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Sat, 6/19 9:01PM 1:03:46

SUMMARY KEYWORDS

truck, driver, case, plaintiff, truck driver, drive, required, accident, company, vehicle, issues, hours, rules, important, georgia, deal, request, preservation, exception, negligent hiring

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Everyone, it's good to see you. My name is Alex Weatherby, I'm very glad that you're here to listen to this presentation, which is titled How to litigate a truck wreck in Georgia, a little bit about me so that you know who I am and who's talking to you for the next hour. I am a first generation lawyer, my dad as a plumbing contractor here in Georgia. And I'm a seventh generation Georgian. When I got out of law school, I immediately started practicing in truck wreck stuff. And so I've had 11 years of prior experience. And I do it on both sides of the aisle. So I represent some of the largest trucking companies in the country. And then I also do the plaintiff side. I know that's a little bit different now than a lot of people are just fully plaintiffs are fully defense. But I think iron sharpens iron, it's very nice for me to be able to see one side and then see the other through my plaintiff side and 2018, for example, I had a wrongful death verdict of a little over $27 million. So I do know how to try a case if I need to get it done that way. And I am the lead counsel for a number of Fortune 100 companies here in Georgia. So I don't try to say that to brag about myself, but but just to let you know a little bit about who you're going to be hearing from today over the next hour. I also other than being a lawyer, I'm just a normal human like you. I have two little children that are pictured here, civil and Elise, and my wife, sage, and we live in Georgia. So just like you I practice law, but I have a full life. So a little bit of an overview of the course. Where are we going to go today? Well, I like to say truck accidents from stem to stern, that really is a boating term. But really, I could say I guess truck accidents from hood to trailer hitch. I mean, we're gonna go from the from the top to the bottom today. And it's going to be obviously just an overview of the law of truck wrecks, because we're only doing one hour. And you can practice law in this area for 11 years, like me, or 40 years and still learn something new each day. So the first topic we're going to discuss is the first call and the initial investigation. When you're on the plaintiff side, and you get that first call, hey, I was injured in a truck accident. What do you do the same thing when you get a call from your company that says, I've just had a terrible accident, and I need your help. There are things that we need to do really fast at the beginning. Once you get

through the initial or pre suit investigation, it's time to start thinking about pleadings. The plaintiff is going to be thinking about what claims Am I going to serve? Are there any unique Truck Accident issues and a unique Truck Accident laws? The defense is also going to be thinking about what are their unique defenses that I'm able to assert. In this case. Once we get the pleadings, we're going to do discovery. It's the same type of rules that we use in any type of discovery lawsuit case. But there are some interesting issues. And one of the main things is going to be is the discovery reasonable and necessary. Whenever you're dealing with a big company. On the other side, there's a tendency to try to just do a shotgun approach. I think that actually a sniper approach is a better way for you and your case. Expert issues, experts are huge in truck accident cases. Because if you're anything like me, you don't have a CDL license, and you don't know how to drive a truck. So you need someone who can talk to you about what are the rules, how breaks, are they within the standards? Was the truck in service or out of service was the driver doing what he's supposed to do? Common legal issues, we're going to talk about the common legal issues that arise. Now while this course is primarily for Georgia attorneys, and that's going to be the law that we focus on some of these principles will apply nationally. Because as you're about to find out, trucks are international Lee regulated by the federal government.

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Every good lawyer needs a disclaimer and this is the last part of opening part of the presentation. The world of trucks is very complex. Please do not just listen to this one hour video and then sail off on filing your lawsuit without getting any help make sure that you've studied all of the rules that I talked about today. Remember, practicing law is a practice and I can't teach you everything about truck wrecks in the next hour. I don't even know everything about it, but I can teach you where to find. And you can always call or email me anytime, my email and phone numbers at the bottom of each of these slides, and I'm happy to answer any question for you, or help you find the answer. So the first call and initial investigation, what do we do? What do we do? And I want you to take a few moments and think about what are the first things that you would do in one of these cases. And because we're not in person, I have a little theme music for us to listen to, to help us briefly think.

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All right, so now Alex Trebek would come on and say, Show me your final answer. So these are the actions that you need to do when you get the first call. You need to be thinking about a preservation letter. What are you going to send? And in order to do that, as we're going to talk about in just a little bit, you're going to need to know what exactly the rules are that apply to truck wreck, so you know that the unique documents you're going to have, you also want to send open record, request the 911, to police involved, so that you can figure out what exactly does the police officers say happened? And are there any witnesses that either called 911, or talk to the

