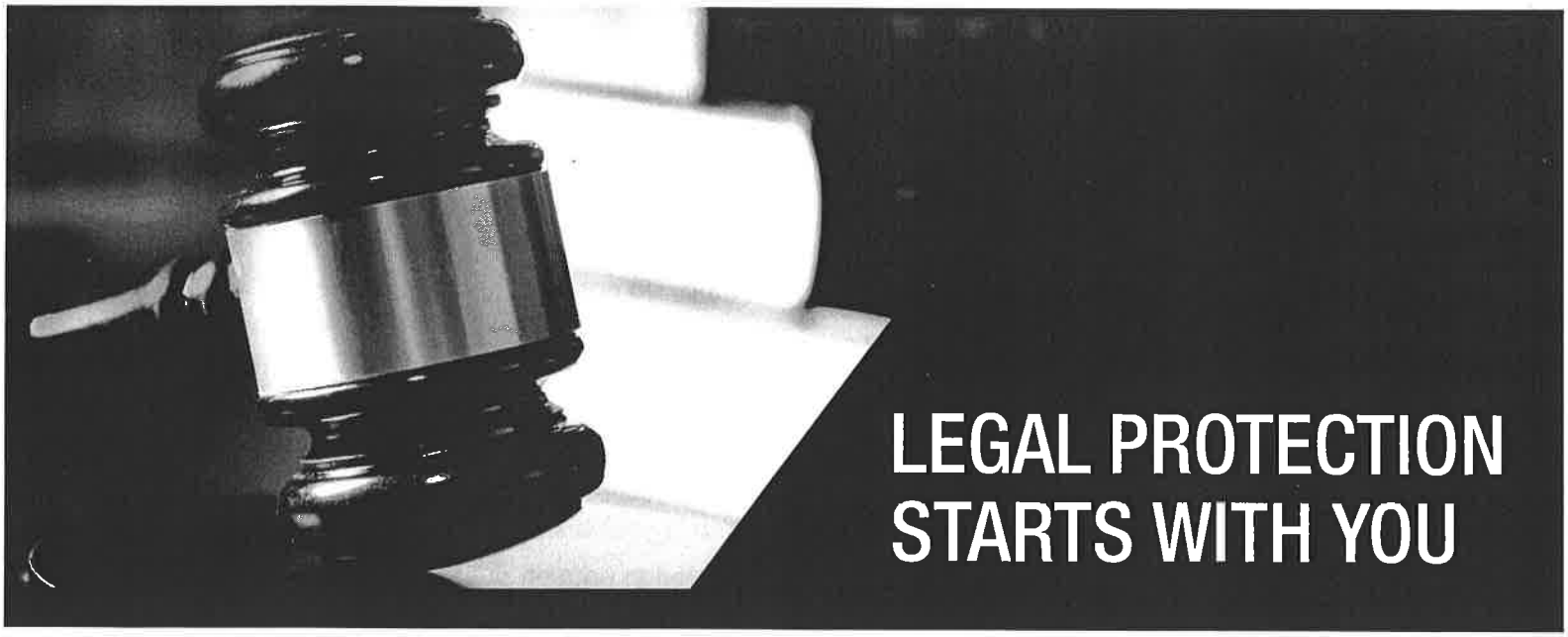

LEGAL PROTECTION STARTS WITH YOU

The world abounds with legal threats to your company. Billboard advertising "truck accident" lawyers provide a constant reminder of those perched to prey upon your business for their financial profits.

It is tough enough out there. You don't need to help them. Don't make it worse for yourself.

Too often, companies self-inflict legal harm without knowing it's happening. Don't make it easy for plaintiffs' attorneys.

Here are some ways to protect yourself.

1. Don't take statements from your drivers.

You've heard me say and seen me write this many times. (See the articles and blogs on www.cdl-law.com). I know many people find this difficult to accept—it is the way that it has been done. However, tradition doesn't make it right or avoid the harm.

