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## PENNSYLVANIA

### IS YOUR TRUCK DRIVER A “PROFESSIONAL DRIVER”?



Gary N. Stewart

Truck drivers take pride in transporting freight for the benefit of the citizens of this country and the world beyond. For the most part, these same citizens have no idea of the challenges that operators of commercial vehicles face each and every mile that they drive. Like any other professional, to prepare for the challenges of their occupation, truck drivers receive training before they begin their careers and they continue to perfect their trade throughout their careers.



Michael T. Traxler

Accordingly, why not allow a plaintiff’s attorney or the court to refer to the operator of commercial motor vehicle as a “professional driver”?

Aggressive plaintiff attorneys are attempting to exploit the term “professional driver,” hoping that it will lead to higher jury verdicts. We believe that their goal is to convince a jury or a fact finder that because a motor carrier refers to their operators as “professional drivers” that they are subject to a higher standard of care.

In Pennsylvania, there is no professional standard of care for a truck driver. A truck driver is subject to the same standard of care as all motorists, the reasonable person standard. *Fredericks v. Castora*, 241 Pa. Super. 211, 360 A.2d 696, 698 (1976). In *Fredericks*, the Superior Court “declined to develop a higher standard of care for experienced truck drivers.” The Superior Court noted that the Supreme Court of Pennsylvania held truck drivers only to the standard of care required of all motorists. The Superior Court also noted that “[t]here is only one degree of care in the law, and that is the standard of care which may be reasonably required or expected under all of the circumstances of a given situation.” Therefore, the goal of a plaintiff’s attorney in using the phrase “professional driver” to suggest that a heightened standard of care exists for truck drivers is an attempt to confuse the issues and mislead the jury.

While these tactics are typically not used until the time of trial, plaintiff’s attorneys begin to set the stage for their “professional driver” arguments early in the life of a bodily injury case. Their efforts begin with written discovery requesting driver handbooks, company manuals, and documents generated as part of the hiring process; documents that may refer to operators as “professional drivers.” These documents are then used as exhibits during the depositions of drivers and

corporate designees. In the absence of documents making reference to a “professional driver,” plaintiff’s attorneys will ask questions seeking admissions from a driver or company representative to support the “professional driver” argument to be used at trial.

Therefore, the defense of these arguments must begin with proper attention to the documents that are produced during discovery and be followed by thorough preparation of the testimony to be given by drivers and company representatives. Throughout this process, the attorney defending the driver and the motor carrier should be prepared with appropriate objections and should be aware that the Federal Motor Carrier Safety Regulations make no reference to operators of commercial motor vehicles as “professional drivers.” Pursuant to the regulations, a driver is defined as “any person who operates any commercial motor vehicle.” Title 49 C.F.R. §§ 382.107 and 390.5. If federal and state law do not allow for a heightened standard of care to be applied to operators of commercial vehicles, defense counsel should not allow a plaintiff’s attorney to infer otherwise. Further, many other jurisdictions, such as New Jersey, Delaware, New York, Connecticut and Rhode Island do not have a higher standard of care for truck drivers.

At an appropriate time prior to trial, a motion *in limine* should be filed to preclude plaintiff’s attorney from using the term “professional driver” during the opening statements, questioning of witnesses and closing arguments. In Pennsylvania, we have been successful in having the term

“professional driver” excluded from trial proceedings.

Even if the motion is granted, defense counsel should still request a jury charge clarifying that a truck driver is not subject to a higher standard of care to avoid any juror’s assumption of “he should have done something different because he is a professional driver.”

In the U.S. District Court for the District of Rhode Island, we convinced a federal judge to instruct the jury that despite the fact that the defendant driver was a professional driver, it did not mean that the standard of care applicable to him was different from the standard of care applicable to the plaintiff. The charge continued with an instruction that the standard of care applicable to a truck driver is neither greater nor lesser than the standard of care attributable to any other driver of a vehicle on the highway.

The jury instruction was: “Now, the fact that [the driver] is a professional truck driver does not mean that the standard of care applicable to him is any different from the standard of care applicable to [plaintiff]. A truck driver is subject to the same standard of care as any other motorist. The standard of care applicable to a truck driver is neither greater nor lesser than the standard of care attributable to any other driver of a vehicle on the highways.” Marissa L. Theroux vs. Gregory A. Estrada & Marten Transport, Ltd., U.S. District Judge Ernest C. Torres, 1:07-cv-00435, (R.I. 2008).

While truck drivers are true professionals, precautions should be taken to prevent the term “professional

driver” from being used against your driver and company to allow for the mistaken assumption that they are held to a higher standard of care.

**Gary N. Stewart** concentrates his practice in the area of commercial motor vehicle defense and he has defended cases in Pennsylvania, New Jersey, Connecticut, Rhode Island, Massachusetts and Vermont.

Gary is admitted to practice in Pennsylvania, New Jersey, Massachusetts, Connecticut, Vermont and Rhode Island as well as before the U. S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey, the District of Massachusetts, the District of Rhode Island, the District of Connecticut and the U. S. Court of Appeals for the First and Third Circuits.

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