

2020 Transportation Seminar

- 1:00 Welcome and Introduction
Jeremy Swift – Treece Alfrey Musat P.C.
- 1:05 Preventing a Bad Case from Getting Worse – Spoliation Set-Up, Required Recordkeeping Practices, Spoliation Defenses and Strategy
Kevin Foley, Reminger Co., L.P.A.
While everyone wants the glory of a defense verdict, avoiding a catastrophic or nuclear verdict is equally important. Preventing bad facts from becoming a nuclear verdict is often more than difficult than securing a defense verdict. This can be limiting compensatory damages or defeating a punitive damages claim. It represents a victory for your company. This presentation will address the mindset necessary when implementing strategies in the pre-suit investigation and during litigation to prevent a bad case from getting worse.
- 1:25 Driving a Wedge Between Employer and Employee – Direct Negligence Claims, Punitive Damages Claims, Bad Faith Set-Up Attempts
Richard Mincer – Hirst Applegate, LLP
There's no such thing as a simple truck wreck case anymore. Even when the facts of the accident seem rather simple and even if the injuries are not catastrophic, Plaintiffs often will assert direct negligence claims against the motor carrier for negligent hiring, training, supervision, and entrustment. This presentation will look further at these types of claims.
- 1:45 Reading People: Applying Human Psychology to Your Litigation and Communication Strategy
William McKenzje, Norman, Wood, Kendrick & Turner
What can you observe about a person that will help you predict their next decision? This presentation will explain how learning a person's personality, generational makeup, and socio-economic class can help you tailor your communication to maximize effectiveness and elicit favorable decisions from them. It's not about judging people. It's about identifying someone's core motivation and tendencies; because once you do, it is just a short leap to persuading them.
- 2:00 Introduction to the Reptile Strategy
Todd King – Cranfill Sumner & Hartzog LLP
In 2009, attorney Don Keenan and jury consultant Dr. David Ball published a book entitled Reptile: The 2009 Manual of the Plaintiff's Revolution. The authors advertised it as "the most powerful tool in the fight against tort reform" available to plaintiff's attorneys seeking to obtain favorable verdicts and extraordinary damages awards. Since its publication, the reptile strategy has been taught and presented to plaintiff's attorneys across the country. This presentation will provide an introduction to the Reptile Strategy.
- 2:15 How to Defeat the Reptile
Brian Johnson – Drew Eckl & Farnham, LLP
While reptile tactics are not necessarily a new creation, the use of such by plaintiff's counsel has increased in an effort to magnify damages and recovery in litigated cases. The tactics and defenses to the same are numerous. The reality is that there may not be a "one size fits all" approach, as every case must be evaluated upon its merits, with all evidence being considered. However, the reptile tactics have proven to be effective and are likely here to stay. Accordingly, it is important to recognize such tactics and engage in efforts as early as possible in the investigation, discovery, and pre-trial phase of the litigation in an effort to gain leverage and fight back the impact of such tactics. This presentation will provide an overview of how to do that.
- 2:35 Autonomous Trucks – Rolling Down an Interstate Near You – With the Potential to Take Liability out of the Company/Driver's Hands.

The transportation revolution is here! Fasten your seatbelts! The race is on for the mass rollout of self-driving, autonomous vehicles (AVs). The reality is that the technology is here (subject only to being fine-tuned), but the current federal and state regulatory schemes (or lack of them) are causing confusion and delays. In other words, our existing automobile laws are becoming more outdated day-by-day as AV technology continues to advance, and these outdated laws are creating barriers to the development, testing and deployment of AVs.

3:05 Afternoon Break

3:20 Introduction to COVID Epidemic and Legal Challenges Related to Same

Jeremy Swijt – Treece Alfrey Musat P.C., Joni Mangino – Zimmer Kunz, PLLC, Karen Bamberger – Betts, Patterson & Mines, P.S.

