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A Publication of the Attorneys Information Exchange Group

Spring 2015

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The Story of a Rear End Collision Truck Wreck Case

By Chris Glover



Have you heard a lawyer who handles product liability cases say that trucking litigation is easier? I was in Palm Springs at the recent AAJ convention and a lawyer mentioned that to me. I must confess, I once thought the same thing. That may have one time been the case, but I don't believe it to be true. Why are product liability cases difficult? I've worked those cases for the last fifteen years. I think there are many reasons, but the primary reason is that the cases are defended with coordinated knowledge, experience and resources. It is the reason AIEG exists.

There are always exceptions, but my experience is that trucking litigation was once defended differently than it is today. Today the industry and its defense counsel are planning the defense on all fronts. They have developed experts. Defense counsel and trucking companies have emergency response teams that arrive on the scene of wrecks to control the evidence. Letters of preservation are often responded to now with a skillfully drafted no.

There is a coordinated effort to attack tort law in the various states. I recently was served summary judgment where the

defense claimed that the Federal Aviation Act preempted my punitive damages claim in a trucking case. I first laughed until I conducted a little research and learned that there have been numerous defense counsel seminars pushing this approach. Other examples include coordinated attacks on broker liability, direct claims of negligence on the corporation when agency of the driver is acknowledged, self-critical analysis privilege, and lack of discoverability on the post-crash investigation. The list goes on.

It doesn't stop in the courthouse either. The industry is now in the process of

driver fatigue and other regulations. Efforts are even underway to influence potential jurors in the future case.

The truth is that I could go on and even then I'm not sure we on this side even know all that is being done. These same tactics were successfully employed in response to product liability claims and necessitated plaintiffs groups to respond in kind.

Today a developing battle front is trucking. That's why AIEG and other organizations are educating lawyers and working together to respond. Joining the battle with other lawyers has been invaluable to my clients.

You may have seen my title and wondered why I wrote an article on a rear end collision case. Surely Chris can handle a truck that rear ends his client. Well, that isn't what happened at all. My client ran into the back of a fully loaded log truck stopped at a red light. It was at night and even though my client was slowing and would have stopped prior to hitting the trailer, she didn't stop prior to hitting the rearmost log. That log pierced into her windshield killing her instantly. The accident report had my client at fault for rear ending the stopped tractor trailer. The insurance company forced her family to obtain a lawyer by denying liability.

The first question I had to answer was

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why did my client hit a stopped truck in a fairly well lit area, albeit at night, with her headlights on? Help from other lawyers handling trucking cases led me to a human factors expert who answered questions about conspicuity, perception, and human expectations. To understand the cause of rear end collisions, the first step is to determine how a person normally and successfully performs the task. The next is to determine why the task was not successfully performed this time. Generally speaking, people don't purposefully cause their vehicle to crash into the rear of another. So we know that something impaired that person's ability

to avoid a crash. Were there internal impairments such as a cell phone, drugs, alcohol, fatigue, or just not paying attention? Eliminating those internal impairments will lead the human factors scientist to next examine external factors that could have impaired the driver's ability to avoid a crash.

Science tells us that drivers use a phenomenon called looming motion to know when to avoid a crash. Looming motion is the science behind when a driver views an object, such as a stopped truck ahead, and is able to judge whether a rear-end collision is imminent. Looming

occurs when an image expands outward indicating the vehicle is approaching. In my example, the stopped truck's edges move outward as the driver approaches creating a motion cue called looming. A faster closing rate results in a faster expansion and faster edge of the motion resulting in a greater looming. This allows the human factors scientist to assign values to issues like distance and time to collision.

Looming will reveal the time to collision, but it doesn't tell a driver whether a response is necessary. There is more to deciding whether to avoid a rear

end collision than perceiving the time to collision. One of those factors is the driver's expectations. Research shows that unexpected events delay the decision to attempt to avoid a collision in the first place.

I employed an accident reconstructionist that I've worked with from my days as a product liability lawyer. With all due respect, there is a difference between accident-reconstructionist experts. Those that understand the intricacies of a case against General Motors will generally run circles around some local folks who have had some preliminary instruction prior to deciding to be an "expert" in their retirement. I will leave it at that. The battle of experts was every bit as intense as anything I've experienced in the products arena. Having the best ones mattered.

Proving liability in that case took a thorough understanding of trucking regulations at the state and national level. I had to understand industry standards on the transportation of logs for both intrastate and interstate commerce. Using skills I learned by researching NHTSA and SAE articles was extremely helpful. There have been numerous studies about the helpfulness and limitations of the various types of warning devices like conspicuity, trailer lights, flags, and warning lights.

I later learned that the trucking company went back to the scene of the crash to photograph the truck after the incident. The problem was that the truck and the

trailer were altered prior to these self-serving pictures. The staged photography session had the truck perfectly in compliance with all the applicable regulations and industry standards. These photographs were conveniently delivered to the investigating officer. Fortunately good investigation and some luck found witnesses and additional pictures showing violations of lighting regulations on the truck exposing this farce.

The fight in that case continued into discovery. Does that sound familiar to those product liability lawyers? Obtaining any meaningful discovery required discovery meetings and motions to compel. That wasn't enough either. The driver's qualification file contained response to information requests from previous employers. They were all impeccable recommendations. Stopping there would have kept my client from obtaining the critical piece of information that resolved the case.

I subpoenaed each of the employers to confirm the information contained in the driver qualification file. One response showed that the driver had failed a drug test. However, a comparison to the same employers' records in the defendants' driver qualification file showed a clean history on drug use. Somebody wasn't telling the truth. The previous employer had no reason to lie and that was confirmed when he told us that the defendant never contacted him about

this employee. They had created a clean document.

This case was filed in a very conservative county. Handling this case like a simple car wreck case would have been a disaster. It was far more complicated than understanding a driver's obligations to stop when approaching traffic at a red light. In the end, a lot of what I learned was shared with me by other lawyers who had been there before. Thanks to everyone who helped.

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