officers that you can give a ring to, I'm not going to go over the open record requests, because you'd likely do that in your own practice already. Then you're going to marshal evidence, particularly on the plaintiff side, you're looking at your evidence that you can get for injuries and things like that. And on the defense side, you're going to be looking at things from trying to figure out what exactly happened with the truck and stuff like that. And then you'll be monitoring treatment. So in order for us to figure out what we ask for in a preservation letter, we need to know what evidence is important in a truck case. You may already know this, but starting big picture, the Federal Motor Carrier Safety Administration, they are the arm of the US Department of Transportation that regulates trucking governments, they have huge amounts of regulations, they're voluminous, there is no way I can talk to you about all of them today, but you need to know that they're out there. And then if you're dealing with a truck wreck, it's likely that one of their regulations is going to apply. The regulations are accessible for free on the D o T's website, you can go to this link. And you can read all 100 parts of the Code of Regulations if you'd like to. Because I can't go through all of the regulations, I do want to talk about some commonly litigated ones that way, you know, to ask for this stuff in a preservation letter and to preserve this stuff, if you've got a serious truck accident on the defense side. And that's to deal with licensing. Obviously, there are unique licenses that apply to truck drivers, hiring and training. Unlike when you were I hire an administrative assistant or a paralegal or associate there's no requirements by the bar of looking for a written application, having it under oath getting a medical exam, but a truck driver is different drivers hours of service, there's a limit to how much a driver can work and how long they can drive for a day. And for a week, we're going to talk about that drug and alcohol is also a regulation that has to be thought through because you are a truck driver, you obviously can't drive impaired, there are unique rules that truck accident companies have to follow with that. And then inspection and maintenance of a tractor trailer that's also dealt with. And so unlike me, are you who maybe you go get your rolls changed every 5000 miles, maybe you don't. There's regulations that deal with a truck accident. So let's go through each of these licensing first. Obviously, a CDL license is required, and that's a special permit. And then underneath there, there's different sub parts if you want to have to drive, you know, explosive chemicals and things like that. And each state has additional criteria as well. One partition fairly interesting rule is the age requirement. So a person has to be 18 years or older to drive intrastate. So in other words, I can't leave the state of Georgia, I have to be 21 or older to drive interstate. So I'm going to go across the state lines. And there's a written exam. This is particularly important because there is an actual manual that's available online that talks through all of the things that a truck driver must answer on a test. Obviously, that's very important information for any Truck Accident Attorney to have, you want to see if your deals with backing, what does the manual say about that? left turns, parking, hours of service, all those things that a truck driver, by law is required to know. For example, and you know, we're talking about licenses. So the book has particular deals with licenses, for example, you can't do falsified information. And if you figure it out, then that person's disqualified from driving by the state. But again, it deals with all kinds of regulations.

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There, there's a road skills test, just like you were completed, but it deals with a commercial vehicle. And this is also important, because there's a road skills test, there doesn't necessarily have to be one with the hiring and training that we're going to talk about. Next, a lot of lawyers get that wrong. Then there's a medical fitness exam, every driver has to pass a medical exam that says, I'm okay to drive. And it's pretty intense, you fill out an entire form saying whether you have any issues with health history, and then you also go through a physical exam. So this can be particularly helpful in two ways.

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if you suspect the driver may have a physical disability that led to the issue, or to if you think that you're actually being sued by a truck driver, and this has happened to me, in a case where the truck driver was suing one of my clients, and I'll call this truck driver, Mr. s. And he was claiming totally disabled, back pain. We had him at his deposition, saying I haven't been able to work, couldn't work, couldn't lift a finger couldn't work at Walmart, all of those things that you go through in a deposition. And then later, we discovered his medical fitness exam. And in order to have a medical fitness exam and pass it to be a truck driver, you obviously can't have debilitating neck or back issues. And so he had certified that he had no neck or back problems. So it's a very important document to determine to get a handle on whenever you're on a truck accident, either on the plaintiffs or the defense side. So what are the licensing requirements mean for that initial call? Well, you want to do ask that the medical examiner certificate the preserve the CDL license be preserved. And you want to review the materials that are available to you through the Georgia State website that says hey, this is exactly what a truck driver is, takes a test on when backing when braking, etc. Whatever the facts are, in your case, this will give you an idea of what the standard of care. So a few times throughout this presentation, we're going to do real world examples. These are obviously things that I've just come up with as as fact patterns. So that hypothetical so that we can talk about that a little bit. So Mr. Young is driving a truck from Alabama to Georgia, and he's hauling co2. he crosses state lines, his insulin level drops, he passes out and crashes into a passenger vehicle. Where does our lawyer brain go with this? So the first thing we want to look at is is co2, one of those types of chemicals that requires an extra pass on your license, an extra endorsement? The answer is yes. Then we want to look at his age. It just says that he's young, but is he old enough to drive from Alabama to Georgia? And then we have the insulin level. Was this revealed on the CDL medical exam? Was and if so, what was he doing to maintain? So we can see how licenses can come into play and any in a particular truck accident case. hiring and training This is generally a big issue of contention. The application is required to

