

CRASH PREPAREDNESS — WHAT TO DO AFTER CDL ACCIDENTS

Presented by Thomas E. Schulte and Renea Hooper



Defending your business in a catastrophic accident

- Post-Accident Considerations
- How video cameras assist defense counsel in defending transportation companies
- Countering the Reptilian Theory

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Your Hosts for this Session

- Thomas E. Schulte
- Renea E. Hooper

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Accidents are Costly

\$240K

Average cost of injury
accident involving
Large Truck and Bus.¹

\$11M

Average cost of fatal
accident involving
Large Truck and Bus.¹

81%

Of all car-truck
accidents are caused
by passenger vehicles.²

Sources: (1) FMCSA, #2016 Pocket Guide to Large Truck and Bus Statistics, (2) FMCSA, 2009

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POST-ACCIDENT CONSIDERATIONS

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Evaluation

Levels of Response

- Death/Loss of Limb/Burns/Paralysis
- Loss of Consciousness/EMT Transport/Another Comm. Motor Vehicle with BI
- Property Damage/Minor Injuries

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Have a plan in place

- Who is Called
- Have a Trained Intake/First Call Person
 - ✓ Trained on What to Ask
 - ✓ Trained on What to Record
 - ✓ Trained on What to do Next

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Depending on Severity

- Drug/Alcohol Test
- Attorney to Arrange, Supervise, Monitor
- Independent Adjuster
- Accident Reconstructionist

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What Should Driver Do?

- Photos
 - ✓ Damage to Other Vehicle
 - ✓ Photos of Vehicles Stopped
 - ✓ Photos of Claimant (within Reason)
 - ✓ Photos of Interior of Claimant Vehicle
- Interview with Law Enforcement Authorities
- No Statements to Bystanders
- No Social Media
- No Texts

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Preserve Evidence

- Vehicles
- ECM for Both Vehicles
- Driver's Log
- Driver's Vehicle Inspection Reports
- Dispatch Records
- Qualcomm, Omnitrac
- GPS
- Maintenance Files
- DQ Files
- Drive Cam (video event data recorder)

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Spoliation

Spoliation Allegations Can Create, or Allow to Continue, a Suit which Should Never Have Been Filed.

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What to do with driver

- If Citation Issued Handle Appropriately
- Preventability/Non Preventability
- Suspension/Termination

What to do with Vehicle

- Repair, or Not

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ADVANTAGES OF USING VIDEO CAMERAS IN DEFENDING TRANSPORTATION COMPANIES

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Advantages of using video cameras

- Assists in determining whether the truck driver may be partially at fault for the accident.
- Allows defense counsel to properly counsel the truck driver days after the accident instead of weeks or months later.
- What if video is unfavorable?

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Advantages of using video cameras

- Video cameras assist motor carriers, insurers, and defense counsel establish how the accident occurred.
- Provides real time information and knowledge.

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Advantages of using video cameras

- Having true understanding of liability allows all stake holders to assess all the risks from the accident.
- Allows defense team to develop strategy to minimize the risks.

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Other Benefits to using video cameras

- Motor carriers can use the data as a teaching tool to reduce the risk of future accidents.
- When used properly, video cameras promote and encourage safer driving practices.

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Risks of using video cameras

- Using technology that exceeds regulatory requirements can create additional liability exposure IF carrier does not actively enforce its more stringent requirements.
- Discoverability of using video cameras.

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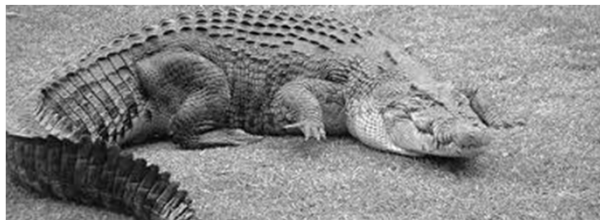
Countering the Reptilian Theory

Reptile Theory

- Plaintiff's attorneys attacking the company itself instead of focusing on the accident.
- Primary theme is safety.
- By demonstrating that a defendant company violated a safety rule, it creates a danger that the jury feels compelled to protect against.
- Goal is to direct jury's focus on the harm that could have happened, rather than the harm which actually happened.

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COUNTERING THE REPTILIAN THEORY



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Countering the Reptilian Theory

- Reptile Theory is developed early on in the case by plaintiff's counsel.
- Written discovery is tailored to obtain as much information as possible regarding safety policies, protocols and records.

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Countering the Reptilian Theory

- The purpose is then to obtain an admission from the driver or corporate defendant during written and oral discovery that a rule(s) was violated.
- This sets up the case for a Reptilian response (survival mode) by the jury to want to remedy any safety or security threats.

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Countering the Reptilian Theory

- Preparing witnesses
 - ✓ Prepare witness to recognize a dangerous “global” safety questions.
 - ✓ Witness should recognize questions with phrases like “wouldn’t you agree with me that...” or “wouldn’t it be fair to say that...”
 - ✓ Witness should respond to broad questions regarding “endangering the public” with explanation that there are too many undefined variables to answer such a general question.
 - ✓ It is okay to agree with safety questions, but often it is better to use caveats such as “in some cases that is true, but that was not necessary in this case” or “that is just *one* of the things that is a priority at the company.”

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Countering the Reptilian Theory

Challenging Reptile Tactics

- Affirmative Defenses
 - ✓ Defendant has the burden to prove its affirmative defenses.
 - ✓ E.g., Contributory negligence/comparative fault -- Plaintiff violated an applicable standard of care which caused or contributed to the injury.
 - ✓ Plaintiff violated a safety rule which endangered the public.

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Countering the Reptilian Theory

- Motions in Limine
 - ✓ Used to attack the reptile tactic as an improper attempt to circumvent the “Golden Rule” prohibitions at trial.
 - ✓ Golden Rule arguments are equivalent to requests for sympathy.
 - ✓ Can prevent the reptile from even entering the courtroom.

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Countering the Reptilian Theory

- At Trial
 - ✓ Emphasize details of your particular case – show plaintiff was oversimplifying and taking things out of context.
 - ✓ Refocus jury on *this* plaintiff and *this case*.
 - ✓ Show that the safety rules are not absolute.
 - Proper action in a situation depends on various factors and considerations.
 - ✓ Remind jurors that plaintiff has the burden of proof.

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THANK YOU

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Q&A SESSION

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