

The Keys To Defending Auto Claims

March 14, 2024





Agenda

1. Questions on Verdicts
2. Litigation Climate Today
3. Lessons Learned From Verdicts
 - a. Negligent Hiring
 - b. Negligent Supervision and Training
 - c. Negligent Operation of the Vehicle
 - d. Negligent Entrustment of the Vehicle
4. Failure to Retain Documents, Black Box or Telematics
5. Pre-Accident Activities You Should Undertake
6. What to Do If You Get Sued

POLL QUESTION NUMBER 1

Facts:

A tractor trailer blocked the road as it backed into a driveway. A van was driving down the road, did not see the tractor trailer blocking the road and hit it resulting in the van driver's death. The deceased's parents sued the trucking company and driver alleging negligent operation of a vehicle and negligent supervision. The deceased was in his 20's.

The jury found the driver was in the course and scope of employment when the accident occurred and apportioned liability at 65% for the driver; 20% trucking company and 10% to the owner of the trucking company.

How much was the verdict?

- a. \$10 million
- b. \$100 million
- c. \$200 million
- d. \$247 million



POLL QUESTION NUMBER 2

Facts:

This case involves a rear-end collision where the commercial truck's driver rear-ended the plaintiff ("injured party") causing neck and back injuries to the plaintiff who was in the car the commercial driver hit. The driver of the commercial vehicle had marijuana and methamphetamine in his system and 3 traffic violations on his record in the preceding three months. The Plaintiff sued the truck driver and trucking company alleging the company failed to follow its own internal hiring and training policies and for punitive damages. The jury awarded both compensatory and punitive damages and found the company liable for all damages and the driver liable for 30% (the driver had no assets).

What is the verdict:

- a. \$30 million
- b. \$56 million
- c. \$101 million
- d. \$210 million



POLL QUESTION NUMBER 3

Facts:

A tractor-trailer owned by a company ran a red-light and broadsided a SUV. The driver of the SUV and her son suffered traumatic brain injuries (“TBIs) and other injuries and the driver’s daughter alleged PTSD from watching her mother and brother being injured. The brother and sister were minors. A lawsuit was filed against the driver of the tractor-trailer as well as the owner of the truck alleging the company negligently entrusted the truck to the driver and thus was vicariously liable.

What was the verdict?

- a. \$66 million
- b. \$99 million
- c. \$48 million
- d. \$70.6 million





Litigation Atmosphere in the United States Today

Why Are Jury Verdicts So Excessive

Reptile Theory: Jurors are being asked to be the policeman of their communities and keep their community safe from companies who place profit over safety

Social inflation

Litigation funding (Camp Lejeune, Baby powder case)

