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From records to admissions

A DEPOSITION TOOLBOX FOR COMMERCIAL-VEHICLE CASES

A commercial-vehicle case is not simply a car-crash case with a larger defendant. Trucks, buses, garbage trucks, delivery vehicles, rideshare vehicles and fleet vehicles often bring a second layer of fact finding; namely, the safety system behind the driver. The system includes licensing, training, dispatch, inspections, maintenance, hours, route selection, electronic data, camera footage and the company rules that were supposed to prevent the crash.

This is why the driver deposition and the corporate PMQ deposition are often the strongest opportunities to establish liability. The objective is not to prove you know the Code of Federal Regulations. The objective is to lock down that safety rules existed, the company knew them (or should have), the driver was expected to follow them, the documents show what rules were not followed, and the violation of those rules cannot be dodged.

The deposition should not be the first time you learn the rules. It should be the place where the rules, the documents and other evidence come together. When done correctly, the witness is not asked for broad conclusions. The witness is walked through the standards, the training, the facts and the failure. This is exactly how you turn a commercial vehicle deposition from a question-and-answer exercise into liability proof.

Start with the rulebook

The first step is identifying which safety rules apply. Do this before written discovery, not after the document production arrives. The rules tell you which documents should exist, who should have created them, how long they should be kept and which topics belong in a PMQ notice.

For interstate trucking, start with the Federal Motor Carrier Safety Regulations. The broad application provision is 49 C.F.R. section 390.3. It requires motor carriers and drivers to know and comply with applicable safety regulations. California also incorporates many federal motor

carrier rules into intrastate operations through title 13 of the California Code of Regulations. (Cal. Code Regs., tit. 13, §§ 1202.2, 1212, 1213, 1213.3.) Do not assume that a case is outside the federal framework just because the trip began and ended in California.

The most common federal rules to know at the outset include these: Commercial driver licensing under 49 C.F.R. part 383 and Vehicle Code section 15250; driver qualification files under 49 C.F.R. section 391.51; prior-employer safety inquiries under 49 C.F.R. section 391.23; annual driving-record reviews under 49 C.F.R. section 391.25; drug-and-alcohol testing under 49 C.F.R. part 382; safe operation rules under 49 C.F.R. part 392; hours-of-service rules under 49 C.F.R. part 395; vehicle inspection, repair and maintenance rules under 49 C.F.R. part 396; and the accident register under 49 C.F.R. section 390.15.

Several specific rules come up again and again. Section 392.3 prohibits operation when a driver is too fatigued, ill or otherwise impaired to safely operate. Section 392.14 requires extreme caution in hazardous conditions. In *Weaver v. Chavez* (2005) 133 Cal.App.4th 1350, 1355-1357, the court recognized that section 392.14 imposes an obligation beyond ordinary reasonable care when hazardous conditions are present.

Section 392.80 and section 392.82 address texting and hand-held mobile-telephone use by commercial drivers. Part 395 addresses driver hours, records of duty status, supporting documents and electronic logging devices. Part 396 addresses maintenance records, driver vehicle inspection reports, pre-trip inspection duties, post-trip reports and periodic inspections.

Do not forget ordinary California rules. Vehicle Code section 22350, the basic speed law, is often more useful than the posted speed limit because it focuses on whether the speed was safe for conditions. Vehicle Code section 21950 addresses pedestrians in crosswalks. Vehi-

cle Code section 22100 addresses turning positions. Vehicle Code section 22107 addresses unsafe turns and lane changes. Vehicle Code section 21703 addresses following too closely. Vehicle Code section 23123.5 addresses wireless-device use. These statutes can be more understandable to a jury than the federal rules, and they often work together.

In a bus or public-transportation case, look beyond the trucking rules. A common carrier owes passengers the utmost care and diligence. (Civ. Code, §§ 2100, 2101; *Acosta v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 19, 27; *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 785.)

Public fleets may also implicate Government Code section 815.2, which makes a public entity liable for torts committed by employees acting within the scope of employment, subject to applicable statutory defenses. Transit agencies may have Public Transportation Agency Safety Plans and safety-management-system records under 49 C.F.R. part 673. Passenger carriers, charter-party carriers and tour-bus operators may also be regulated under the Vehicle Code, Public Utilities Code and California Highway Patrol terminal-inspection rules. (Veh. Code, §§ 1808.1, 34500, 34501, 34505; Pub. Util. Code, §§ 1031, 5381.)

