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LAW GROUP

2020 Year in Review: Personal Injury

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Overview

- I. Direct negligence against the motor carrier
- II. Technology
- III. Nuclear Verdicts
- IV. Trends
- V. Most Dangerous Interstates
- VI. Extortionist Towing Bills
- VII. Hours of Service
- VIII. COVID-19
- IX. Preview 2021



Direct Negligence Claims Against the Motor Carrier

- ▶ Hiring, training, retention, & supervision
 - Guide the jury's attention towards the motor carrier
 - Every "nuclear verdict" case
- ▶ Problems
 - Backdoor means to introduce evidence, such as driving records and prior bad acts
 - Confusion of the issues, and encourage the jury to act based on passion and prejudice, rather than material facts
 - Invites the jury to improperly assess the negligence of the employer twice
- ▶ Admitting respondeat superior...



Direct Negligence Claims Against the Motor Carrier

- ▶ Pre-trial
 - Motions for Partial Summary Judgment
 - Motions in Limine
- ▶ At trial
 - Bifurcation
 - First Phase – Accident Only
 - Second Phase – hiring, retention, training, and other acts of the employer and employee
 - Punitive damages caps
- ▶ Respondeat Superior Rule
 - Majority Rule – e.g., North Carolina
 - Minority Rule – e.g., South Carolina and Georgia



Direct Negligence Claims Against the Motor Carrier

▶ Recent Georgia Case

- *Quynn v. Hulsey*, S19G1612 (Ga. Nov. 2, 2020, reconsideration denied).

1. Do you find by a preponderance of the evidence that the negligence of Danny Driver, as an employee of ABC Trucks, proximately caused the injuries to Paul Plaintiff?

Check “Yes” or “No”: ___ Yes ___ No

If you checked “Yes” in Question No. 1, please proceed to Question No. 2.

If you checked “No” to Question No. 1, please sign and date the Verdict Form below and inform the Court that you have reached a verdict. Do not answer any other questions.

2. Please fill in the following regarding the apportionment of fault for each party (Note: these must total 100%):

Paul Plaintiff _____%

Danny Driver / ABC Trucks _____%

1. Do you find by a preponderance of the evidence that the negligence of Danny Driver, as an employee of ABC Trucks, proximately caused the injuries to Paul Plaintiff?

Check “Yes” or “No”: ___ Yes ___ No

If you checked “Yes” in Question No. 1, please proceed to Question No. 2.

If you checked “No” to Question No. 1, please sign and date the Verdict Form below and inform the Court that you have reached a verdict. Do not answer any other questions.

2. Please fill in the following regarding the apportionment of fault for each party (Note: these must total 100%):

Paul Plaintiff _____%

Danny Driver _____%

ABC Trucks _____%

Technology

- ▶ Dash camera for summary judgment

- ▶ “Smart watches”

- ▶ *Shimmel v. Navistar Int’l*

Corp., 440 F. Supp. 3d 438 (W.D. Penn. 2020).

- In a rear-end collision, Plaintiff brought a products liability action against the leasing company and argued that the truck was defective at the time of the lease because it did not have collision mitigation technology.



Nuclear Verdicts

- ▶ More frequent and growing in size
 - For example, in Georgia, the American Transportation Research Institute (ATRI) found 4 verdicts in 2006 that exceeded \$1m.
 - 70 verdicts exceeding \$1m in 2013
 - From 2017 to 2018 the average trucking jury verdict grew by 483 percent
- ▶ No limit on what a jury can do
- ▶ Factors from ATRI Study



Nuclear Verdicts

- ▶ Pre-crash Actions
- ▶ Litigation Preparation
- ▶ Mediation and Settling
- ▶ Litigation strategies



Florida

- ▶ Motorcycle crashed into a tractor-trailer stopped in the emergency lane
- ▶ The tractor-trailer allegedly did not have lights on
- ▶ Significant Injuries
- ▶ Offered to settle for policy limits of \$1 million
- ▶ Condensed Zoom trial
- ▶ Verdict:
 - \$411 million



Georgia

- ▶ Last known pre-COVID-19 trucking trial
- ▶ Tractor-trailer rolled over and killed one man who was walking on the shoulder of the highway
- ▶ The driver of the truck suffered a medical emergency and passed out behind the wheel
- ▶ Defense argued Act of God defense
- ▶ Verdict:
 - \$21 million



Trends

- ▶ Kitchen Sink Complaints
 - Sue Everyone
 - Allege Everything
 - Brokers, Trailer Owners, Maintenance and Repair Vendors, Shippers, Products Liability Claims
- ▶ Medical Treatment
 - Gaps
 - Elective Procedures
 - COVID-19 Exposure



Most Dangerous Interstates for Trucks

- ▶ FMCSA review of recently-released 2018 accident data
- ▶ Ranking of most deadly interstates in rain or snow involving trucks with gross vehicle weight ratings over 10,000 pounds
- ▶ Metric: Fatalities per 100 miles in rain/snow
 - 1. I-85 = 6.1
 - 2. I-95 = 5.7
 - 3. I-75 = 5.3
 - 4. I-20 = 4.7
 - 5. I-77 = 4.4



