

## Tips from a trial lawyer

**E**dward Nicklaus, managing partner of Nicklaus, Hyatt & Pena, P.A., based in Coral Gables, FL is a trial lawyer with 31 years of experience, much of it defending truck fleets. Recently, for example, Nicklaus notes that his firm successfully represented Penske Truck Leasing in a \$7.5 million negligence lawsuit. According to Nicklaus, there are several things fleet owners and managers can do to prepare themselves for the courtroom — long before they ever find themselves in a lawsuit.

"Even great truck fleets with great safety records will be involved in an accident someday if they drive enough miles," Nicklaus says. "The law of averages just catches up with you. To make things tougher, the general public knows very little about trucks or trucking and years of bad press have made people — made juries — less than sympathetic to the trucking industry." There are, however, still things you can do to improve your odds of a favorable verdict:

1. Select the right lawsuits to try. If your driver was in the wrong, settle it and get on.
2. Train all of your drivers to obey safety rules and know the rules so well they can recite them from memory, including everything required during a pre-trip, walk-around safety inspection.
3. Watch hours of service. Plaintiff's attorneys are going to ask, "Well, just how sleepy were you?" even if the case has nothing to do with fatigue. They will ask, "Were you in a hurry? Were you speeding to get one more load



before you had to stop for the day?"

4. Make sure each driver knows all about his or her truck. "Are automatic slack adjusters on the truck?" a plaintiff's attorney will ask. "What does that mean?"

5. Maintain your equipment. Whether or not brakes were a factor in an accident, for instance, it will go against you if the truck's brakes are discovered to be out of adjustment.

6. Keep good and thorough records, including maintenance records. If you do the right things and have the data to document it, then you will be better able to defend the cases you should defend. Without the data, you may be right but you are at risk because you can't successfully defend yourself.

7. Hold regular safety meeting with your drivers and dispatchers.

8. Teach drivers how to respond if they are in an accident: cooperate with the authorities, call the safety director or their supervisor, and don't talk to anyone about the accident until your counsel arrives.

9. As a general rule, defend your drivers if they get a traffic citation and let them know that you will be there to help them. Drivers are often very anxious and upset following an accident or other incident. As a result, they may plead guilty to a traffic violation even if they are not at fault. In Florida and some other states, a guilty plea is admissible as evidence in a civil case and may be offered by a plaintiff's attorney as evidence of negligence. If the driver pleads "not guilty," the violation is not admissible as evidence, even if he or she is later found guilty of the violation.

10. Honesty is always the best policy. In the event of an accident, if you have good drivers, the facts will support you.

— WENDY LEAVITT