be written, the federal law requires it to be written. And it requires us to include particular things that can be very useful in determining if this driver was fit to drive a truck. So we have three years of prior addresses, we have a list of current, or former CDL that you've had, like, if you moved from Texas to here, you got to have your prior employers, if you've driven a truck, it's up to 10 years, and the written application is certified. So you've got to tell the truth, obviously, with nonparty request, and we'll deal with that when we talk about discovery. But this is a treasure trove, potentially, of information. Where's this truck driver, where they go and where have they been? Were they a good fit? The application stage also triggers an investigation by the truck company at the time the driver was hired. So the truck company has to do their due diligence. And that requires an MVR record from the state. So we've got to ask the state, Hey, does this person drive have they had any accidents, things like that, then we also have to talk to the DLT covered employers for the prior three years. And generally, you will send them some type of written request, what I've seen most often like a fax and email, something like that, that says, Did you employed this drive? Or are there any accidents are there any alcohol or drug issues, but it could be an oral request with just a notation that's also permitted. These documents could be important to your case, obviously, on the plaintiff or the defendant side, so you want to preserve the application and the investigation.

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In addition, you're going to have an annual inquiry. So unlike ourselves with with our jobs, we don't have an annual and great to see a again, I still drive my vehicle. But if you're a truck driver, you do. And it's two things. One, the truck company is going to ask the state for an MVR report updated One, two, the driver themselves is going to certify if they've had any issues, obviously, both of these are very important to determine whether there are any issues, and was the truth told about these issues. Those inquiries in our experience can be important, and they should be included in your preservation. We mentioned this a little bit a moment ago, I talked about it. But a road test is actually not generally required by a carrier when they are hiring and drive. And that's because you pass a road test already when you've got your CDL. And this is straight out of the statutory code. It's on your slides. But basically it says that if you can present a valid CDL license, then you don't have to give a road test. That said, Some employers still will perform a road test. And those can be important to preserve. For example, we had a case where we're on the plaintiff side, and it dealt with a backing incident. So the truck driver had backed up into our client's vehicle while the client was still there in a parking lot. That obviously was not what was supposed to happen. When we pulled the road test by the employer. What we saw is that the employer had noted unsatisfactory with the back incident, is that going to fundamentally change the case? No, but it is a good fact, to say, hey, this guy has a problem with back address driver qualification file. This is very important and should be included in any preservation request and preserve it. And you've got notification of it as the lawyer and the driver qualification file is by statute and it has to include the application, the MVR, a road test or a copy of the license, those yearly increase we

were talking about in the medical examiner certificate. So by including a driver qualification file, that term of art, you will encompass all of those things that we've just talked about. So that is a very important thing for you to include on your request. So in addition to hiring, a lot of times, folks will raise the issue of training. Training is actually not generally required. And that's in the state of Georgia. Maybe another state has something different but the state of Georgia There's this this case, Ortiz that's in your slides, but it says, quote, the Federal Motor Carrier Safety regulations generally do not require trucking companies to train their drivers in quote. So, most of the time, for my cases, unless there's something glaring, I'm not going to try to go down the rabbit hole of negligent training on the plaintiff side, it just doesn't add much to it, there is an exception for entry level drops. And that's drivers with less than two years experience. But even then, the Federal Rules just requires some very small amounts of training that are written in your slides. And it doesn't require you to do in depth training, this person is certified by the state to be able to drive a truck, that's why they have a CDL license. That said, some drive some companies still perform the training. And so it should be requested. If you think driver training is going to be an issue. I just don't know. And we'll talk about this when we're dealing with the pleading section. But whether you really want to stick your flag in the ground at training on a case like this. So let's go through another one of those hypotheticals or what I'm calling real world examples. Driver MC drivers and as operating a bus, and he's a recent hire for Marta, the Atlanta bus authority. He had previously drove for Greyhound, Atlanta charter bus in the cab county school systems, while driving the bus, he rear ends a passenger vehicle. So what issues does our lawyer brain spot here?

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The first thing that I spot is that this information must have come from the driver qualification file. That's how we would know. That's why you want to request because then you're going to be able to trigger Was there any issues with Greyhound Atlanta charter to cab County? Are there any issues with rear ends, those passengers of vehicles there. So this can kind of show you how a driver qualification file can lead to some very important information. The drivers hours of service This is one of the most hotly contested issues a lot of times, but really they come into play when there's some type of fatigue factor. So if your case just deals with like I was talking about a parking lot incident or something like that, probably the hours of service are not that important. But if it deals with somebody falling asleep on the wheel on the interstate, we've also dealt with those cases, that obviously makes logs more important. So there is a rule specifically governing what are called hours of service. And they deal primarily with two issues. One, how long can the drunk driver operate a vehicle on a particular day? Two, how long can they operate on a particular week. Now, calculating this stuff is kind of like when you first learned how to calculate 30 days to reply to a complaint. And you have to remember the plus three of the weekends and the holidays. There's all kinds of exceptions and ways that it gets extended, things like that, that we can't cover them all today, but we're going to talk about kind of the big ones. So first, let's deal with the limits. And then we'll deal with some exceptions that you need to be aware of. So first, there's a 14 hour

