

THE LAWYER'S LOGBOOK

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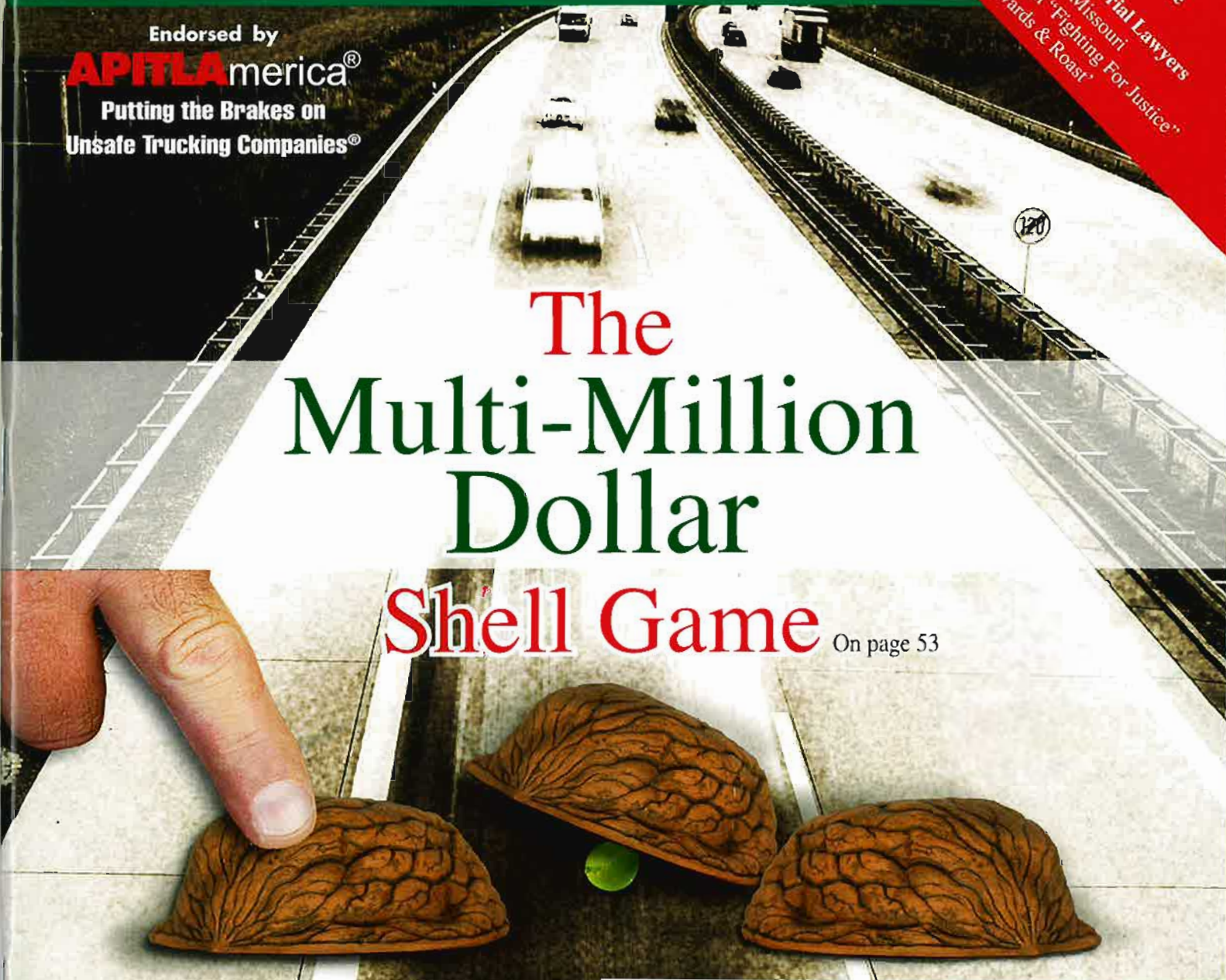
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Let's Get SERIOUS:

Making The Most Out Of The Defendant Driver's Prior Violations

Discovery of a commercial driver's prior traffic violations, let alone the admission of such evidence at trial, is often fiercely challenged by defendants. When met with a thorough analysis of the rules, these challenges should fail given the relevance of this information for various purposes in your case. As explained below, discovery of prior traffic violations of a defendant truck driver is reasonably anticipated to lead to admissible evidence that the driver should have been disqualified at the time of the wreck, or had previously been disqualified, but allowed to continue driving.