The point is not to cite every rule in the complaint. Rather, it is to know which rules fit the facts. A regulatory violation may support a negligence presumption, further strengthening your liability theory. The California Supreme Court has also recognized the use of safety statutes and regulations in civil cases. (See *Elsner v. Uveges* (2004) 34 Cal.4th 915, 927-928.) But even when negligence *per se* is not the end of the analysis, safety rules are powerful because they define what the company and driver were supposed to do under the circumstances.

Let the rules drive discovery

Commercial-vehicle discovery should be written from the rulebook backward. If

the regulations require a document, ask for it by name. If the company claims the rule does not apply, make it say so. If the document is missing, that may become part of the deposition.

Start with a preservation letter. Demand preservation of the vehicle, camera footage, electronic control module data, event data recorder data, GPS and telematics, electronic logs, dispatch communications, phone records, driver-facing and forward-facing video, maintenance records, inspection records, accident-investigation files, photographs, incident reports and post-incident repair records. Camera systems and telematics can overwrite quickly. Buses often have multiple interior and exterior camera angles. Those angles may show far more than impact, such as mirror checks, hand position, speed, lane position, passenger movement, the driver looking down, a phone on the console, an earbud, a late signal or the absence of any emergency response.

Then serve targeted requests for production. Boilerplate requests are not enough. The production should let you reconstruct the driver, the vehicle, the trip and the company safety system.

- The driver. Request the driver qualification file, employment application, commercial driver license, endorsements, restrictions, medical examiner certificate, MVRs, annual reviews, prior employer safety inquiries, road test records, drug and alcohol testing, prior crashes, citations, out-of-service orders, discipline, performance reviews, safety scorecards, training records, remedial training and any documents the driver received about company safety rules.
- The hours and trip. Request electronic logging device data, records of duty status, supporting documents, fuel receipts, toll records, weigh station records, gate logs, bills of lading, dispatch records, route assignments, delivery schedules, appointment times, load tenders, rate confirmations, trip sheets, manifests, cargo weight, gross vehicle weight and communications about delays, time pressures or incentives.

- The vehicle. Request maintenance and repair records, pre-trip and post-trip inspection reports, annual inspections, defects, corrective action, recall notices, tire records, brake records, lighting records, owner manuals, maintenance schedules, ECM or EDR downloads, GPS data, telematics, hard-brake events, speed data, safety-system alerts, camera footage and documents showing preservation, download and analysis of electronic data.

- The company. Request policies, procedures, driver handbooks, training manuals, safety meeting materials, attendance records, accident registers, prior similar incidents, safety complaints, internal investigations, FMCSA audits or compliance reviews, SMS/CSA materials, organizational charts, fleet safety roles, hiring criteria, termination criteria, broker or lease agreements, operating authority, corporate relationships, insurance policies and post-incident discipline or policy changes.

- The public-entity or bus system. Request route sheets, run cards, dispatch audio, radio logs, bus operations control communications, incident reports, camera retention policies, bus maintenance records, operator training records, remedial training, Public Transportation Agency Safety Plans, safety management system records, terminal-inspection records and documents showing who was responsible for safety, training, maintenance and post-incident review.

In rideshare, delivery and app-based cases, the same method applies even though the regulatory framework may differ. Request app trip data, GPS traces, driver-app communications, acceptance and cancellation history, background checks, driver onboarding materials, vehicle inspection documents, phone-use data, prior rider complaints, deactivation history, safety policies and any communi-

cations between the platform and driver before or after the incident.

Interrogatories should fill the gaps. Ask the defendant to identify the person responsible for preserving each category of data, the retention period, the system used, whether the data was downloaded, who downloaded it, who reviewed it and what was lost or overwritten. By the time the deposition begins, there should be no mystery about what was produced, what should have been produced and what is missing.

Use the expert before the deposition

A trucking or commercial-vehicle safety expert should not be saved for the end of the case. Retain the expert early enough to review the production before the driver and PMQ depositions. The expert can identify code violations, missing records, data that should exist, inconsistent logs, incomplete inspections, inadequate training and facts that a non-specialist may miss.

Provide the expert with the police report, pleadings, discovery responses, produced documents, video, photographs, vehicle data, maintenance records, training materials, route materials, phone records, maps, and any applicable rules. Ask the expert to focus on two practical questions: what is missing, and what admissions matter? Sometimes the problem is simple: The company produced proof that the driver attended training, but not the training materials themselves.