driving window left. That's not 14 hours, you can drive, it's 14 hours you can work. So if I come to work at 7am, as a truck driver, I'm not going to be able to drive anymore after 9pm. It's a 14 hour driving window. In addition, the drivers required to take a 10 consecutive hour break after that 14 hour period. So in other words, if I go off duty 9pm That evening, I'm going to have to take a break, at least until 7am that next morning, my math is right. So also with these rules, it's important for me to mention that we're dealing right now with property carrying So in other words, trucks carrying materials versus trucks carrying people or buses carrying people like that Greyhound example, those are still cdls but they have a little bit different rules. But most of the time we're dealing with property carrying issues. We're gonna find on that, Okay, so we've got the 14 hour period for one day. So now, during that 14 hour period, you were allowed to operate your truck to actually drive for 11 hours. So we can drive for 11 of that 14, if I go seven in the morning, the nine at night, that's my hours on duty, and then I can drive in that time, 11 hours. Obviously, just like us, when we go on vacations or something like that you're not operating your vehicle the entire time while you're driving, you're going to be taking breaks, things like that. Sometimes for long haul truck drivers, they can really get going for a while. And so there's another rule that says after eight hours of driving, we have to have a 30 minute rest break. After eight hours of driving, we have to have a 30 minute respirate. And that could be a 30 minutes of eating lunch or, or things like that, it could be a 30 minute nap, whatever you want. And that regulation is in 390 5.3 of the federal rules. So we have the 14 hour day limit the 11 hour driving limit. Those are the primary limits for property care and vehicles, dealing with hours of service. On a daily basis, there's also a weekly limit. And that's 60 hours for a seven day a week employer for 70 hours for an eight

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excuse me 70 hours for eight days, or 60 hours for seven days, the way that you determine that is the 60 hours applies to drugs, companies that only run six days a week, let's say you're off every Sunday, if you're an every day, a seven day a week truck company, then you have the 70 hour limit. So the hours are adding this is on duty hours. So I can't have 14 hours for seven days in a row, I would Eclipse that 6070 hour limit. So these are weekly limits. That said they don't go from Sunday, to the following Saturday. That's not how it works. It's seven days counting backwards or eight days counting backwards and depending on if you're in the 60, or the 70 hour limit. So there's an example in your slide where we've totaled this up for a company that's running on the eight day limit. And so what you can see from this example is on Sunday, if you're looking at it at slide 34. But on Sunday, there's zero hours that the person is on duty, but then by the time they get to the next Sunday, they've already accumulated 67 hours. So once that Sunday with the zero, the first one knocks off, you're only going to have three hours of time left for that Monday. So it's probably time to take a break. A lot of times there'll be a 36 hour reset, which in other words, if I've got all the way up to 70, I can go 36 hours and do a reset and that resets my entire limits 100 air mile exception. So now we get to sort of some of the exceptions that deal with these hours of

service, the 100 air mile exceptions basically, if you take a point, and you draw a big circle around it for 100 miles 100 air miles as the crow flies all the way around, you can fit within this exception. And that is that if a driver goes to that spot, and then returns to that spot each day, and does not go outside that 100 air mile rule, then they don't have to keep a log book. And what your logbook is going to say and we've got an example of one in a moment, but what it's going to say is you're going to have a chart that says on duty down driving down off duty and it kind of they draw it out, or a computer more likely now draws it out a very time consuming for people and then you've got to keep up with the paper and things like that. So if you're in the 100 air mile exception, you don't have to do those logs, you were still subject to coming back to work within 12 hours. So you've got to go from your office back to your office within 12 hours and stay within that 100 miles

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to qualify.

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You're also still subject to the 10 hour off duty requirements and the 11 hour driving requirements. So it shortens the driving window from 14 to 12. But still the other windows are going to be the same. There's another exception which is called the 16 Our short haul exception. What this exception does is it allows you to go up from 14 to 16, once every seven consecutive days. So it we're starting to sound like an algebra problem here. But once you get a real fact pattern, you can see, okay, I'm allowed to extend it this once have I done it seven prior days, to take advantage of this, there's still specific things you're going to have to do, you're gonna have to leave and report from that same location, that same dot for that day and the five prior days, you still got to be off your 10 hours, you got to be released from duty within the 16 hours. And you can't use that exception, more than once in that period. Can't use that exception more than once in the seven prior days, you can obviously use it, you know, in the next seven reset. Another commonly litigated one, we had a one that we were litigating back a few years ago from the snow again, and if y'all remember when the ice just covered up Atlanta, and nobody could get home, people were walking, you know, back home. This came up a lot. And that's the adverse driving condition exception. And that's if there's unexpected adverse conditions while driving, it can be traffic, it can be that hellish ice storm, things like that, then you can add two hours of drive time during your 14 hour period. So the 16 hour exception applied to the length of time on duty, this exception applies to the length of time drive. So what we need to have for this exception is one it's unexpected at the beginning of the run into it occurs then the original 14 hour period, so it's not going to save you if you're already for over 14 hours, then. This is an interesting one. So I thought that I would bring it up is that there was a Coronavirus exception. And it affected everything it also affected trucks, as you may recall, were was a big concern at the beginning that we weren't going to have enough food on the shelves and things like that. Most of that is brought

