



## PEACE WITH A PURPOSE

Turning Terminated Drivers Into Effective Witnesses

By Jaci House and Bharat Varadachari

**T**rucking companies and their attorneys often deal with juries' ingrained biases against trucking companies and their drivers. How do we change the narrative to focus on the facts of our individual cases while humanizing drivers against prejudicial stereotypes and the reptilian strategies many plaintiffs' attorneys employ?

For attorneys representing companies that operate large commercial vehicles, this is a question that they, and their clients, need to answer long before the jury is selected. While each case has its obstacles, nothing is more important than presenting the driver in a favorable light, which can often neutralize the reptilian

approach to litigation.

If a case proceeds to trial, it is up to the attorney to reveal obvious biases in the voir dire process to exclude unfavorable jurors. At the end of the day, though, despite the attorney's best efforts, it is almost certain there will be prejudices involved when an accident concerns a larger commercial vehicle versus smaller passenger vehicles.

The plaintiff's attorney may try to exploit these prejudices at every available opportunity over the course of the trial, so, to counter this, it is critical to personalize the company to the jury. This is most effectively done through the driver. The best results for the company occur when the driver can connect on a personal level and not come off as defensive. The path to this outcome

begins long before the driver's deposition or trial appearance.

### WHEN THE DRIVER IS LIKELY AT FAULT

A driver who is cooperative, properly prepared, and who understands how to testify will have a positive impact on settlement value and the jury. However, when the driver was clearly negligent, the situation becomes more complicated, especially if the driver was terminated as a result of the accident. If that is the case, then it is even more important for the attorney to build a relationship with the former employee or owner/operator.

When one is at fault, it is human nature to skew the facts to try to minimize culpability. In addition, when a driver is terminated or loses the client under an owner-operator agreement, there is often

a degree of hostility toward the company, which can lead to damaging deposition testimony if the disgruntled driver is looking to hurt the company.

If possible, it will benefit the company if it can at least explain to the driver the reason for the termination. There is no guarantee that the reasoning will be well-received, but if there is an attempt to convey the message that the company had no alternative based on the facts of the accident, then the driver may be more inclined to cooperate months or years later when it is time for a deposition or trial. As time passes, a driver is more likely to be cooperative if the company was upfront about the termination process. Impersonal letters regarding termination can have disastrous long-term consequences if the driver feels the situation was not handled properly.

The attorney must also reach out to the driver at the earliest opportunity and convey true empathy for the turn of events. The attorney must try to form a personal relationship with the driver and place the company's position in a more understandable light. To the extent possible, explain that the company has limited discretion in making decisions of termination, that the company appreciates the driver's contributions, and that the attorney's representation is being provided at the company's expense in large part because of the driver's past contributions.

### PREPARING A DISCHARGED DRIVER

Preparation of a material witness is critical for a successful deposition. There is a tendency to not put any more effort into preparing a witness for a deposition than what would be done to prepare the same witness at trial. In a serious trucking accident, most plaintiff's attorneys will take a videotape deposition of the driver, especially if it is borne out in written discovery that the driver lost his job as a result of the accident. An unprepared or disgruntled driver can absolutely turn a salvageable case into a nightmare process.

By communicating on a sincere level with the driver from the beginning, the chances are greater that the driver will at least respect the employer's

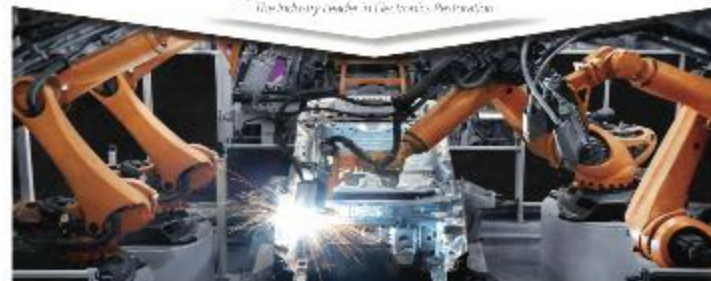
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position, and the attorney can then use the driver to defend the company and the driver's own conduct as one. It is also important, in some circumstances, to make the driver aware that there is a risk of potential personal exposure if she is uncooperative—if the driver does not put forth a good-faith effort and takes a personal vendetta against the former employer, a serious liability case can quickly become one of punitive damages with just a few flippant answers to questions regarding training, hours of service, or maintenance of driver logs.

Commercial drivers are trained professionals and take great pride in their craft. Acknowledging their expertise early on is often the best way to help connect juries with the driver. Once a professional relationship is

forged with the former employee, every effort should be taken to meet on two-to-three occasions to prepare the witness for a deposition or trial appearance. There is often a provision in the policy that enables the insurance carrier to reimburse drivers for taking time off from their current jobs and allow them to attend the preparation sessions without incurring a loss financially. The added cost and inconvenience of taking whatever steps necessary to make these sessions as convenient as possible for the former employee will be justified by having a properly prepared witness.

Unfortunately, there are times when a driver must be discharged by the employer. When that occurs and litigation ensues, the company and its counsel must take the necessary steps to preserve a professional relationship with their drivers and to show that there is still a mutual benefit for them to cooperate. If the driver remains uncooperative, this should be relayed to the carrier immediately so it can be taken into consideration when assessing the settlement value. An uncooperative or angry driver, even in a situation where liability is favorable, can significantly increase the value of a claim. ■



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