoverable?
    - Reasonably calculated to lead to admissible evidence
  - Limitations
  - Discovery demands / Notices to Admit
  - Conferences (Preliminary , Compliance, Status, Pre-Note)
  - Motions (Dismiss, Strike, Compel, Preclude, Spoliation, Sanctions)

# Evidence Generally

## ◎ GATHERING/OBTAINING EVIDENCE

- Non-Party's Evidence
  - Type of Non-Party Evidence
  - Subpoenas (government agency – so-ordered)

# Evidence Generally

## ◎ Evidence at Trial

- Same types of evidence as in discovery
  - Testimonial (direct/cross examinations), documentary evidence, expert, physical
- Presenting to a jury – higher standard
- Admissibility
  - Discoverable vs. Admissible
  - Limitations (objections)
    - Relevance
    - Privileged
    - Lacks Foundation / Personal knowledge / Speculation
    - Unqualified Expert

# Evidence Generally

## ◎ Evidence at Trial

### • Admissibility

#### ○ Limitations (objections) - continued

- Chain of Custody
- Prejudice outweighs probative value
- Unauthenticated
- Not disclosed during discovery
- Subsequent remedial measure
- Prior bad acts
- Hearsay

# Evidence Generally

## ◎ Hearsay

- Out-of-court statement offered for the truth of the statement
- Not hearsay if going to mental state / credibility
- Exceptions
  - Business records (must meet requirements);
  - Admission against interest;
  - Hospital records;
  - Excited utterance;
  - Dying declaration;
  - Statement made for medical diagnosis/treatment
  - Present sense impression;
  - Unavailable
  - Public Records

# Types of Evidence in Trucking Litigation

## ◎ Causes of Action/Parties

- Negligence (operation, maintenance, hiring, supervision, training, entrustment)
- Contractual

## ◎ Damages

- Injuries / Financial (Compensatory);
- Punitive

# Types of Evidence in Trucking Litigation

## ◎ Want to Prove

- Had an obligation;
- Failed to satisfy that obligation;
- The failure contributed to the accident/breach;
- And Resulted in Damages
- For punitive damages – they want to prove that there was knowledge of a significant risk and reckless indifference.

# Types of Evidence in Trucking Litigation

## ◎ Testimonial (Sworn statements/ Testimony at Deposition or Trial)

- Drivers (facts about the accident, knowledge of procedures, general compliance);
- Companies – Managers (Record Keeping – Hiring)
- Witnesses (do they know one of the parties, unbiased, statements vs. non-party depositions)
- Police Officers (were they present at the scene, what is admissible absent same)
- Experts (doctors, data retention specialists; independent adjuster; accident reconstruction engineers; bio-mechanical engineers)

# Types of Evidence in Trucking Litigation

## ◎ Documentary Evidence

### ○ The accident

- Video footage (dash cam, security camera);
- Pictures (damage to vehicles; signs; intersection; lights; skid marks; position of vehicles; construction; things affecting visibility); - TIME STAMPED/GEO STAMPED
- Police Report (field notes, pics, measurements);
- Accident reports/Recorded Statements/MV104
- DOT Post-Crash Inspection Report
- 911 Transcript / First Responders' Call Logs/Run Reports
- Citations / Criminal/Agency Determinations

# Types of Evidence in Trucking Litigation

## ◎ Documentary Evidence

### ○ Your driver

- Toxicology results;
- Medical certificates;
- License;
- Electronic Logging data;
- Pre-trip/Post-trip inspection;
- Employment file;
- Driver history (CSA);
- Cell phone records;

# Types of Evidence in Trucking Litigation

## ◎ Documentary Evidence

### ○ Your company

- Pre-Employment Screening info;
- Driver's qualification file, personnel file, application, disciplinary history; accident history, payroll information, six month's of driver logs, time cards and records of duty status
- Current driver's manual
- Communications (driver, mechanic, client) relating to operation of vehicle / job performance;
- CSA history;
- Insurance information;
- Preventability determination;
- Disciplinary action;

# Types of Evidence in Trucking Litigation

## ◎ Documentary Evidence

### ○ Your vehicle

- Title, registration (cab/trailer), leases
- Maintenance records;
- Prior Inspection records
- Pre-trip – post-trip
- Repair history;
- Post-accident repair records;
- ECM/ELD data;
- Out of service history;
- Post-accident inspection findings;

# Types of Evidence in Trucking Litigation

## ◎ Documentary Evidence

- The job
  - Bill of lading, contract, expense receipts, itineraries, fuel receipts, tolls, dispatch records;
- Their driver
  - Medical, employment, taxes, reports, receipts, prior lawsuits, social media
- Their vehicle

# Contentious Issues

## Evidence in Trucking Litigation

- ◎ Preventability Determinations – Disciplinary Actions
- ◎ Admissibility – CSA/SMS Score
- ◎ Spoliation
- ◎ Plaintiff's strategies

# Contentious Issues

## Evidence in Trucking Litigation

- ◎ PREVENTABILITY DETERMINATION
- ◎ No federal requirement
- ◎ Party admission / Business record
- ◎ Contesting admissibility of preventable determination
  - Clearly define what constitutes company's definition of 'preventable'
    - Should be stricter than the legal definition for negligence
    - Misleading - prejudicial impact outweighs probative value
  - Subsequent remedial measure
- ◎ Do not make snap judgments - Get all relevant information first

# Contentious Issues

## Evidence in Trucking Litigation

- ◎ Admissibility of CSA/SMS information
  - CSA was created for purpose of safety, not proving legal liability
  - Documents required by FMCSA not supposed to be admissible
  - Flawed system with respect to allocation of fault / preventability
  - If related to proximate cause of accident, could be admissible

# Contentious Issues Evidence in Trucking Litigation

## ◎ Spoliation

- Compliance with record retention regulations
- Preservation of physical evidence
- Keep documents in excess of statutory mandated time periods when on notice of likelihood of litigation
- Adverse inference
  - Intentional or inadvertent failure to retain documents
  - Must relate to proximate cause of accident

# Contentious Issues Evidence in Trucking Litigation

- ◎ Plaintiff's Strategies
  - Subpoena everything
  - Paint as a bad actor
  - Any non-compliance = Liability
- ◎ Objections (preserve on appeal)
- ◎ Motions in Limine

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