Use that analysis to refine the deposition outline. For example, if the logs show a driver worked consecutive long days, the deposition should not merely ask whether the driver was tired. It should establish the hours, the schedule pressure, the company monitoring system, the supervisor who could see the violation, and the absence of intervention. If the driver claims a pre-trip inspection was done but there is no DVIR or defect record, the deposition should establish what the inspection required, what was checked, who trained the driver and how the company verifies compliance.

Turn production into exhibits

The strongest commercial vehicle depositions are exhibit driven. Do not walk into the deposition with a long topic

outline and hope the witness gives you what you need. Walk in with the rules, the documents and the video in the order needed to prove your theory.

The California Commercial Driver Handbook is often one of the best exhibits. Federal regulations require a state to provide an FMCSA-approved commercial driver manual to commercial driver's license ("CDL") applicants. (49 C.F.R. § 383.131.) The California handbook contains practical safety rules that jurors understand, like look far enough ahead; check mirrors; signal early; maintain space; manage speed; recognize hazards; and avoid distracted driving. The handbook is not a substitute for the statutes and regulations, but it is a direct, practical admissions tool. Use it this way.

First, establish that the driver obtained a CDL, studied the handbook, passed a written test and passed a driving test. Then establish that the handbook teaches safe operation, not paperwork. Then tie the rule to the crash. If the driver agrees, you have the standard and the violation. If the driver denies knowing the rule, you have a training and qualification problem.

Company materials are just as important. Thin training materials can show the company did not meaningfully train on the hazard that caused the crash. Detailed training materials can show the driver was taught the rule and violated it. Either way, the materials help. A one-page sign-in sheet for annual safety training means little unless you also have the curriculum, slides, videos, quizzes, handouts and trainer. Request them and use them.

Video should be broken into usable pieces. Create stills from the key moments, such as when the hazard first appears, when the signal should have been activated, when the driver should have checked the mirrors, when the pedestrian enters the crosswalk, when the vehicle passes the last safe stopping point, when the turn begins, when the driver looks away, when the speed changes, when the brake lights come on, and when the collision occurs. The stills make the deposition cleaner. They also prevent the witness from hiding behind a fast-moving video.

For a bus case, use the multi-view

angles. An exterior camera may show the traffic hazard. An interior camera may show the driver looking down, checking mirrors or failing to check passengers after impact. A driver-facing or front-interior camera angle may show whether the driver was using a phone, wearing an earbud, eating, looking at paperwork, or otherwise distracted. If a bus operator says, "I looked," the video may show whether that is true.

For a right-turn tractor-trailer or garbage truck case, the exhibit order may be: CDL, handbook turning rule, company turning policy, driver training record, route map, video stills, damage photographs and post-incident review. For a fatigue case, the order may be: hours-of-service rules, ELD records, supporting documents, dispatch communications, delivery deadline and company policy. For a maintenance case, the order may be: DVIR, defect report, repair order, annual inspection, post-crash inspection and PMQ testimony on how defects are supposed to be corrected before dispatch.

Build admissions, not topics

The deposition outline should be organized by admissions, not by subject headings. A topic is "training." An admission is, "The company has no document showing this driver was trained on hazard recognition before this crash." A topic is "speed." An admission is, "Even if the speed limit was 45, a safe commercial driver must reduce speed when visibility is blocked and traffic is stopped ahead."

Start with the easy safety truths. A commercial vehicle is larger, heavier and harder to stop than a passenger car. It can cause serious injury or death. It requires special licensing or training because it is different from an ordinary car. A safe commercial driver must know what is around the vehicle, look far enough ahead, check mirrors, use signals, manage speed, leave space, watch for pedestrians and avoid distractions. Most witnesses will agree. If they do not, the answer may be more useful than an agreement.

Then move to the specific rule. Do not ask, "Were you negligent?" Ask the building blocks:

- You were trained that a commercial driver must look far enough ahead to identify hazards

before they become emergencies?

- You were trained that mirrors must be checked before and during a lane change?
- You were trained that a driver must reduce speed when conditions make the posted speed unsafe?
- You were trained that you should not begin a turn unless the path is clear?
- You were trained that, after a collision involving passengers, the operator must assess passenger safety and request emergency help?