Don't hand the plaintiffs their case on a platter in the form of a driver statement. We don't get one from them. Your driver's statement only helps the plaintiffs.

Additionally, the statement to you or your insurer can conflict with other statements of the driver (such as to the police) or technology (such as ECM, satellite tracking,...). Any such conflicts only undermines your driver's credibility as to what happened in the accident. Further, if criminal charges are a possibility, you can undermine his 5th amendment protections.

Bottom line—don't take your driver's written or recorded statement. You are only helping the plaintiff.

2. Review your handbooks

Plaintiff attorneys are employing strategies to prove you and your driver's negligence by showing violations of rules. Some rules are obvious—rules of the road found in the state vehicle code, FMCSA regulations,...

These attorneys are now going further. Plaintiff attorneys now are using company handbooks and manuals as the standard against which to measure driver negligence.

They argue that the company rules are in effect a standard of care. Violating the rules equal violating the standard of care. Violating the standard of care is negligence. And it all begins with the company handbook and your internal regulations.

You need regulations to operate your company. You properly have aspirational safety principles. However, you need to do so in a way to minimize their being manipulated against you by plaintiffs' attorneys.

Have your attorney review your handbooks. Look for rules and requirements that can be used against you in depositions or at trial.

A classic example of their attack is the standard handbook statement of "don't admit fault". The plaintiff attorney will twist as instructions to deny even the most obvious fault. "If you rearended a car full of nuns of I-81, even in that case you would deny you are at fault and refuse to take responsibility, wouldn't you?"

The simple solution is found in balance—"Don't admit fault. Don't assess blame. You are to relate facts, not give an opinion." This is an example of how the rough edges can be sanded off your handbook.

Bottom line—don't let your own words in your manuals to be twisted against you.

3. Don't do drug or alcohol tests that are not required.

Hearsed, nursed, or towed. That's the FMCSA requirement—a death, treatment away from the scene, or towed. The last two require that a ticket also be issued. While Pennsylvania has its own requirement, it is rarely enforced. That will be the topic for a future article.

No test should be performed unless it is absolutely required. When asked why his football teams primarily run the ball, Woody Hayes said that three things can happen on a pass play and two of them are bad. An unnecessary test can result in bad evidence.

Think about it. Police officers are trained to recognize individuals under the influence. Many police reports, including Pennsylvania's, include a block for the officer to indicate if there was any such indication or the driver "appeared normal."

If your driver is determined to "appear normal" by a trained police officer, there is no reason for a test. You have the testimony of a trained professional that there was no indication of alcohol or drug use.

Bottom line—don't create an problem by an unnecessary test where trained officers have not found any sign of impairment.

4. Review your preventability policy

Make sure your preventability policy does not inadvertently result in a binding admission of negligence. Make sure your policy and procedure protects your conclusions from discovery in a lawsuit.

Negligence is the failure to do what is "reasonable" under the circumstances. If your definition of "preventable" is that the driver failed to everything "reasonable" to avoid the accident, the plaintiff's attorney will argue that your finding that the accident was "preventable" is an admission that he was negligence.

Several of us from PMTA served on an ATA task force to develop model language to avoid this possibility. Further, our preventability guidelines are structured to provide protection from discovery seeking your conclusions and opinions. Email me if you would like a copy of the white paper on "preventability."

Bottom line—Make sure your "preventability" definition and procedures are in a form that maximize your protection.

5. Don't do unnecessary post-accident inspections.

Your truck is inspected post-accident by police. The inspector is certified and does a full level one inspection per CVSA standards. Your truck is cleared of any pre-accident defects.

Stop. Do not have another inspection. Again, you the best possible evidence—a clean inspection by a certified inspector.

What benefit could you get from another inspection? (See the Woody Hayes quote above).

Bottom line—a clean DOT inspection is all you need and is your best evidence.

It's tough enough out there. The world is full of lawyers waiting to pounce upon your company for their profit. Don't help them.

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