Distrust of corporate America and the judicial system

Inflated value of money

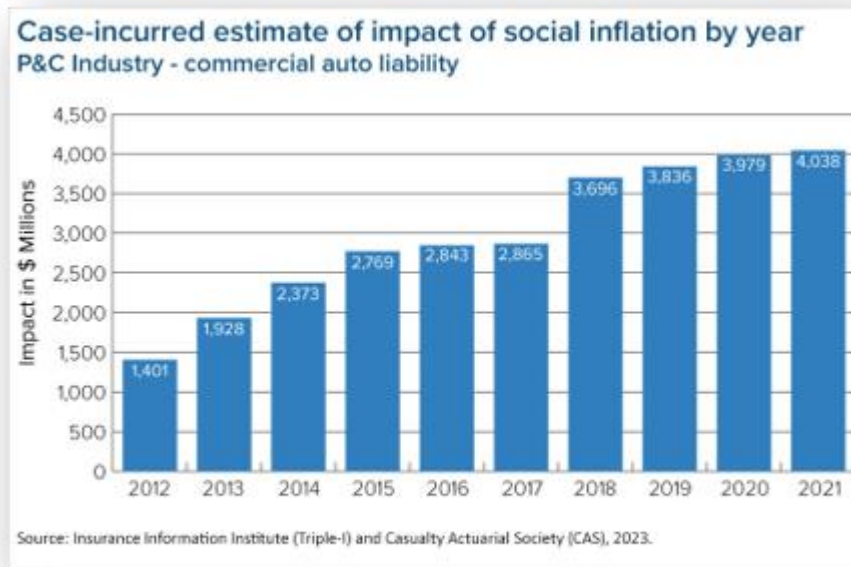
Reptile Theory

1. Based upon a book entitled Reptile: The 2009 Manual of the Plaintiff's Revolution by David Ball and Don Keenan.
2. The reptile theory focuses on safety and security issues through the use of statutes, safety handouts and industry standards.
3. The point is to show how a company violated any of these three areas so they can argue the defendant company does not care about keeping you, the juror, and the plaintiff safe.



Social Inflation

Social inflation refers to how insurers' claims' costs are increasing above general economic inflation. The “social” represents shifting social and cultural attitudes about who is responsible for absorbing risks.



- A 2022 study by the Insurance Institute and the Casualty Actuarial Society found that social inflation accounted for \$20 billion in commercial auto claims between 2010 and 2019 and the number keeps growing.
- Commercial auto (especially trucking companies) professional and product liability cases as D&O insurance cases are the most affected by social inflation



Litigation Funding



- Investors are always looking for ways to make money and litigation is a new means to make money. Investors give money to plaintiffs or their attorneys to fund their litigation and in return they receive their money back.



- There is very little regulation in the lit funding realm. Only nine states require third-party litigation funding registration or licensure.

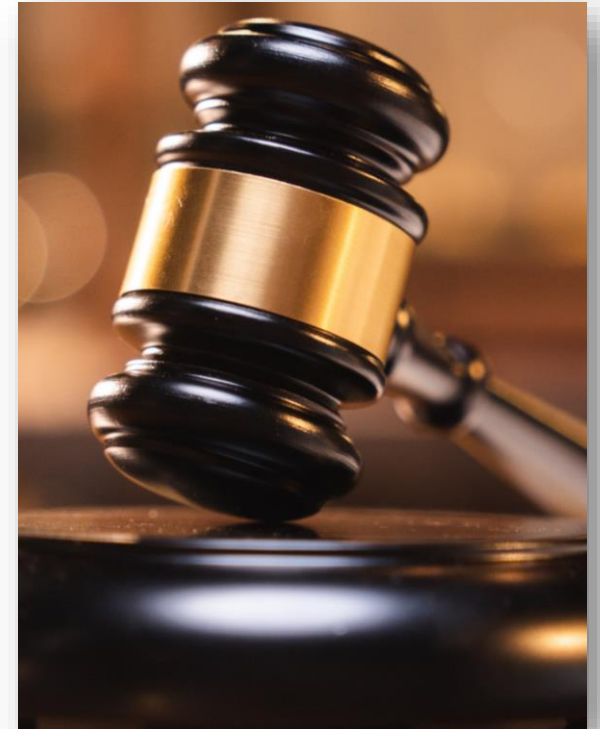


- Litigation funding is used for advertising (Camp Lejuene lawsuit), mass emails, social media in an attempt to indoctrinate potential jurors against a particular company or product.

Jurors are Policing Companies

Shifting juror attitudes

- Growing belief that companies should take full responsibility for the safety of their products/services and workplaces no matter how impractical or costly
 - **88%** of jurors believe companies should take “**any and all**” precautions
 - **58%** believe a corporation “always” has some responsibility even when plaintiff has some negligence
 - **62%** think its an “important function” of juries to “send messages to corporations to improve their behavior.”
 - **75%** said they favor punitive damages to punish corporations (+ 8% post-pandemic)





Let's Discuss the Theories Used In Auto Accidents

Negligent Hiring

The employer knew or should have known about an employee's background which, if known, indicates a dangerous or untrustworthy person and/or behavior.



- Have a policy regarding hiring practices and stick to it



- Remember safety must be at the forefront of how and who you hire



- It is important that you obtain yearly MVRs. It is your responsibility as a company to monitor these. You do not want to be at a deposition answering why you did not know your driver had a DUI or multiple traffic violations



- What, if any, background checks do you do? Do you have a pre-employment physical? Is there pre-employment drug testing?

