

COMMERCIAL VEHICLE ACCIDENTS: HOW TO CONTROL COSTS BEFORE INCURRED

BY:
Shari D. Goggin, Managing Partner,
Resnick & Louis, PC



This session is eligible for 1.25 Continuing Education Hours.

For these hours to appear on your certificate, you must:

- Have your badge scanned at the door
- Attend 90% of this presentation
- Fill out the online evaluation for this session



Online Evaluation



SHARI D. GOGGIN



- 103 trials (jury and bench)
- Defending multi-million-dollar, high-level exposure meet safety, trucking, commercial, premises, products, construction and personal injury, wrongful death and large loss property damage liability claims from inception through jury trials and appeals in State and Federal cases.
- Counseling commercial clients in their ongoing operations using litigation experience to prevent litigation and to place clients in positions of strength should a lawsuit arise.



OUR GPS FOR THE DAY

1. Before the Facts
2. The Facts
3. Client Action
4. Litigation Process
5. Results



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How Your Practices Affect Outcomes

- 1. Industry Custom & Practice
- 2. Policies and Procedures in Writing
- 3. Follow Them
- 4. “Document” Everything



INDUSTRY CUSTOM AND PRACTICE



- What is it?
- Are we meeting it?



Legal Principles and Technology Go Hand-in-Hand



NEGLIGENT
ENTRUSTMENT:



HIRE: THIRD PARTY
VENDOR, APPLICATION,
REFERENCES,
BACKGROUND CHECKS



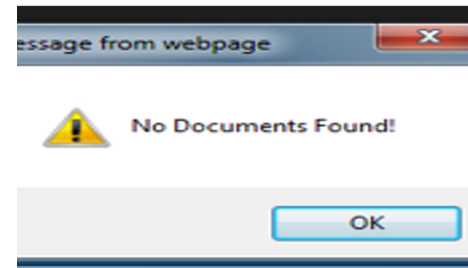
TRAIN: INITIAL
TRAINING, ONGOING
TRAINING, E-
SIGNATURES, E-
VERIFICATION,
INFORMATION
STORAGE



SUPERVISE: GPS, E-
LOG BOOKS,
TELEMATICS, PHONE
TECHNOLOGY, E-
COMMUNICATION (IN
PERSON?)



ERROR:.....



- Without documentation, it didn't happen....



Accidents Always Happen



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TRIAL PREPARATION AND EXPERIENCE ARE KEY

- This is the study of real clients and real cases where I was lead counsel for the defense
- Some of the names of the parties and some facts have been changed to protect the innocent and edited for time

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3 REAL CASES, 3 REAL OUTCOMES



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JUST THE FACTS.....

- **CASE 1:** INTOXICATED WOMAN FLIPS MINIVAN ON HIGHWAY, PEOPLE STOP IN MIDDLE OF ROAD TO HELP INCLUDING 64-YEAR-OLD PLAINTIFF/DECEDENT . DEFENDANT DRIVER REAR ENDS CAR KILLING OCCUPANT. 25 million demand
- **CASE 2:** SEMI MAKES ILLEGAL U-TURN; PLAINTIFF WAS A 38-YEAR-OLD FATHER AND ELECTRICIAN WITH BABY IN BACK SEAT. PLAINTIFF DRIVING BEHIND TRUCK, WENT UNDER THE TRAILER SHEARING OFF TOP OF HIS CAR. \$14.7 million demand
- **CASE 3:** ELECTRICIAN'S TRUCK HITS PARKED CAR WHERE PLAINTIFF 50-YEAR-OLD FEMALE WAS A PASSENGER \$6 million demand

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ABOUT LAST NIGHT.....



1. WHEN THE CALL COMES IN:
WHO, WHAT, WHERE, WHEN, WHY
AND HOW



2. TO TAKE A STATEMENT OR NOT
TO TAKE A STATEMENT? RECORD IT
? TAKES NOTES ABOUT IT?



3. TECHNOLOGY, PHOTOS, VEHICLE
DOWNLOADS, GPS DATA,
PROFESSIONALS, INVESTIGATOR,
ATTORNEY INVOLVEMENT



4. PRESERVATION IS KEY.



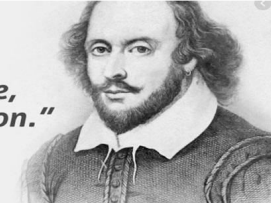
TO CALL OR NOT TO CALL....

LAWYER INVOLVEMENT:

Rapid Response, weighing crash severity, injury severity v. costs/expenses

*"To be, or not to be,
that is the question."*

William Shakespeare



VERIFICATION = EVIDENCE

- Case 1: DQ file, training (initial and on-going), GPS, e-log books, telematics, phone technology, e-communication, policy manuals/rules, driver observations (in person v. technology supervision)– verified?
- Case 2: Policy manuals (signed), logs, GPS, training, driving history, supervision verified, training verified
- Case 3: Policy manuals for electrician and overall safety, little specific to driving, excellent company safety policies, verified, OSHA/extra training
- When technology may not be enough...



