Attacking Bias Before Voir Dire

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Package delivery companies have a distinct advantage in litigation over other trucking companies; they are synonymous with receiving either packages that are gifts or something that is bought online. These companies have developed images that invoke positive feelings in jury pools. In contrast, a waste hauler or an oil company that provide as much value to society is not likely to invoke such positive feelings. A company with a good reputation for safety, responsible management, and credible corporate representatives will likely fare better at trial than a company without those characteristics. To obtain these characteristics, it is important to have a post-accident company plan of action.

An effective post-accident response plan should include sensitive, personal contact with everyone affected by the accident. A trucking company should train one or more corporate representatives to arrive at an accident site as soon as possible to offer assistance to those affected by the accident. A trucking company should help with transportation, food, clothing, hotel, funeral costs, and grief counseling. A compassionate accident response shows the injured party that the company cares about their well-being, and this can have a positive effect on settlement negotiations or possibly head off a claim entirely. Further, even if an accident turns into a lawsuit and reaches the trial stage, jurors will see a company with a human face and compassion.

It is important for the trucking industry to spread the word on how important trucks are to our country and how professional truckers are the safest group of drivers on our roads. Drivers who reach safety milestones should be lauded publicly. Evidence of trucking companies’ positive contribution to society must be reported. Everyone should
actively seek opportunities to talk and write about trucking companies’ overall safety record and high standards to which commercial drivers are held.

Know the Venue

Heading into a voir dire it is important to research the demographics, lifestyles, recent events, and economic state of the county or district from which your jurors are drawn. This may offer you an idea of the likely attitudes of your jurors. High unemployment, economic hardship, and excessive reliance on government subsidies all spell trouble for trucking industry defendants. It is important to look at a map where the venue sits. If major interstate highways crisscross a venue or if it is a manufacturing hub, the high volume of truck traffic more likely than not will affect the attitudes of your jurors.

Jury Bias in Voir Dire

Jurors are more likely to identify and sympathize with the people in the car than with the driver of the truck. Therefore, in voir dire the attorney should focus on identifying jurors with negative attitudes towards truck drivers, trucking companies, and corporations in general. It is also important to identify jurors who oppose caps on damages in lawsuits or who appear excessively sympathetic toward injured people. It is important when questioning a jury panel to ask questions in a way that presumes bias exists. For example, the question:

“Does anyone here have a negative view of corporations?”
This question may not elicit a response from all jurors who hold this view. They may be reluctant to raise their hand as the question implies someone only rarely would have such an opinion. Try this instead:

“By a show of hands, how many of you have a negative view of corporations?”

Here, the question is more likely to get the response you want as it suggests people commonly have these negative views, and the juror will not feel shy in telling us that they do. Here are additional questions you should consider asking in a trucking case:

I represent Mr. [driver] and [trucking company], and I recognize that many people have negative opinions of truck drivers or trucking companies because of the experiences they had or because of what they have seen in media reports.

How many of you have ever been intimidated or scared by a truck on the road?

How many of you, by a show of hands, have ever witnessed or been involved in an accident with a truck?

Some people believe truck drivers are professional drivers and because they are professionals, they should be held to higher driver standards than regular drivers. How many of you feel this way? How many of you feel strongly about that?

It is important to also indoctrinate jurors against bias during voir dire. For example you can say:

[Trucking Company] is a company that is responsible for delivering freight to stores, manufacturing plants, and anyone else who needs something transported from one place to another.

Trucking companies like [trucking company] are made up of people, and they deserve the same justice that we would give to an individual. The law will instruct
you that you must treat individuals and corporations the same. Will everyone here be able to do that – to treat [truckling company] the same as you would an individual, such as [plaintiff]? 

The Five Nuclear Verdicts in 2018

1. A $165 million jury verdict was upheld by the appellate court in New Mexico in February 2018. The FedEx truck collided with a small pick-up and a mother and her 4-year old daughter were killed. “Assuming a monetary value to the loss of a loved one was up to jurors and there was no sign the jury in this case was swayed by passion or prejudice.” Morga v. FedEx Ground Package.

2. In February 2018 a California jury award $53 million to two brothers whose pickup was hit by the driver of a CRST commercial truck that crossed over the center lane of a two-lane highway. The jury awarded $33.6 million to the driver and $19.2 million to the passenger. There was no appeal; a post-trial confidential settlement was reached. Lenning v. CRST.

3. In May 2018 a Texas jury awarded $90 million in a collision that killed a 7 year old and paralyzed a 12 year old. The collision occurred during freezing rain and black ice road conditions. Blake v. Weiner Dist. Court of Harris County Texas.

4. In July 2018 a Texas jury awarded $101 million against FTS International, an oil services company. The FTS driver was under the influence and rear ended a car. There
was a $75 million punitive damage award. The driver had multiple driving violations prior to his hiring and was involved in 3 accidents while at FTS. *Patterson v. FTS.*

5. In November 2018 a Texas Jury awarded $260 million to the family of a man that was killed when his van collided with a tractor trailer positioned across 4 lanes of highway. The tractor trailer had pulled out of a private driveway, positioning itself to back in. As it sat blocking 2 northbound and 2 southbound lanes, a 21 year old plaintiff slammed into the side of the trailer and died. *McPherson v. Jefferson Trucking.*

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1 This material was prepared in large part with the article: Stockland R. Hickey III and Paula J. Gabier, Pd.D., *An Essential Element of Risk Management Battling Bias Against Truckers,* For the Defense (Dec. 2011) 53 No. 12 DRI for Def. 59.