Negligent Supervision and Training

Elements: Company had a duty to supervise the employee; the employer negligently supervised the employee, and the lack of supervision was the proximate cause of the injury to another



- IN YOUR EMPLOYEE MANUAL, SET FORTH EXPECTATIONS FOR DRIVERS, SUPERVISORS AND WHAT TO DO IF/WHEN YOU HAVE AN ACCIDENT.



- IF A DRIVER IS USING A NEW PIECE OF EQUIPMENT TRAIN THEM ON IT, DOCUMENT THE TRAINING AND HAVE A RETENTION POLICY TO KEEP TRAINING MATERIALS.



- MAINTAIN AND RETAIN MAINTENANCE LOGS IF IT IS ALLEGED TO BE AN AUTO ACCIDENT CAUSED BY AN EQUIPMENT FAILURE.



- MAKE SURE YOU FOLLOW ALL PROCEDURES AND SAFETY RULES IN YOUR EMPLOYEE MANUAL.

Negligent Operation of the Vehicle: What to Consider



- Have training often about distracted driving and why it is forbidden. Document the training and attendance.



- Do you provide company cell phones? If yes, how often do you review if the driver was using the phone while driving? In your employee manual, set forth expectations for drivers regarding cell phone use in the vehicle.



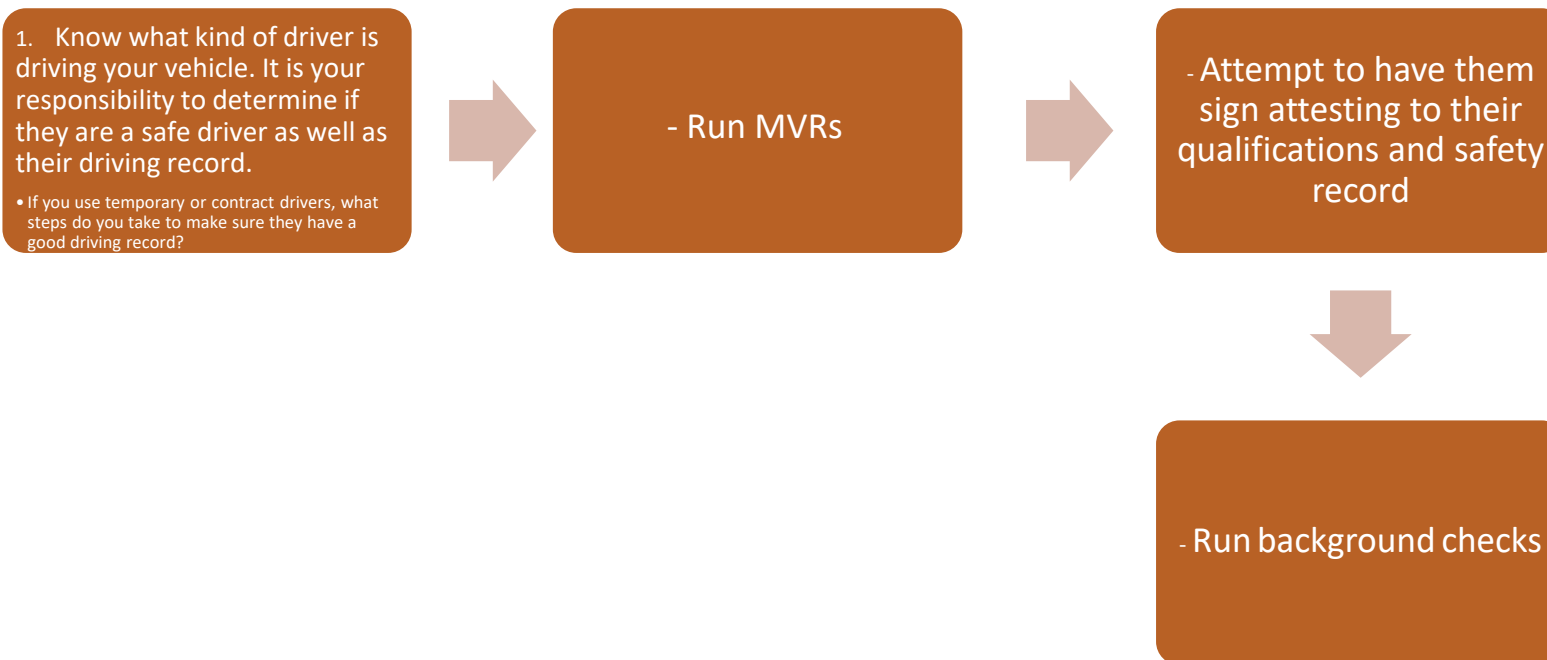
- Do you review the black boxes to determine if a driver was speeding, driving erratically, etc.



