

# TRUCKING TIPS

June 1, 2007

Many saw the recent headlines from Dallas. A trucking company was hit with a \$20 million verdict for a 2004 accident. The accident on LBJ Freeway occurred when the tractor trailer plowed into a line of cars, injuring three people, one of whom died several months later.

The award for actual damages in the accident was \$9.7 million; however, the jury awarded \$11 million in punitive damages against the company. The apparent reasoning for the jury's award of punitive damages is a "loud and clear" reminder to companies regarding the importance of consistent and effective hiring practices.

According to the article, the evidence revealed that the driver had cocaine in his system at the time of the accident. The company apparently had never checked the driver's prior driving history, which included a conviction for driving with a suspended license. The company records showed that the company had been cited by DOT for not screening its drivers for drugs. There was also a problem in that the personnel records of the driver were "missing."

The attorney for the plaintiff was quoted as saying the jury sent a message to all trucking companies with poor hiring practice: "They basically said, 'We the people who drive on the highways are tired of this...It's just not right and we won't take any more of it.'"

As has been reported in previous TIPS, the emphasis of plaintiffs' attorneys in recent years has been to focus on the responsibility of the company in hiring, training and supervising its drivers. The recent case is stark evidence of the impact the perception that the trucking company failed or ignored its duty can have on a jury's decision.

The best time to make sure your records are up to date and in good order...is now. Do not wait until there is a reason to have documentation of the required records. If your current driver qualification, personnel and equipment records are not complete, take the time to bring them up to standards. Review the required documentation under FMCS §391, §393, §395 and §396 and implement an effort to bring the documentation into compliance. Be sure you have in place procedures to secure and preserve records when litigation is apparent. Seek assistance, if necessary, to analyze the documentation or to perform audits of the driver's records. Ultimately, you will be in a better position for any defense if the time is spent to confirm your compliance now, rather than to explain your lack of documented compliance before a hostile jury.

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