Due diligence requires every trucking case be screened for claims of independent negligence on the part of the motor carrier in their supervision of the truck driver, as well as the hiring and training of the driver. The Federal Motor Carrier Safety Regulations (FMCSR) create independent duties on motor carriers to monitor drivers' traffic violations and the discovery of these violations and the

surrounding circumstances are direct evidence of a motor carrier's compliance with federal law and negligence in supervising its drivers.

What is a Serious Violation?

The purpose of Part 383 of the FMCSR, which regulates commercial driver's licenses, is to help reduce or prevent truck accidents by disqualifying drivers who operate commercial motor vehicles (CMV) in an unsafe manner. [49 C.F.R. 383.1] This includes regulations that establish periods of disqualification for drivers convicted of certain offenses, including "serious traffic violations". [Id.]

The FMCSR defines a "serious traffic violation" as a conviction of any of the following offenses while operating a CMV:

- (a) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;
- (b) Reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a CMV in willful or wan-

ton disregard for the safety of persons or property;

- (c) Improper or erratic traffic lane changes;
- (d) Following the vehicle ahead too closely;
- (e) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control;
- (f) Driving a CMV without obtaining a CDL;
- (g) Driving a CMV without a CDL in the driver's possession. Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense; or
- (h) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported. [49 C.F.R. 383.5]

While this section specifically refers to violations when operating a CMV, the notification and disqualification regulations refer to violations in any type of motor vehicle.

CAUTION: Do not be fooled by the defense counsel who argues that only violations occurring in a CMV count toward disqualification. Counsel may use the official regulatory guidance issued in 1997 for § 383.51 to advance this position. That guidance advised that convictions for serious traffic violations only result in disqualification if the offenses were committed in a CMV - unless the State has stricter regulations. Section 383.51 was extensively revised in a final rule published on July 11, 2002. The changes took effect on Sept. 30, 2002, and states were given three years to implement those changes. In effect, the changes made the above regulatory guidance obsolete, because it made certain speeding violations in a personal vehicle grounds for disqualification.

Finally, many states have adopted more stringent standards that apply to violations committed in a personal vehicle, therefore, a thorough review of your jurisdiction's law on this topic is absolutely necessary.

Notification and Investigation Requirements of Drivers and Motor Carriers

A truck driver is required to notify the state which issued his CDL and his employer of all convictions of state or local law relating to motor vehicle traffic control within 30 days of the conviction. [49 C.F.R. 383.31] Such traffic violations can require disqualification of the driver, whether the violation was in a CMV or not. Table 2 to 49 C.F.R. § 383.51 contains a list of the offenses and the length of disqualifications, depending on the type of vehicle the driver was operating at the time of the violation. [49 C.F.R. 383.51] Additionally, the minimum standards set out in the regulations requires that drivers be disqualified for a minimum amount

of days for being convicted of 2 or more serious violations in a three year period. [49 C.F.R. 384.218 and 384.219] It is vital that you obtain an accurate history of all violations committed by the driver so that you and your expert can determine whether the driver had been previously disqualified, should have been previously disqualified, but was not, or should have been disqualified at the time of the subject crash, but was not.

It is incumbent on the employer to ensure that a disqualified driver does not drive a CMV. [49 C.F.R. 383.51] The employer is required to do an annual inquiry of each of its driver's motor vehicle record to determine whether the driver meets the minimum requirements for safe driving, or is disqualified. [49 C.F.R. 391.25] In doing so, the employer must consider any evidence that the driver has violated traffic laws and must give weight to violations which exhibit a disregard for the safety of the public, such as speeding, reckless driving and operating under the influence. [Id.] The motor vehicle record and a note identifying the person who conducted the review must be maintained in the driver's qualification file. [Id.]

Creating a Standard of Care Using Serious Violation Regulations

It is important to remember that the regulations discussed above are the absolute minimum standards required of truck drivers and their motor carrier employers with regard to prior serious traffic violations. These regulations can and should be used to create a standard of reasonable care for the defendant motor carrier which establishes reasonable efforts the company should make beyond the bare minimum. For example, a corporate representative can be asked whether a supervisor who is aware of violations that were not reportable should take those into account when deciding whether to disqualify a driver for a period of time.

The effect of this is to create a

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