



PENNSYLVANIA IS YOUR TRUCK DRIVER A “PROFESSIONAL DRIVER”? – CHAPTER TWO



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In 2011 we wrote that the law in Pennsylvania, as well as numerous other jurisdictions, is that there is no different or higher standard of care for a truck driver than any other motorist. (*TLU*, Vol. 12, No. 2, *IS YOUR TRUCK DRIVER A “PROFESSIONAL DRIVER”?*) Essentially, just because a truck driver is getting paid to drive does not make him or her a “professional” driver. In our opinion, when a lay person hears that someone is a professional *anything*, it infers that the individual has a higher duty of care or responsibility.



David R. Chludzinski

We believe that the vast majority of the American motoring public believes that the driver of a tractor trailer is a “professional driver.” It does not help that our drivers will say that they are “professionals.” Many times, there is a sign on the back of the trailer, saying “This vehicle is driven by a PROFESSIONAL DRIVER.” In addition, there may be instances when the company’s drivers manual refers to them as “professional” drivers. Furthermore, stop at any truck stop and you will hear announcements about the “professional driver” this or the “professional driver” that, and see signs welcoming “PROFESSIONAL DRIVERS.” However, these opinions or statements *are not the law*.

Many of us have experienced counsel who attempt to use the public’s mistaken assumption at trial to infer that our commercial driver should have known or done things better or differently because he or she was a “professional,” which means that the driver was negligent. Years ago, we tried a case in Connecticut and afterward were told by two jurors, “Well, we believed your driver did nothing wrong, but since he was a ‘professional driver,’ he should have done more.” Unfortunately, this opinion has not changed much over time.

Many judges also have these same perceptions and feelings. Let us not forget that judges are people too and they also drive on our highways. In many instances, they have never tried a trucking case and you will not find this as a standard jury instruction anywhere that we are aware of. Accordingly, ever since our experience in Connecticut, we have been striving to clarify the law in this area.

In our prior article, we reviewed the first Rhode Island Federal Court case (*Marissa L. Theroux vs. Gregory A. Estrada & Marten Transport, Ltd.*, U.S. District Judge Ernest C. Torres, 1:07-cv-00435, (R.I. 2008)), where we convinced the federal judge to give this instruction. A favorable verdict was returned. Since then, we are pleased to report that “our” position that there is no separate “professional” standard of care for a commercial motor vehicle operator has been adopted by the U.S. District Court for the Western District of Pennsylvania (2010) and the Connecticut Superior Court (2011).

In the District Court for the Western District of Pennsylvania, the jury instruction relating to the standard of care applicable to the defendant truck driver was:

In Pennsylvania, there is no professional standard of care for a truck driver. Instead, he or she is held to the same standard as all motorists, the reasonable person standard. *Houston v. Robert Smith and Marten Transport, LTD*, U.S. District Judge Kim Gibson, III: 2009-CV-190 (W.D. Pa. 2010)

In addition, the Connecticut Superior Court for the Judicial District of Hartford gave the following jury instructions with respect to the standard of care applicable to a truck driver:

The fact that “driver” was the driver of a tractor-trailer at the time of this accident does not mean that the standard of care applicable is any different from the standard of care applicable to “other driver.” A truck driver is subject to the same standard of care as any other motorist. However, you may take the experience and training of each driver into consideration in determining whether he or she acted as a reasonably prudent person under the circumstances. *Emmanuele v. Howell and ATS, Inc.*, Superior Court Judge Julia Aurigemma, Civil Docket No. CV-08-6002967 (Judicial District of Hartford 2011)

The last sentence of the above jury instruction was included over our objection and the case was settled before appeal.

We were able to convince the respective judges by using state law, if it existed, but more importantly, emphasizing *Dahlgren v. Muldrow*, C.A. No 1:06-CV-00065, pg. 11(USDC, ND FL. January 18, 2008). In both instances, our opponents argued that there is a higher standard of care because the drivers must comply with numerous federal regulations and receive specialized training. In fact in the Western District of Pennsylvania trial, the judge was adamant that although the law in Pennsylvania is that there is no higher duty of care for a truck driver, there was a “different” duty

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of care as shown by the numerous regulations contained in the Federal Motor Carrier Safety Act.

In the *Dahlgren* case, the U.S. District Court for the Northern District of Florida held that plaintiff’s counsel was precluded from making any statements to the jury or references during questioning of witnesses regarding commercial motor vehicle operators being held to a higher standard of care than other highway users. The court specifically stated that the current Federal Motor Carrier Safety Regulations do not state, *anywhere*, that truck drivers are held to a higher standard of conduct than other highway users. Although the plaintiff argued that a document titled “Interpretations of 49 CFR Part 383” (published by the Federal Highway Administration’s Office of Motor Carrier Standards, Standards Review Division) set forth that commercial motor vehicle operators are held to a higher standard of care, the court reiterated that the specific interpretation was *removed* and the Federal Highway Administration stated in issuing the regulatory guidance that “all prior interpretations ... may no longer be relied upon as authoritative insofar as they are inconsistent with the guidance published today.”

Both trial judges ultimately agreed that there is not a higher standard of care. This helped ensure that there would be no confusion that truck drivers are held to the same standard as every other motorist. In fact, this is an area that we inquire into during *voir dire* because we believe it is essential that the prospective jurors learn and understand this concept as soon as possible during the proceeding.

Please be aware that some motor vehicle “experts” are still citing the “Interpretation” noted in the *Dahlgren* matter to improve a plaintiff’s position that the truck driver should have known better.

Although many plaintiffs’ attorneys will still attempt to argue or infer to the jury that the driver is a “professional,” it is very important to clear up this issue before jury selection and then again during jury instruction.

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