by truck companies. And so the Federal Motor Carrier Safety Administration, they said okay, we're going to temporarily provide hours of service relief for this, it also happened by the governor in the state of Georgia. So all of the things we've been talking about, deal with property carrying motor vehicles. And there are different rules for passenger carrying some of those apply, some of them don't. But the general rules, I don't want to get too mathy here. So I'm just going to go over this very quickly. But the general rules are 10 out no more than 10 hours of driving, following eight hours off duty, no more than 15 hours on duty following eight hours off duty and the 60 to 70 weekly limits that we talked about for that seven and eight day periods. So you switch with the driving hours and the on duty hours, as well as the off duty requirements. But the same kind of concept applies that hey, I've got to be off duty or on duty for a particular amount of time. So I promised you a copy of the logbook. And on slide 40, you can see this. This is one of the older logs of the paper logs. And as you can see, there's different things there's off duty sleeper berth, driving on duty. And what you would traditionally see is a line that's drawn, that shows how many hours you're doing those things all the way till the end, and then a total at the end. A lot of times, drug companies now the more sophisticated ones have switched to an on board device that keeps up with the locks. Now, as you can imagine, particularly if you're a big truck company, this is a lot of paper, every driver is feeling dealing with this thing every day. So you were required to keep logs only for six months, only for six months. So that's important because in your preservation letter, you want to ask for the driver daily logs. If you think at all there might be an issue or I guess I shouldn't shouldn't say if you've foreclosed that this is not an issue

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you want to ask. And particularly the logs are going to come into play if you think the driver is driving too much and perhaps was drowsy fallen asleep, things like that. So let's do another one of those real world examples. So Mrs. Daly trip driver is in an accident while delivering bread to a Kroger grocery store. She works for Dave's organic bread, which is one of my favorites right now. She left at 7am that morning. However, because of the accident, she did not return until 8pm. That night is a log required. So what this deals with is that exception of the 100 air mile. So we've got a daily trip driver who's driving, it sounds like in the small market of her community delivering bread, she left at seven a hour, she didn't return till 8pm, that's 13 hours, so she doesn't fall underneath the typical exception for the 100 air miles. So she would have to do a walk, you would want to get a copy of that. Drug and Alcohol testing, this doesn't come up very much in cases, because most of the time truck drivers know that their bread and butter depends on them not having substances in their system. But if it does come up, it's important to know what's there. So during the initial hiring, a truck company is required to do a drug screen, not an outcomes for me, we got to do a drug screen. And so there wouldn't be a copy of that kept likely in the driver qualification file or somewhere else. It's not required by statute in that particular area. Alcohol and Drug Testing after certain accidents. So not every accident requires a drug and alcohol test,

the vast majority do not actually require. Instead, there are specific times that it's required. And I wrote out a chart on slide 45, that's very helpful. And it begins type of accident. And then on the left side, you can see the different types, and then whether a citation was issued, those are going to be the two things that you're looking for in the two factors. So the rule is pretty simple. If there's a human fatality, you have to test the drug. That's a route. All the other ones are going to depend on Is there a citation issued? If there's no citation issued to the driver? Then it's not required. If there is a citation issued to the driver, then you look at was there a bodily injury with immediate medical care from the scene? So an ambulance comes? Or was there disabling damage to a vehicle, so a vehicle had an axle broke and had to get towed? Things of that nature? If so then you do need a test. So it's human fatality. Yes. And then citation, then we look for was there bodily injury with immediate medical treatment or disabling damage. other instances, you do not have to do the drug and alcohol test. So we also have random drug and alcohol screens. And this is done by regulation as well, where a certain percentage of the truck companies, drivers will need to be tested every year. And Originally, it was 10%. And it changes each year 10% of drivers for alcohol 25% for drugs. So depending on the fact that circumstances may be these random tests are important. Most of the time, there's not in my experience drugs or alcohol involved in a truck accident. But there are exceptions obviously. The other one that I wanted to talk about the other regulation that would come up when you're thinking what issues are here, what do I need to ask for and the preservation. That is the inspection and maintenance of the tractor trailer. So the federal regulations require a trucking company to maintain their equipment and working conditions, the truck and trailer have to be in good working order.