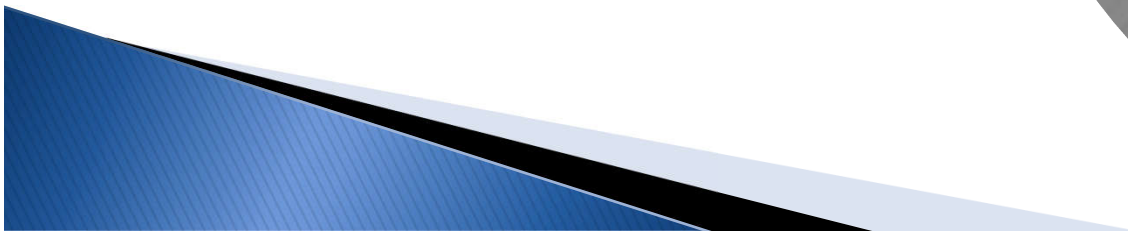
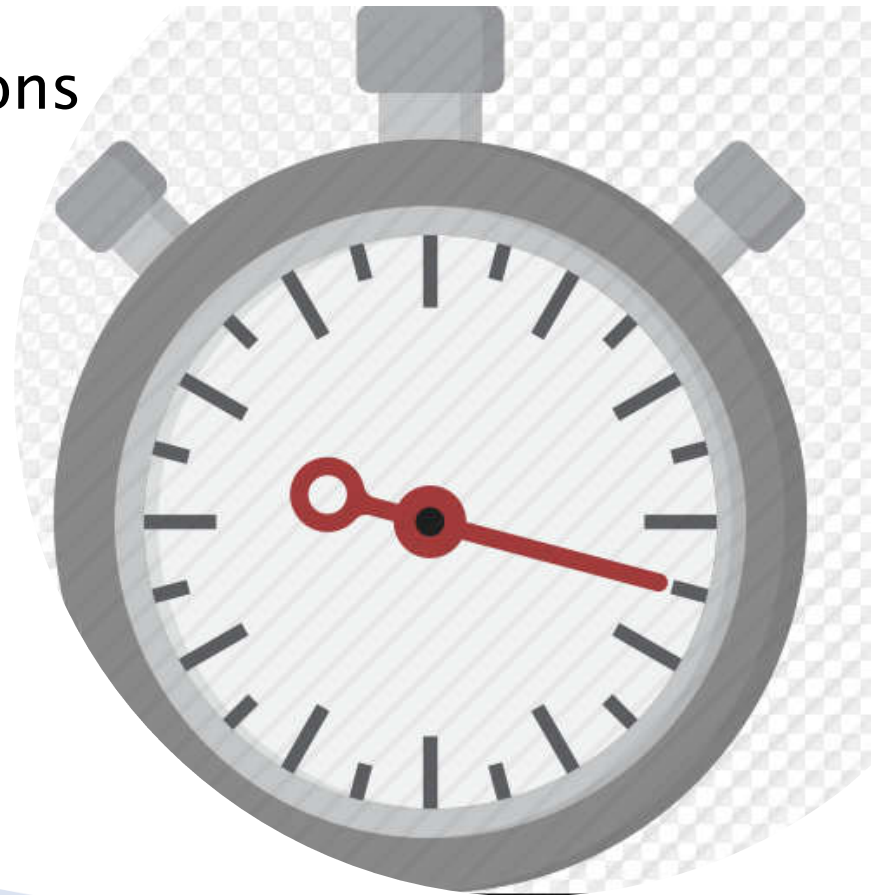
Extortionist Towing Bills

- ▶ What are they
- ▶ What to look for
- ▶ How to respond



Recap: Hours of Service

- ▶ Effective September 29, 2020
 - 30-minute break
 - Sleeper berth exception
 - Adverse Driving Conditions
 - Short-Haul



Recap: Hours of Service

- ▶ In Practice
 - Updates to Policies
 - Uniformity in Drafting
 - Uniformity in Application
 - Post-Accident
- ▶ In Litigation
 - Heightened Standard
 - Use of Technology
 - Plaintiffs' Goals
 - Industry Goals



COVID-19



Accidents While Under Exemptions

- ▶ Exemptions remain in effect until February 28, 2021 or until revocation of National Emergency
- ▶ “Direct Assistance”
- ▶ Crash Reporting if under Exemptions
 - Motor Carrier Must Report Recordable Crash to FMCSA within 5 business days if driver under exemptions. Information Needed:
 - Date of Accident
 - City/Town and State of Accident
 - Driver’s Name and License Number
 - Vehicle Number and State license number
 - Injuries and/or Fatalities
 - Police–Reported Cause of Accident
 - Citations or Violations Assigned to Driver



COVID-19: Impact on Courts

- ▶ What's changed since June 2020?
- ▶ Virtual
- ▶ Statute of Limitations
- ▶ Delay
- ▶ Early Resolution



Preview of 2021

- ▶ Restarting jury trials
- ▶ Changing/ed perception of trucking industry
- ▶ Technology
- ▶ Increased minimum financial responsibility



Next Webinar

- ▶ Broker/Regulatory Year in Review
 - February 24, 2021



Questions?



Presenters



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