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## The Trials and Errors of Preventability Determinations

**A**fter a motor vehicle accident, it is common for motor carriers to determine whether their driver could have prevented the accident. This positive, safety-oriented process is known as a preventability determination.

Carriers make this assessment for several reasons: to evaluate and possibly change company policies and procedures to prevent similar accidents, to determine whether it should impose discipline, or to address safer driving.

A company representative conducts an investigation into the accident. This often includes a review of police reports, witness statements, and interviews. The motor carrier then decides whether or not the accident was preventable.

Unfortunately, the preventability determination can have a negative impact when introduced in a lawsuit where the commercial driver's negligence is in dispute. The primary problem lies in the fact that a motor carrier's definition of preventability and the standard for negligence are often drastically different. Fortunately, there are arguments that support excluding the preventability determination from trial, and courts have excluded the determination for these reasons.

The ability to successfully argue that

a preventability determination is not admissible at trial depends largely on the motor carrier's preventability determination and process. For instance, if the preventability standard the motor carrier employs is the same, or substantially the same, as a negligence standard, then courts are less likely to exclude the preventability determination. This would make it more difficult to exclude such evidence on the basis that it is misleading to the jury.

Motor carriers should have a definition of preventability that applies to its review of accidents. The definition could be the same as the definitions crafted by the National Safety Council and Federal Motor Carrier Safety Administration, or it could be created by the carrier's staff.

The preventability definition should not be similar to a negligence standard of ordinary care. For instance, a motor carrier assessing an accident as preventable if the driver was at least one-percent negligent could be construed as an admission of negligence. A preventability definition that focuses on

defensive driving and accident prevention is more likely to be excluded at trial than a preventability definition that uses a negligence standard.

If the motor carrier uses the preventability determination to make recommendations and changes to company policy regarding driver conduct, that purpose should be clear from an outsider's perspective. That outsider may be a judge, determining whether to permit the jury to learn about the carrier's preventability determination.

### **Have Clear Policies in Place**

Documentation related to the preventability determination process should expressly state the purpose and use of the determination as a way to evaluate company policy and recommend changes. It should be clear that the focus of the preventability determination is not to assign fault, but is part of an overall safety-conscious effort by the carrier.

The motor carrier's safety director should be prepared to explain the company's preventability determination during a deposition. It will be largely that person's testimony, along with any documentation related to the preventability process, that will support the motion to exclude the determination at trial. ■