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And the truck company must maintain those records for a period of at least 18 months. What that really means in practical circles circumstances a year lay there's going to be a full detailed what's called d o t inspection where they look at the drug all the way from the nose to the rear saying what is going on with this thing. And they look at the brakes and everything about the drug to make sure it is what's called in service and that's commonly called the D o t inspection. So I usually ask for that. If I have any question about Whether the truck was in good service, the driver daily inspection report, so a driver is required to look through their vehicle each morning and perform a more cursory type review. It's not a full maintenance, inspection or anything like that. But they have to do that before they go in after they're done. And you're basically walking around the vehicle looking to see, hey, is the service brakes connected? Is the parking brake work? Are the lighting, the lights work? What about rear vision, mirrors, things like that. So you're just walking around and making sure there's nothing very glaring, that's wrong with the truck. And that is done by each driver on that truck each day. And it's maintained for three months. So these are a thing that will go away. Because once again, this is a lot of paper. This is the thing that will go away, if you don't ask for the preservation. So if you have any concern about the maintenance of the vehicle you'll want to do. So there's out of service orders where the D o t, either on the scene of an

accident will come out and they'll look at it and say this truck was out of order for their own inspectors. Or you can have an expert calm If you are concerned about the truck and look at it to see if it was supposed to be on the road that was out of service. There's all different types of rules that could cause something to be out of service. I can't go through them all now, nor do I know that. But what's important to know is that there are mechanical conditions that can lead to breakdowns that would require a vehicle to be out of service. If the vehicles out of service. That's obviously an important fact to know, on the plaintiff or defense side. Was this vehicle even supposed to be on the road at all. So let's do another one of the real world examples. We have the Mr. Driver man is backing out of a facility when he accidentally strikes another vehicle. In the police report, it says it says that he said his mirrors didn't show the car, they're the what and our lawyer caps are we thinking might be an issue here that we want to look at. So one thing that I would want to know is why the mirrors didn't show the car. Now it's true that there's always blind spots. So maybe he was just one of the traditional blind spots. But did he perform the proper looks before backing to make sure that are required by the log by the Georgia books to make sure that he didn't have anything behind? Did he have a spotter? Do you have anybody assisting him backing out? Did he perform his pre trip inspections to confirm that his mirrors are they are in good working order? Those are the types of things that I would be looking for. So now that we know what evidence may be important, how do we secure it? How do we secure it? Well, as a plaintiff's attorney, you want to send a preservation demand. And if you're a personal injury attorney, you probably are familiar with these. It's something that says hey, I represent this person, they may have a claim here. And it identifies specific relevant evidence. I send mine via certified mail or some other married area that permits tracking. And then once received, it's going to trigger a duty on the company to ensure that relevant items are preserved because now they've got notice if a potential client. So an example of a preservation and a truck wreck case. And here's one that we wrote and I didn't include all the specific items because it's too long. But think about the types of things that you would want to include. And while we pause for a second, I'll give us another game show music so we can make sure we have something to listen to since we're at home alone.

44:39

All right, so that was the prices right? So Bob Barker Drew Carey now it'd be walking out. So what did you write down? What did you think about should be included? Here's just a small list of potential items. videos, a lot of truck. drivers will now have cameras installed on their car so they can see what happens in front of them. photographs, the vehicle itself, these are expensive pieces of equipment and the vehicle itself will be repaired and returned to service as soon as possible. Because these pieces of equipment cost a lot of money. If there are any training materials or manuals, and the communications that driver qualification file, GPS information, a lot of trucks will have GPS installed on the logbooks, wait tickets, if you're concerned about the weight of the vehicle, if there's a loading issue, maybe something fell off, we want to know how is it tied down,

preserve anything related to that. So it's going to depend on what is in your particular case. For me and my preservation letters, I like to be as specific as possible, I don't want to be overly broad, where it just almost doesn't matter. Because it's so vague, I want to be specific, these are the things I really want to look for. So as the defense attorney, what are we going to do? Well, we're going to want to secure evidence. And a lot of times as a defense attorney, you might not be involved, unless it's a more serious accident, or they receive some type of letter. But once you are involved, you want to coordinate with the local personnel. We want to know who was involved, who are the point people that we can talk to to get to the bottom of the accident. I like to have a phone call with those folks rather than an email chain because I like to be able to hear them and talk to them. Once we get those people on the horn, we want to work on preserving any relevant materials, come up with the list yourself, what would you want to know, if you were on the plaintiff side or the defense side? What are the potential liability issues? Then, once we preserve, we want to communicate with the client and say, Okay, here, here's what we've preserved, we're done. You also want to consider an inspection of the vehicle or equipment involved, this is going to depend on the seriousness of the issue, and whether the vehicle had anything to do with it at all. And then we maintain a copy in our file as well as preserved. So that's kind of what the defense attorney is going to want to do. So I'm not going to spend too long on the law on spoliation, because it's the same on any type of tort case. But essentially, what you're looking for is did they, in bad faith, destroy a relevant item. And relevance is the most important factor not? If the requested item has nothing to do with the facts, then you're not going to get a judge to say that that's spoliation. And I think that spending a lot of time on that is probably fallen to the defense lawyers briar patch, then it's good for the plaintiffs side. So you know, if for example, the the accident had nothing to do with the maintenance of the vehicle argued about the daily vehicle inspection reports probably is not going to get you anywhere. Okay, so what do we do after the initial investigation until we file our suit? Well, like any claim, you're going to want to build your evidence, you're going to want to investigate the witnesses that you can get the medical treatment, figure out liability and causation issues. Truck companies are required by law to have an insurance carrier, so they're going to want to notify their insurance carrier. And then there'll be obviously the typical pre suit style negotiation where you're trying to say, Okay, can we resolve this case without having to go the extra mile. But assuming that you do have to file suit, then we get to pleadings and what claims or defenses are going to be asserted. So looking first at the complaint, obviously, we're going to have a negligence

