

When Driver Shortages and Litigation Overlap: Remediation of Impacted Drivers Following a Catastrophic Loss

I am a defense lawyer currently practicing in Boston, MA, with a practice that includes trucking and transportation law. In my younger career years, I primarily defended physicians and nurses in claims of medical negligence. Many of the reptilian concepts facing the transportation industry were in play in the medical negligence industry when I practiced in that area, focusing a jury on ideals of public safety and empowerment. In addition to applying the skills learned from defending against reptilian tactics in medical malpractice, there are lessons in remediating an involved party (there, a medical provider and here, a driver) so that they can return to work in good conscience that should carry from the medical community to the transportation community.

Specifically, I recall the efforts to assist physicians and nurses who found themselves facing litigation to continue their skilled practices and navigate the emotional toll of litigation or patient loss. These efforts came from an assortment of entities: the employer, professional organizations, and the insurers. In the transportation community, even in the face of historical high driver shortages, this effort is sporadic and company specific, leaving drivers to deal with PTSD and related mental and physical impacts following a catastrophic loss. Often, the driver chooses to leave the profession fully in this situation.

The truck driver shortage remains at or near its historical high with forecasted exacerbation of the shortage as drivers continue to age and retire. The ATA estimates the shortage of drivers could surpass 160,000 in 2031, requiring the industry to need to recruit nearly 1.2 million new drivers into the industry to replace retiring drivers, drivers that leave voluntarily (e.g., lifestyle) or involuntarily (e.g., driving records or failed drug test), as well as additional drivers needed for industry growth.¹

While the industry faces an increasing shortage of drivers, it simultaneously faces an influx of trucking litigation marked by nuclear verdicts, fear, increasing insurance rates and premiums, and constant small claims having substantial impacts on slighter fleets. While the trucking industry has analyzed the shortage and impact of litigation from all angles, the time has come to consider the overlap: what can companies and insurers do to remediate drivers involved in accidents to get them back on the road after a catastrophic event?

My first transportation claim involved a box truck driver who struck and killed a pedestrian unexpectedly on a major highway. The loss of this pedestrian deeply upset the driver who, up until this accident, had a long-standing and pristine driving record. This accident resulted in a criminal charge and a civil lawsuit, both of which further exacerbated this driver's feeling of profound loss. Even once the criminal charges resolved in his favor and the civil case was resolved, this driver remained profoundly impacted. He was unable to return to work, and his fleet lost a long-trusted driver. At the time we parted ways, he was uncomfortable driving even his personal vehicle.

¹ *****[.thetrucker.com/trucking-news/the-nation/ata-truck-driver-shortage-remains-at-near-record-high](https://www.thetrucker.com/trucking-news/the-nation/ata-truck-driver-shortage-remains-at-near-record-high)

Since that time, when defending transportation cases and when speaking with trucking companies relative to health, safety, and risks, I encourage more focus on treatment for truck drivers involved in any accidents or litigation with a focus on remediating the driver such that they would be able to return to work, should the company so desire. This may involve mental health treatment to process the loss, extensive deposition preparation prior to offering testimony to rehabilitate the mental status of the driver, and company support for solidarity. There will be times when the desired outcome is not to rehabilitate a driver when an accident arises from poor judgment or decision-making: This driver is not the subject audience. Instead, the idea for rehabilitation focuses on drivers encountering losses or litigation when there is either substantial contributory negligence by the injured party or nothing the driver could have done to stop the accident. A profound example includes suicide by truck.

The efforts by an employer, practice specific groups, and even insurers to provide support following such losses may have a healing impact on the drivers and allow them to return back to work safely. These efforts will be case specific, and may need to pair with re-training efforts. However, given the insufficient amount of drivers in the industry currently, and with the anticipate of the lack of drivers worsening, the effort to remediate well-trained and credentialed drivers faced with a catastrophic loss may ultimately be both a cost-saving measure and a measure helping to heal the involved individuals.²

² It is important to speak closely with your legal counsel and insurer to determine the best way to safeguard any disclosures made by a trucker following a catastrophic loss.