- What do you do as a company to insure your driver is driving safely. If you use driver facing cameras, you must have a policy to review the data and what action is taken when you see prohibited behavior.

Negligent Entrustment

When a person allows an incompetent driver to drive his or her vehicle and that person causes harm to another





Telematics

Should You Use Them



TIME -8.00

54 MPH 87 km/h

Pros And Cons of Telematics

Pros:

- Juries will expect you to have them
- Most accurate measure of what happened
- Can assist with finding no liability or settlement
- Can be placed in many places: front and rear cameras, driver facing camera or a combination

Cons:

- Expense
- Corporate culture
- Someone needs to monitor the telematic data and act upon it





You Get Sued: What Steps Should You Take

Advice: For The Accident Scene...

DON'T

- Get upset or argue with the other party
- Admit fault / Discuss FOL with others
- Post anything on social media
- Get tunnel vision
- Trust your memory
- **Offer/Agree to pay for their damages**
 - This could negatively effect coverage

DO

- Act like you always have an audience
 - You are in public and have no enforceable "right to privacy."
- Check on the other party
- Be aware of electronic communication
 - Text/email if you want it documented
- Be aware of your surrounds post accident
- Document everything
- **Contact Safety/F&P to discuss filing claim**

Evidence To Collect And Preserve

Physical Evidence:

- Event Data Recorder (the Black Box). Make sure the data is not written over or lost
- Telematics: video footage. Preserve the entire video. Do not only keep a bit before and after the accident
- Photographs of the accident scene (if possible, have your driver take photos)
- Vehicle camera footage

Documentary Evidence:

- Incident report and/or police report
- Driver's driving logs
- All documents to be maintained pre-accident
- Complete personnel file



Document Retention

You do not want the injured party's attorney claiming you destroyed evidence (Spoliation)



Keep all maintenance logs for the subject vehicle



Training materials used for employee training and attendance at trainings



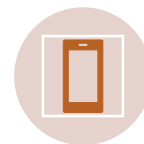
Employee handbooks



Safety and driving logs



Maintain personnel records that include yearly MVRs



Cell phone records

Be Prepared For Depositions

- Be very thorough in what documents are produced in discovery;
- Know what your external website says about your safety practices and policies;
- Know your internal policies;
- Mandate that your attorney prepare you early and often;
- Do not fall for questions such as “You believe that safety should come before profits.” or questions like that;
- Do not apologize for decisions made;
- Have reasonable explanations for policies.



Recap

- Automobile accidents are ripe for large verdicts
- Have hiring practices that include full background and driving record checks
- Know who you are entrusting your vehicle to
- Have a robust safety training on defensive and distracted driving with documented materials and manuals that everyone must attend yearly
- Think about deploying telematics
- Maintain and preserve all physical and documentary evidence
- Be able to sympathetically tell a jury why you are a safety conscious company



Disclaimer

The information in this presentation was compiled from sources believed to be reliable for informational purposes only. Any and all information contained herein is not intended to constitute advice (particularly not legal advice). We do not guarantee the accuracy of this information or any results and further assume no liability in connection with this presentation, including any information, methods or safety suggestions contained herein. We undertake no obligation to publicly update or revise any of this information, whether to reflect new information, future developments, events or circumstances or otherwise. The subject matter of this publication is not tied to any specific insurance product nor will adopting these policies and procedures ensure coverage under any insurance policy.





Thanks!

Presented by:

Tracey Lazarus

720-977-6031

Tlazarus@floodpeterson.com