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or negligence per se, because we violated a rule of the road rule of the federal rule, something like that. There's also a lot of times negligent hiring, training or retention claims, we'll talk about whether those are appropriate and worthwhile. There's a direct action statute where you can actually Sue directly the insurance company, and then we have punitive damages and attorneys fees most of the time, you're not going to get those just like any type of tort case, but we'll talk

about them. So the breadwinner for any good plaintiff's case, and a truck accident is going to be a standard negligence case. The driver committed a violation of the rule of the road that a reasonable driver wouldn't under those same or similar circumstances. That's the basis any good tort claim and LR folks not to gum up the works with unnecessary claims. Because what we want to do on the plaintiff side is keep firing torpedoes until their submarine goes belly up, right? You want to be lightning Focus something that can't be defeated. Here's an example complaint and obviously you have the facts and then you throw in the negligence piece. So negligent hiring, sometimes we'll see these and sometimes they need to be said if the driver really should not have been driving a truck. for 60 years, Georgia followed what's called the respondent superiore. And basically, it's just a fancy way of saying that if the truck company admitted This was my driver acting for me, then no negligent hiring claims would go forward, unless there was punitive damages. But Supreme Court and Quinn in Georgia and Georgia in 2020, they overruled this 60 year doctrine. They abrogated the decision. They said, okay, a jury has to be able to consider the employer's negligence because our apportionment statute requires that. So now there's going to be a separate line for the employer's negligence. And a negligent hiring claim can proceed against the employer, even if it does not support punitive damages. And I have this question, and I'll pause for you to think about it for a moment. Is this a better decision for the plaintiffs or the defendants? And we will have our final game show music here.

52:16

All right, that was Wheel of Fortune, of course, my mom's favorite show. So is it better for the plaintiffs or defendants? I'll be honest, the first time I thought about this, I was like, wow, this is a plaintiff's home run. Now you get to dive deep into big companies. But the truth is, because negligent hiring, excuse me, because hiring is so regulated, a lot of times the employers have followed it to a tee. So it couldn't be better for the defendants. So for the plaintiffs, I can see the argument of Hey, we have additional depositions and documentations. But on the defense side, that's more expense, that's harder case for a plaintiff to win. They're also easy to follow and understand regulations, until the company can look very responsible and look like, hey, this was just a standard, negligent act by our driver. And we apologize for it. But it has nothing to do with how we are as a company. So it gives them a platform to stand up and say we're a good company. So it obviously depends on the facts and circumstances of the case. For me, I would say, I'm still going to follow the same rule. I will not be bringing a negligent hiring claim unless I really feel like I can win that claim. Like it add something to the case, I'm not going to do it just for discovery expedition. So then Georgia has a direct action statute as well. And the direct action statute allows you to sue directly the insurer for the trucking company. So most of the time, you can't even mention insurance. But in a direct action statute, the truck the insurance company is a party to the lawsuit. We generally add the insurance company, thing you're gonna want to be thinking about is, is this a self insured company? Are you going to add a whole nother set of lawyers that you got to deal with? And is it going to add value to your case? So punitive damages

are going to follow the same type of automobile accident cases and we're not going to talk about this too much. except to say that generally punitive damages are not recoverable, where we just have the standard negligence case. And this Coker case is a one that's commonly cited by the defense bar but a driver is driving too fast with the conditions has drug paraphernalia a little bit alcohol in his system and yelled at a pregnant woman was not enough to justify punitive damages. So you can't get much worse than that. That said, some Cases punitive case claims and I've found them many times if I'm concerned that there's something really upsetting here that people need to know about. The same thing is for attorneys the you're going to be following those same kind of standards. And generally, you know, you're going to be looking for a grade just type of behavior. In general, you're not going to get these, but we found a lot of them. If you've got the right case, this makes sure that you're following your fat pattern and not creating a bunch of issues. So also, there's going to be an answer that would be filed that's dictated in large part to the complaint. But you want to raise some important affirmative defenses, contributory negligence, I mean, all drivers have a duty to mitigate. And we've had cases where a driver on the plaintiff side was clearly more at fault than the trucking company. And you want to raise and make sure that the jurisdiction and venue is appropriate causation issues, all of those types of things. We like to put this little caveat the beginning of our affirmative defenses that basically say, which is the truth, most of the time, we don't know all the facts. So we're raising these issues until we can get to a point where we can determine if they're right. So discovery, what is reasonable and necessary. The best way to make your case

