Are you prepared?

I recently had the opportunity to attend a couple of informative webinars and read some great articles on the current trends we are seeing within the trucking industry, with regards to severe collision cases, particularly in the litigious US environment.

Over the past several years it has become evident that the outcome of trucking cases is being driven by three factors – the venue of the trial, the plaintiff lawyer(s), and the 'anger' factor which is geared towards the driver and the motor carrier. The facts of the incident are often ignored by plaintiff lawyers as they focus on sending a message to punish the truck driver and their employer for blatantly disregarding the rules and regulations, despite the fact these violations usually have nothing to do with the actual incident. Defense council must drive home the fact the incident was not the fault of the driver or the motor carrier and hope their message is heard above all the noise of the other unrelated issues.

A simple example would be a driver doing everything they are required to follow the rules of the road, whether it be driving properly or operating their vehicle in a legal and current manner. Then a third party simply loses control of their vehicle and collides with the driver's vehicle and there are possibly severe injuries or maybe a fatality. One would believe the driver is not at fault for the incident as it was the third party that collided with the driver.

It would appear there is little to no liability on the part of the truck driver. However, the jurisdiction can play into the next steps with some regions being more litigious than others, this is the first factor.

The plaintiff lawyers start digging into the driver's and the company's history. They will research and request specific documents on the driver's driving history and may find past violations, speeding, maybe a prior collision or two, minor in nature but still relevant to their search. These become 'warning signs' with more questions asked of 'what the company did to address these past behaviours'. 'Why was the driver hired', 'what training was provided', 'were corrective actions implemented', etc. Plaintiff lawyers will use this information to escalate the concerns of whether this driver was qualified to operate the vehicle or whether the vehicle was mechanically sound and fit for road use. If the driver were not properly qualified, or the vehicle mechanically unfit then the driver or the vehicle should not have been where they were at the time of the incident, and the third party would never have come in contact with the vehicle. This is the second factor.

'Anger', this is the third factor. Anger against the driver and the motor carrier which distracts the jury from the true nature of the collision. This is known as the 'reptile theory'. The strategy relies on the 'Triune Brain' concept of neuroscience, engaging the most primal part of a juror's mind to provoke the feeling that if a defendant's actions are allowed to continue, then the community and even the jury itself may be in danger.

The value of the outcome could be less about economics and more about injury or fatality and the desire to make an example of a company and their driver, who may not have been the person at fault for the collision.

This builds the case for your company to make more than certain that each driver is fully qualified, they meet or exceed your hiring policies, their driving records are pristine, and they continuously receive coaching and training. The equipment they operate must be well maintained and service intervals are diligently met. All processes need to be documented in full detail and up to date, with a review process to confirm all is as it should be.

SUMMIT RISK SOLUTIONS INC.

John Farquhar
Risk Solutions Specialist
John@SummitRiskSolutions.ca
www.SummitRiskSolutions.ca