Jury trials are gradually resuming even as the COVID-19 threat lingers and safety measures are enacted and evolve. In this unprecedented context, jury verdict risks have changed. While particulars are fact and venue dependent, we will provide broad guidance as to likely changes in the dynamics of jury selection and jury deliberations, highlighting areas of greatest risk and recommended steps to address them.

3:30 Reopening guidelines for employers in COVID Epidemic

Ray Greene – Burnham Brown

While the Federal Motor Carrier Safety Administration (FMCSA) and its state partners have effectively cleared the way for trucking companies and commercial drivers to continue to deliver critical goods and supplies during the pandemic, the uncertainty and fluid nature of the health crisis has made it essential for transportation industry members to rethink their operations and reopen components of their businesses in a safe and legal manner. Motor carriers and all of their employees face an ever-changing landscape and multiple impediments to operations as states vacillate on shelter in place and related local orders. And while uncertainties will continue to exist, one thing that is certain is that trucking will play a vital role in recovery of segments of the economy impacted by the pandemic.

3:45 Duty to protect employees and customers from COVID Exposure

Nathan Skeen - Snow, Christensen & Martineau, P. C.

Employers must take adequate precautions designed to provide reasonably safe premises to both its employees and its customers. During the COVID-19 pandemic, there has been an increased awareness of the potential for transmission of disease for obvious reasons. The pandemic has exposed a significant deficiency in most companies' customer and employee safety/protection plans, and companies are scrambling to adapt their workforces to the changing regulations and recommended precautions. Transportation companies are certainly no exception. This presentation will define a transportation company's general duties to its employees and customers as they relate to COVID-19 exposure.

4:00 Potential 3rd party liability for COVID Exposure

Matthew W. Breetz - Stites & Harbison, PLLC

We are in uncharted waters here. While Congress, not surprisingly, has hinted at limiting liability for COVID-19 exposures, we have seen nothing concrete from Washington, DC, at this point. It is unclear whether we will, and even if it were to happen, whether such limitations would pass constitutional muster. There are concerns for potential liability arising from the spread of COVID-19 for employers and businesses. Each of these have unique challenges and potential exposure, but each has defenses to such claims. We will go more in-depth on potential 3rd party liability in this presentation.

4:15 Duty to shut down operations in light of surge in COVID Exposure

Rob Laney - Ryan Ryan Deluca LLP

Some states have begun to roll back the process of reopening because of the recent surge in coronavirus cases. Others will likely do so in the future. The question that arises is what is a company's obligation to cease or curtail operations in the absence of state or local mandates? No single answer can fit all situations that will arise during this unprecedented and rapidly evolving crisis. This presentation will address these issues further.

4:30 Reasonable Sanitation/Mitigation Efforts to Prevent COVID Exposure

Nathan A. Lennon/ Kevin Foley - Reminger Co., LPA

Thorough sanitation is vital to a return to business as usual. OSHA imposes an affirmative duty on employers to provide a safe and healthy workplace for its employees. A business's failure to implement reasonable sanitization and mitigation efforts to prevent COVID exposure can result in increased worker absenteeism, downsizing operations, interrupted supply chains, or delayed deliveries. We will outline these efforts in this presentation.

4:45 COVID Impact on Drivers and the Families First Coronavirus Response Act

Thomas A. Kendrick - Norman, Wood, Kendrick & Turner

In March, drivers began reporting impacts of the novel Coronavirus on life on the road. These impacts included disruption of needed services such as unexpected closing of shower facilities and shortages of bottled water, hand sanitizer, and toilet paper. The drivers also experienced difficulties due to lack of personnel at the docks to timely load and unload their trucks quickly. The inconvenience of the difficulty in obtaining basic services on the road pales in comparison to the impact on drivers who contracted COVID-19. This presentation will look further into how COVID-19 has impacted drivers.

4:55 Industry Panel Discussion and Q&A

5:00 Adjourn