THE LITIGATION PROCESS

- PLEADINGS
- DISCOVERY
- DISPOSITIVE MOTIONS
- SETTLEMENT AND MEDIATION (ADR)
- TRIAL



JURY TRIALS



HOW DO JURY VERDICTS GET SO HIGH?



JURY VERDICT FORMS

1. Medical bills.....	\$ _____
2. Lost Wages.....	\$ _____
3. Pain and suffering.....	\$ _____
4. Loss of a Normal Life.....	\$ _____
5. Disfigurement.....	\$ _____
6. Loss of earning capacity.....	\$ _____
7. Physical Impairment.....	\$ _____
TOTAL.....	\$ _____



PUNISHMENT

PUNITIVE DAMAGES—WHERE THE “REAL” MONEY IS.....

- Definition: Punishment (pure or to deter?)
- When demanded: State-dependent. In Illinois, a Plaintiff cannot initially demand punitive damages without first making evidentiary showing to entitlement. In Texas, it can be demanded in initial pleading and burden is on defense to show plaintiff is not entitled to them.
- Insurance is typically not available to cover punitive damages (or contractual damages)
- Caps: State-dependent. In Illinois, there is no cap, “proportional.” [infamous hot coffee case] In Texas, punitive damages are capped at the greater of **\$200,000** or two times the amount of economic damages PLUS the amount equal to non-economic damages up to **\$750,000**.
- Evidence: Intentional conduct, gross negligence, reckless disregard for safety, willful and wanton, corporate value discoverable?



SETTLEMENT: WHY AND WHEN?

SETTLEMENT- WHY AND WHEN.....

1. Initial Demand: "Policy"—whatever that means, primary, excess, and umbrella
2. Initial Case Evaluation: How to settle at earliest possible time with smallest costs/expenses (advertise me)
3. Mediation: "ADR" what is it, should we use it? Cost/benefit analysis
4. Settlement Conference: Judge presides, last chance?
5. Trial and beyond.....

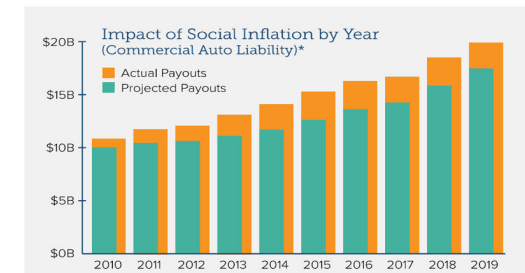


IN THE NEWS.....

SOCIAL INFLATION

"Social inflation" refers to the impact of rising litigation costs on insurer claim payouts, loss ratios, and, ultimately, how much policyholders pay for coverage. While there's no universally agreed-upon definition, frequently mentioned aspects include:

- Proliferation of class-action suits and other lawyer- and government-driven actions ("runaway litigation");
- Growing awards from sympathetic juries ("nuclear verdicts");
- "Litigation funding"—in which investors finance lawsuits against large companies in return for a share in the settlement; and
- Rollbacks of tort reforms that were intended to control costs.



DAVID V. GOLIATH



IT'S YOUR TIME TO DECIDE.....



CASE 1 TRUCK V. CAR DEATH

- A. <\$1,000,000
- B. \$1,000,000 to \$5,000,000
- C. Over \$5,000,000



IT WAS BUT IT WASN'T.....

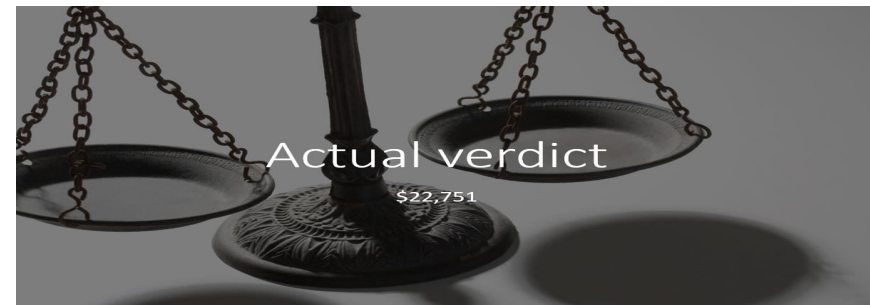


CASE 2: CAR V. TRUCK: SERIOUS INJURY

- A. <\$1,000,000
- B. \$1,000,000 to \$5,000,000
- C. Over \$5,000,000



CLIENT DID THE RIGHT THINGS.....



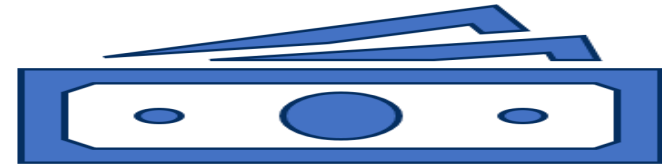
CASE 3: TRUCK V. PARKED CAR: CERVICAL FUSION

- A. <\$1,000,000
- B. \$1,000,000 to \$5,000,000
- C. Over \$5,000,000



CLIENT DID RIGHT THING AGAIN.....

- ACTUAL VERDICT: \$409,000



HELP ME, HELP YOU.....



QUESTIONS AND THANK YOU!



Please complete the Online Evaluation

