



The Global Legal Network
Local Relationships Worldwide

DON'T GET HAMSTRUNG BY YOUR HANDBOOK

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BEST PRACTICES



DON'T GET HAMSTRUNG BY BEST PRACTICES

Negligence is the failure to use reasonable care.

A person may be negligent by acting or failing to act. A person is negligent if he or she does something a reasonably careful person would not do in the same situation or fails to do something a reasonable person would do in the same situation.

Indiana Model Civil Jury Instruction 909 Negligence—Definition

DON'T GET HAMSTRUNG BY BEST PRACTICES

1. **Preventable Accident:** An accident in which there is damage to a Shaw vehicle or other party vehicle, and/or bodily injury or property damage to a third party as a result of poor judgment or conduct on the part of our driver.

13. **Serious Job Performance Failure:** Any action by a driver that causes any amount of damage or bodily harm such as, but not limited to: pulling away from a dropped trailer to the point that the electrical/air lines become separated or detached, leaving the fuel nozzle in the fuel tank and pulling away from the fuel island, violating dock procedures, or failing to correctly hook to a trailer causing the trailer to drop from the 5th wheel.

DON'T GET HAMSTRUNG BY BEST PRACTICES

PROCEDURE

Data used to determine preventability

Each driver's accident file will be reviewed using the following documents to determine preventability:

1. Form A (Accident Report)
2. Form B (Driver's Statement)
3. Police report, if applicable
4. On scene adjuster's report, if applicable
5. Witness Statements
6. Pictures of the accident

DON'T GET HAMSTRUNG BY BEST PRACTICES

Serious Accident and/or Accidents that could place the driver at 60 points.

Accidents that are deemed serious, or accidents that could place the driver at or above 60 points (see [2.0 Point Profile System](#)), will be expedited through the review process. The Transportation Safety Manager will review all available information concerning the accident. This review should take place within 72 hours of the accident. If the accident is deemed preventable, the driver will have 24 hours to submit an appeal.

DON'T GET HAMSTRUNG BY BEST PRACTICES

3. All drivers are responsible to report near misses, vehicle accidents, personal injuries, unsafe acts or unsafe conditions to their supervisor or dispatcher immediately. Failure to report these immediately could result in disciplinary action up to and including termination.
5. **Serious Accident**:** (30 points/possible termination) Accidents such as, but not limited to, a rear-end collision, rollover, and erratic lane change when operating a commercial vehicle that meets the following criteria:
 - a. Bodily injury; or
 - b. Significant damages to either our vehicle or the other party's vehicle(s); or
 - c. Significant property damage; or
 - d. Citation issued due to serious accident

POP UP QUESTION

- What are the potential problems?
 - A. Definitions of “negligence” and “preventable” are inconsistent.
 - B. No opportunity to delay a preventability determination while an accident reconstruction is completed.
 - C. All information used to make a preventability determination (accident report, driver statement, police report, adjuster’s report, witness statements) are now potentially admissible.
 - D. A driver who was involved in a serious, but non-preventable, accident should have been assessed 30 points and potentially terminated.
 - E. All of the above.

DISCOVERY REQUESTS FOR HANDBOOKS

REQUESTS FOR HANDBOOKS / POLICIES AND PROCEDURES

- Requests for Policies and Procedures in Discovery:

INTERROGATORY NO. 11

Identify all Defendant TRUCKING COMPANY policies, procedures, rules, guidelines, directives, manuals, handbooks and instructions and training applicable to Defendant DRIVER regarding driving, defensive driving, turning, intersections, driver distraction and use of cell phones.

- Strategy in Objecting / Denying Production:
 - Basis of objecting
 - Hold until pressed

KNOW YOUR OPPONENT AND PUSH BACK

- Is this “form” reptile discovery?
- Is this attorney a long-time trucking attorney or are they new to the industry?
- Does the attorney REALLY want the handbook, or could they be satisfied with the basics? (insurance info, drug test info, current employment status of driver)

LEGAL FORM

OBJECT, OBJECT, OBJECT!



- Relevance
- Overly Broad
- Vague
- No allegations of independent negligence
- Stipulation of liability

RECENT COURT RULINGS

- Production depends upon your judge.
 - State versus Federal
- Ruling on Independent negligence relative to handbooks:

THE COURT: Plaintiff's motion to compel is going to be denied in part and granted in part...

With respect to Request for Interrogatories Nos. 2, 4, and 11, and Request for Production Nos. 11 and 58, these requests are denied, as [Plaintiff's] petition for damages does not assert any claims of independent negligence against [the Trucking Company].

RECENT COURT RULINGS

- On the basis that the requests for handbooks are overly broad / irrelevant:

After reviewing the pleadings, evidence and the arguments of counsel, **IT IS ORDERED ADJUDGED AND DECREED** that Plaintiff's Motion to Compel is hereby **GRANTED IN PART**. The Defendants [REDACTED] [REDACTED] produce any and all documents related to the subject accident and the plaintiff, [REDACTED]

IT IS FURTHER ORDERED ADJUDGED AND DECREED that Plaintiff's request for any material not specific to the subject matter of this lawsuit is hereby **DENIED**.

HANDBOOK PRODUCTION



- Get it *ordered*
- Limitation on production is key
 - What specific policies / sections need to be produced?
- Produced in this action only
- Consider liquidated damages
- Return at conclusion of the case
- Watermarks versus Bates Stamps

HANDBOOK PRODUCTION

Problematic Language:

- “We expect our drivers to follow the laws ALL THE TIME”
- Policies versus Guides
- Penalties and point systems
 - Are they enforced?
- How “lawyerly” is your handbook?



HANDBOOKS AT TRIAL

Marcus, et al. v NKM Transportation, et al.,
2018-CA-004903

Defense verdict - April 22, 2021



- PLAINTIFFS' CLOSING ARGUMENT: "It's not a guideline. It doesn't say 'Don't park in the roadway unless you feel like it. Don't park in the roadway unless you really want to not get your shoes wet.' It says 'Don't park in the roadway,'" ... "There were plenty of alternatives."

CONTINUING LEGAL EDUCATION

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- If you encounter any difficulties in obtaining CLE credit in your state, please contact:

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THANK YOU! IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ONE OF THE PRESENTERS



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