Only after the witness admits the rule should you show the fact that proves the violation. Use the video, still image, log, policy, or inspection record. Then ask narrow, specific questions tied to what the witness can see: "That is your bus, correct?" "That is your right hand?" "That is the phone?" "That is the pedestrian in the crosswalk?" "That is the vehicle in your blind spot?" "That is your speed?" "That is the amount of time you had been on duty?"

The best admissions usually sound simple:

- The pedestrian had the right of way.
- You never saw the pedestrian before impact.
- If you did not see what was visible, you were not keeping a proper lookout.
- You did not know the weight, length or stopping distance of the vehicle you were operating.
- You cannot identify any document showing you completed defensive-driving training before the crash.

Do not let a stipulation to liability stop the deposition from building damages and direct negligence. In serious commercial-vehicle cases, admissions about training, safety, supervision, inspection, fatigue, distraction and post-crash conduct may matter to allocation, punitive exposure, public-entity evaluation,

settlement value, witness credibility and the jury story. If liability is admitted, the deposition can still establish the seriousness of the impact, the forces involved, what the driver saw, what the driver failed to do, what the company knew and why the crash was preventable.

The PMQ deposition

The corporate deposition should not repeat the driver deposition. The PMQ deposition is about the safety system. The company should be prepared to testify about applicable rules, driver qualification, training, supervision, dispatch, maintenance, inspections, electronic data, camera systems, retention policies, post-incident investigation and corrective action.

Use the PMQ to connect the missing dots. If the driver says he never reviewed the policy, ask the PMQ who was responsible for ensuring review. If the driver cannot define defensive driving, ask the PMQ whether the company contends he was adequately trained on it. If the driver did not know the vehicle weight or stopping characteristics, ask the PMQ whether that knowledge matters to safe operation. If the company produced no training curriculum, ask whether any exists. If none exists, ask how the company proves the training occurred. If the company produced a curriculum, ask where the driver deviated from it.

The PMQ is also where corporate control is proven. In trucking and delivery cases, defendants often try to separate the driver, tractor, trailer, broker, shipper, dispatcher and motor carrier. Request the contracts, load tenders, dispatch communications, lease agreements, interchange documents and insurance agreements before the PMQ. Then ask who controlled the load, route, schedule, equipment, driver qualification, safety monitoring and post-incident investigation. Liability can turn on who had the power and control to prevent the unsafe conduct.

Defensive driving is the safety frame

Defensive driving should be its own section of the deposition, not an afterthought. It is the concept that ties together the rules a jury already understands. A commercial driver is not supposed to

drive only for the perfect condition. The driver must anticipate foreseeable hazards, recognize danger early and avoid putting other people at risk.

This matters because commercial vehicles are heavy machines. A bus full of passengers, a garbage truck in a crosswalk, a tractor-trailer turning right, a delivery truck backing from a dock, or a rideshare driver looking at an app can harm people quickly. A trained commercial driver should know that other drivers make mistakes, pedestrians enter crosswalks, bicyclists appear in blind spots, traffic backs up, visibility becomes blocked and passengers can be injured by sudden braking or impact. Defensive driving is the practice of seeing those hazards early and adjusting before the emergency.

The questions can be direct:

- Defensive driving means you do not wait until a hazard becomes an emergency before reacting?
- A safe commercial driver looks for hazards before the vehicle reaches them?
- A safe commercial driver reduces speed when sight lines are blocked?
- A safe commercial driver expects pedestrians at marked crosswalks?
- A safe commercial driver knows a large vehicle needs more time and space to stop?
- A safe commercial driver checks mirrors before and during a turn because blind spots can change as the vehicle moves?

If the driver understands defensive driving, tie the concept to the facts. If the driver does not understand defensive driving, tie that failure to the company. Either the driver was trained and chose not to follow the training, or the company failed to train the driver on a basic safety concept. Both paths help the case.

Conclusion

A strong commercial-vehicle deposition is built before the witness is sworn. Know the rules. Use the rules to write discovery. Get the records and electronic data. Have a safety expert review the production. Convert the production into

simple exhibits. Then take the deposition by admissions, not topics.

Commercial-vehicle cases reward preparation because the evidence usually exists somewhere in the handbook, in the company policy, in the ELD, in the camera system, in the inspection file, in the dispatch message, in the training record, or in the absence of a record that should exist. When the deposition ties that evidence to the rule the defendant was supposed to follow, liability becomes clear and straightforward. 

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