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on wieldy is to get into a lot of unreasonable discovery. We want to be lightening focused on what is actually important, we don't want to miss a single thing that's important. We also don't want to go to a single thing that's unimportant. So we're going to be using the same tools, the interrogatory is request for production, quest for admission, deposition, and third party things you use. In any case, the plaintiffs interrogatory are going to generally follow those same rules that we talked about earlier, you're going to want to ask about licensing, hiring and training hours of service drug and alcohol inspection issues, read through those regulations and see, are there any other issues that I did not cover that are actually apply here? There likely wouldn't be. So depending on the facts and circumstances, the defense interrogatory are going to file a follow up pretty much any personal injury case, I'll focus a little bit on liability and damages and pre existing issues with medical information being the key, we want to know what is wrong with this person? And are they going to be okay. So, requests for production. Again, you're going to want to ask for all the documents that we talked about your preservation letter, I like to pull out my preservation letter and go from there. And I have forms available on all of this stuff, you can email me or call me I'm happy to send you forms of complaints or preservation demands or any of the discovery requests that we've talked. We have an example request for production, your slides, slide 77, that just has a small eggs or we obviously could put the whole thing in a slide, you'll see

that it looks for that same stuff, the driver qualification file, the alcohol testing, was the driver least driving drivers are sometimes we leased from another driver, was there any GPS or onboard recording device, that kind of stuff. So requests for admissions, you're going to want to focus those just like you would in any other case on things that are actually could be admitted reasonably, as sending a laundry list of request for admission on other issues probably is not going to get you. For the depositions, the folks that we are usually targeting are going to be obviously the parties to the case the plaintiff and defendant, any witnesses, the police officer is important. The company representative can be important, depending on the facts and circumstances. Do we have an expert accident reconstructionist there are two types. Generally there's an engineer. And then there's also an old or experienced police officer who strained and investigating truck accidents. And those people can be helpful if you have them. It's time to pose them. If not think about the unique thing. And then obviously medical experts, things like that. So third party requests for production. I think these are probably the most important piece of any Truck Accident litigation you're going to be looking at on the defense side and prior employers, medical providers, health insurers. On the plaintiff side you want to make sure that you have any issues related to prior employers of the other truck company, other relevant accidents involving this truck driver, things like that. So our experts needed. As we just mentioned, briefly, accident reconstructionist can be hugely helpful. It can be a former police officer who's trained in this area, or it can be an engineer who's trained. And those experts will inspect the vehicle. And they know whether the brakes are in service, whether the vehicle had other issues that could be related to the accident, and they can render an opinion as to whether the accident was caused by an act or omission. Sometimes, they can be extremely helpful in certain cases. They're also because they've got good expertise, very pricey. So you have to think about, is this something that's going to help my case? Or is it going to hurt my case, by adding a huge amount of expense? The facts and circumstances depend on that? And then a medical expert is the standard PCI case and the question is going to be Can you demonstrate to the jury that the injury was or was not related, depending on what side you're on, without the benefit of expert testimony? That's your main question. That's the Hallmark that you're looking for. So the last section that we're going to cover today is the common issues, what legal issues commonly arise and we've already covered a lot of these. And that will be negligent hiring, training and retention.

1:01:34

That's a hotly litigated issue. The Quinn decision just came out, we're not exactly sure how that's going to unfold everything. But a lot of times, there will be motion practice on that issues, and so right. punitive damages, that also can create a lot of paperwork, things like that, in discovery disputes. One of our sayings that in our law firm is only defense lawyers can eat briefs for dinner. In other words, they get paid by writing the paper plaintiff's lawyer gets paid by getting a case resolved. Defense Lawyers also want to get a case resolved A lot of times, but you don't want to throw in everything but the kitchen sink. And we also have a rule that you get more flies with

honey than vinegar. I think being as kind as you can possibly be to everyone that the circumstances allow is important. So I want to leave you with resources. There's websites that are listed in slide 86, that you can find things and read a lot about, there's treatises that you can get that are this thick that you can talk about, and other attorneys can also be helpful. You can call or email me any time for forms or questions or advice. So this has been a short overview of truck cases, don't think it's not supposed to be comprehensive. It's only an hour but it does touch on the high points. before tackling a truck case. Be sure you have extensive knowledge and the ins and outs that you've read all the regulations and that you know what you're doing. These are high value cases, a lot of times with well resourced folks, when in doubt, you can associate somebody who helps you with truck accidents, and you can always give me a call. That's my entire presentation for today. Thank you for listening to everything. I hope I made it somewhat enjoyable. I know an hour is a lot to hear everyone. hear somebody speak but I look forward to working with you in the future. And I wish you the best. Alright, I'm done. Yeah. Good work, and you made it fun.

1:03:41
I hope so. I liked it. I

1:03:42
liked the music. Yeah. I

1:03:44
tried.