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Accidents Happen: Is Your Transportation Partner Prepared?

When a personal injury or wrongful death lawsuit is brought against a commercial transportation company after a motor vehicle accident, creative lawyers are increasingly including negligence claims.

Such claims focus attention on how the transportation company hires, trains, supervises, and disciplines its drivers. Falling short in these practices can form the basis for a jury to hold the transportation company liable.

Above and Beyond Compliance

A company accused of failing to properly screen, train, supervise, and discipline its drivers is required to prove and justify its past actions. Strict adherence to the Federal Motor Carrier Safety Administration's recordkeeping requirements is the absolute minimum. When examined in light of a tragic accident, records must clearly show that the carrier made every reasonable effort to keep unsafe drivers off the road.

Under the controlling law in most states, a transportation company will be held liable for failing to observe reasonable care in overseeing its driver. It amounts to a claim that the company knew, or would have known if it had exercised ordinary care, that the driver was likely to cause an

accident. Negligence claims are based on the principle that companies have a responsibility to protect customers and the public from injury at the hands of their employees.

The impact of a claim for negligent practices becomes apparent immediately after the lawsuit is filed, when the company's policies are requested during the discovery process. The plaintiff's attorney will target the qualification files of all current and former drivers, and will request the safety director, dispatchers, driver trainers, and personnel managers to testify under oath.

The Best Defense

When choosing transportation partners, it's in your best interest to make sure they can position themselves to defend claims. Compliance with the regulations alone is not enough. The transportation companies you work with should enforce the following four tactics.

1. When hiring drivers, perform the required background checks. If standard checks reveal any issues, such as prior

accidents or multiple traffic citations, the partner should broaden its search by looking further back in time or by interviewing past employers to gather additional information.

2. Establish consistent hiring policies that can apply to all drivers.

The policies should identify specific and objective disqualifiers, and should never fluctuate with the supply of applicants. Partners should share policies with all employees and applicants. In addition to providing a basis for defense in a lawsuit, these policies also help hold recruiters and hiring managers accountable.

3. Require retraining. Require any drivers who receive a traffic citation, are involved in a preventable accident, or otherwise violate a company policy to undergo retraining that addresses the issue.

4. Address problems. If another employee reports concerns about the conduct of a driver, the transportation company must address that concern. If the company ignores the problem, and the driver later causes an accident, this can form the basis for an award of punitive damages.

It is never too late for your transportation partners to improve safety operations. The changes they make today will reduce liability tomorrow. ■

