

**NOT JUST A BIG CAR CRASH – YIN AND YANG
TRUCKING TIPS AND PITFALLS**

**TODD CLEMENT
CLEMENT + SPEER
17855 DALLAS PARKWAY, SUITE 155
DALLAS, TEXAS 75287
(972) 250-9250
todd@clementspeer.com
www.clementspeer.com**

**WILLIAM TOLES
MUNSCH HARDT KOPF & HARR, PC
500 N. AKARD STREET, SUITE 3800
DALLAS, TEXAS 75201-6659
(214) 880-1050
wtoles@munsch.com
munsh.com**

TABLE OF CONTENTS

I.	INTRODUCTION	4
II.	WHY JURORS AWARD PREMIUM VALUES IN TRUCKING CASES	4
III.	INITIAL INVESTIGATION	5
A.	Collision	5
B.	Truck and Trucking Company	5
1.	Vehicle Damage	5
2.	Black Box Technology	6
3.	ESP and ACC	6
4.	Vehicle Speed and Location Technology	7
5.	Other Items of Interest	7
6.	Trucking Company	7
C.	Plaintiff's Vehicle	7
1.	Vehicle Damage	7
2.	Black Box Technology	8
3.	Vehicle Crashworthiness	8
D.	Documentary Evidence	8
IV.	TRUCKER NEGLIGENCE	9
V.	THEORIES OF LIABILITY AGAINST A TRUCKING COMPANY	10
A.	Importance of Derivative Liability	10
B.	Drivers Liability First	10
C.	Respondeat Superior	10
D.	Statutory Employer Doctrine	10
1.	Statutory Employer Rule	11

	2.	Majority Rule – Absolute Liability	11
	3.	Minority Rule – Course and Scope Required	12
	4.	Interstate Carrier and Purely Intrastate Haul	12
	5.	Seminal Texas Cases	12
E.		Branded Vehicle Doctrine.....	14
F.		Trucking Company Negligence Submission	14
	1.	Rosell v. Central West Motor Stages, Inc.	14
	2.	Bedford v. Moore	15
G.		Active Negligence Theories.....	16
	1.	Negligent Entrustment.....	16
	2.	Negligent Hiring, Retention and Supervision.....	17
	3.	Malice/Gross Negligence Examples.....	26
VI.		TRUCKER DISCOVERY	27
VII.		TRUCKING COMPANY DISCOVERY	31

NOT JUST A BIG CAR CRASH – YIN AND YANG TRUCKING TIPS AND PITFALLS

I. INTRODUCTION

When an eighteen-wheeler collides with a passenger car, truck or SUV, the bug on a windshield analogy immediately comes to mind. Basic laws of physics dictate when an 80,000 lb. truck impacts a 4,000 to 6,000 lb. car, truck or SUV at significant speed, someone in the smaller vehicle is likely to receive serious injuries or be killed. A truck's incredible potential for harm requires truckers and trucking companies to exercise commensurate responsibility.

When retained on a serious injury trucking case by the plaintiff or the defense, a trial lawyer must recognize that while the case may have a great deal in common with a car wreck case, there are substantial differences that must be taken into account. This paper addresses some major trucking issues that a trial lawyer may want to consider.

II. WHY JURORS AWARD PREMIUM VALUES IN TRUCKING CASES

PLAINTIFF:

We all instinctively know that trucking cases create premium settlements and verdicts, but why? Juries award large verdicts against trucking companies for many reasons including:

1. Self-Preservation – Juries believe if they award a large verdict, a similar collision might not happen to them or their loved ones;
3. Expectation of Safety – Juries expect truckers and trucking companies to be safe because of the potential for harm and may react strongly when those expectations are not met;
4. Preservation of Life – Jurors believe lives can be saved by their trucking verdicts;
5. Avenge Bullies – Jurors believe trucks and truckers are the bullies of the road and everyone loves to see a bully get what is coming to him;
6. Preventable Is Inexcusable – The simple argument is that many collisions are both predictable thereby preventable thereby making the failure to take action akin to an intentional tort; and
7. The Desire to Improve Safety – Many jurors believe they can improve roadway safety and compel future responsible behavior with their verdict.

DEFENDANT:

In addition to the factors above, some of the other hurdles you face when defending a trucking company or truck driver are the belief all trucking companies are wealthy, negative experiences by a juror with a tractor-trailer and stereotypes related to trucking companies. Nevertheless, you can successfully defend trucking companies and truck drivers. Some effective

arguments are:

- Preparation – Take the time to prepare your truck driver and corporate representative for depositions and trial testimony;
- FMCSR – Familiarize yourself with the Federal Motor Carrier Safety Regulations (FMCSR) and be aware of the regulations that are applicable to your case;
- Voir Dire – Confront the negative perceptions of the trucking industry and learn about the negative experiences of individuals on your jury panel;
- Safety – Emphasize the importance of safety on the road and the importance of safety with your company and drivers;
- Training – Emphasize the importance of driver training and your client’s driver training program;

III. INITIAL COLLISION INVESTIGATION

PLAINTIFF:

If you are fortunate enough to be hired within hours, days or even weeks of a serious trucking collision, you should institute your own investigation of the circumstances surrounding the collision. As soon as possible, go to the scene yourself. Spend time observing the scene, the traffic flows, the topography, any impediment to vision and any collision evidence that may still remain, such as highway markings.

If the collision is fresh, the vehicles are available and the potential damages warrant it, you should consider hiring an accident reconstruction expert to download the black boxes, map the scene and examine the vehicles. I generally use a two-pronged approach with these experts.

My first call is to a retired police officer who was the head accident investigator for a major metroplex police department who is now retired and working in accident reconstruction. I use him to interface with the investigating police officers, who often are more comfortable and forthcoming talking with a fellow officer. This access can be critical when an accident report is delayed due to an ongoing investigation and the names of witnesses are needed. The investigator is also a licensed private investigation who may be utilized to conduct interviews with material witnesses, often including the tow truck driver. Of course, this investigator also provides practical and professional insight into the cause and dynamics of the collision.

If speed, braking, crashworthiness or other collision issues causes me to anticipate that the testimony of a more credentialed accident reconstruction expert may be beneficial, I will also immediately retain an experienced accident reconstruction expert with a background in engineering and significant testifying experience. Many call themselves experts so I encourage you to screen the expert to assist in choosing the best person for the job. Early involvement when the evidence is fresh is often the key to a future positive result.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Not Just a Big Car Crash - Yin and Yang Trucking Tips and Pitfalls

First appeared as part of the conference materials for the
2022 The Car Crash Seminar session
"Truck/CMV Wrecks: Yin and Yang"