

News Story

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Keeping your eyes on the road

As trucking companies cut corners, be prepared to expose lax safety standards

By Carol Lundberg

When Steven Gursten's client's car was rear-ended by a truck driver, the truck company's insurance adjuster offered \$100,000. And the client was tempted to take it, even though he'd suffered a serious spinal injury which -- two years after the crash -- has left him still unable to return to work.

But Gursten knew the case was worth more than that. He had to start digging, though, to find out how much more. And he had to do it fast, or run the risk of his client losing out on hundreds of thousands of dollars.

It's easy enough for auto accident lawyers to look at truck and bus accidents as nothing more than high-value cases. The problem, however, is those truck accident cases will be anything but high value if not worked appropriately.

So says auto accident lawyer Michael J. Morse, of Southfield-based Michael Morse PC.

"There are a lot of attorneys out there not getting full value because they're not doing the work they need to do," he said.

That can leave clients in dire situations, he said, because injuries resulting from truck accidents tend to be far worse than those sustained in the average car crash.

"There are 9 million trucks on the road in the U.S. That's only 4 percent of all vehicles, yet trucks are involved in 12 percent of fatalities," Morse said. "They're dangerous. Four thousand people die every year in collisions with trucks and in 2007, 123 people in Michigan died in truck accidents."

It's only going to get worse, says Eric Simpson, senior associate attorney in Morse's office.

"Michigan Department of Transportation has cut truck inspections and the state has cut funding for school busses. The state mandates that buses be inspected, thankfully, but shifted the burden to the schools," Simpson said. "As they're forced to shift transportation costs, they're going to have older fleets on the roads. It's a snowball effect, and the regular drivers on the roads are going to pay the price."

Working a truck accident case can mean taking a completely different approach than a car accident case, Gursten said. In a car accident case, you wait as long as possible to file, in order to prove impairment; a truck accident case has to be filed as soon as possible.

"For years the trucking industry has had a model: delay, deny, defend," Gursten said. The reason for that model is that after six months, it's legal to destroy records such as driver's logs, he added. "If they bog someone down, even while negotiating in good faith, they can get rid of a lot of damaging evidence."

At the American Bar Association Transportation Megaconference in March, he heard much talk among lawyers who represent trucking companies, about ramping up their attempts to reach out early to injured plaintiffs.

"Be nice and get these cases settled,' is the mantra," Gursten said. "If they can settle with an injured person and pay off their house and debts, and buy them a new car, they'll settle for sometimes pennies on the dollar of what the case is worth."

Figuring out what the case is worth is more complex than it is in automobile accidents, and often it means figuring out exactly how the crash happened.

In Gursten's case, the trucking company was responsible for demanding that the truck driver work an impossible, and unsafe, schedule.

But some lawyers aren't doing all they can to find out all the reasons for the crash, and they're losing out, Gursten said.

They need to look at driver log books, GPS data, shipping data, cell phone records, and fuel or toll receipts to determine exactly where the truck was all day.

"Log books are fiction. You have to create a timeline for everything that happened in the days or the week leading up to the accident," Simpson said. "You need to know, when that driver entered the state, when he started working, how long he'd been driving."

Lawyers also need to depose safety and training managers, and look at inspection and maintenance records for the trucks, in order to find out if the truck itself was safe.

A growing number of trucks are not.

"A preliminary report by the trucking company's investigator will say that there was nothing wrong with the truck or the driver," Morse said. "But you have to research these things because there was a report released [by the American Justice Association] this summer that found that at least one in five trucks should be off the road. They found that 22.2 percent of trucks that were still on the road failed inspections."

Further, the same report found that approximately 1 percent of truck drivers report having some form of alcohol or drug dependency, he said.

"That doesn't sound like a big deal, until you realize that's 100,000 drivers on the road right now with drug and alcohol abuse problems," Gursten said.

Another area where lawyers make mistakes when working on truck accident cases is the failure to look for all sources of coverage because the \$750,000 minimum coverage for trucks is so much higher than \$20,000 minimum coverage for cars, Morse said.

"They don't know to look at driver liability, shipper liability, and load broker liability. They might think there is \$1 million in coverage, and they don't know where the additional coverage might be. We're finding sister companies, parent companies, and a lot of different ways to disguise coverage" Gursten said. "We have a company policy here where we can't settle with an adjuster until we get a certified copy of the insurance policy because we've been lied to so many times."

Lawyers need to look for all MCS 90 forms (the forms that prove financial responsibility for the motor carrier) for all possible responsible parties, he said.

Morse had a case in which the truck company's adjuster first told him that there was \$750,000 in coverage. But after doing some digging around, Morse found umbrella policies and additional coverage.

"That's pretty common. You can't take their word for it," he said. "You have to spend your time getting every dollar of coverage you can. Even after you get it in writing, dig some more."

Sometimes, even after every stone has been turned, the truck accident case winds up being very similar to a car accident case, said Wayne J. Miller, a law professor at Wayne State University and shareholder at Southfield-based Miller & Tischler PC.

"Any lawyer wants to answer the questions, how did this happen? Was there something wrong with the truck? Something wrong with the driver?" Miller said. "The defense will say it's anything and everything but the truck driver's fault."

That's what happened when he worked on a truck accident case on behalf of his client's estate. The accident victim was on his way to work at the Wayne Assembly Plant one early morning in December 2002. A truck driver who had just left the plant moments earlier blew through a red light and slammed into the victim's car, killing him.

Miller looked at everything; the truck's inspection and maintenance records, the driver's records and log books and the intersection itself.

The driver was acquitted at his criminal trial, and as Miller headed to the civil trial he knew all he could try to prove was the accident was the result of a driver's egregious, but straightforward, error.

"He just ran a red light," Miller said.

He knew the trucking company carried \$1 million in coverage, but he avoided making the mistake some other lawyers make when a company carries seven figures worth of coverage.

"We went after the company for the rest," Miller said. "They knew they were facing much more exposure than \$1 million."

The result was a \$1.8 million settlement.

If you would like to comment on this story, please contact Carol Lundberg at (248) 865-3105 or carol.lundberg@mi.lawyersweekly.com.

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