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## Trailer Manufacturing, Leasing, Interchange Liability

Recent Articles and Presentations

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**The trucking industry recently received 450 million reasons to pay closer attention to best practices for trailer safety and the business relationships involving trailer use. On September 5, 2024, plaintiffs suing trailer manufacturer Wabash National Corporation received a jury verdict awarding punitive damages of \$450 million in the case *Perkins, et al. v. Wabash National Corp., et al.* The punitives arose from allegedly failing to take adequate measures ensuring the safety of a trailer that was two decades old. Two people died in 2019 when their vehicle crashed into the Wabash trailer. Wabash's legally compliant rear-underride guards did not prevent the loss of life.**

The Wabash case is expected to be appealed. Regardless of how liability ultimately lands when the dust settles, this is a cautionary tale with implications far beyond product defect cases. Transportation is a relationship business with many moving parts, literally and figuratively. All companies involved the business of our ubiquitous 53' trailers can take this moment to reflect on the best ways to protect our companies and the motoring public.

Among the trailer-based relationships there are four points of meaningful focus: (1) equipment manufacturer best practices, (2) equipment leasing best practices, (3) equipment interchange best practices, and (4) equipment use best practices.

**Equipment Manufacturer FMVSS Best Practices** – Motor vehicle equipment manufacturers must comply with the National Highway Transportation Safety Administration's (NHTSA's) registration and safety standard certification requirements. The Federal Motor Vehicle Safety Standards (FMVSS) are found in regulation at 49 CFR Part 371. Our self-certification regime places responsibility on manufacturers to confirm requirement with, for example, the rear-underride standards at FMVSS No. 224, which was updated in 2022. In this litigation environment the equipment industry is challenged to consider whether minimal safety compliance remains practically sufficient.

**Equipment Lease Agreement Best Practices** – Large trailer leasing companies and smaller enterprise equipment companies often lease those trailers to the operating motor carriers. This is documented by a Trailer Lease Agreement that establishes among other key points the parties responsible for maintenance and insurance of the trailer unit. The Graves Amendment at 49 USC 30106 protects those leasing-only companies from practically all liability for any vehicular accident arising from use of the equipment. In this litigation environment the leasing industry, and intercompany relationships to manage enterprise risk, is challenged to maintain the "trade or business of renting or leasing" standard set in the Graves Amendment as well as clear allocation of responsibilities in Trailer Lease Agreements.

**Equipment Interchange Best Practices** – Motor carriers who own or lease trailers are in the business of using those assets as efficiently as possible to ensure return on investment and customer satisfaction. Sometimes efficiency is accomplished by interchanging a trailer to another motor carrier on a through bill of lading. This practice is permitted under regulation at 49 CFR 376.31. The rules that an originating motor carrier sets for the carrier to whom it offers the trailer are often presented in

a short form Interchange Agreement. In this litigation environment the motor carriers involved in trailer interchange are challenged to responsibly paper when, where, and how possession and use of the trailer transfers—and the responsibilities that follow for physical damage, vehicular accident, and cargo loss or damage.

**Equipment Use Best Practices** – All motor carriers are responsible for the systematic inspection, repair, and maintenance of equipment they operate. Those regulatory requirements are found at 49 CFR Part 396. During day-to-day operation, drivers are of course on the defensive front line. For example, the obligation to produce Driver Vehicle Inspection Reports under 49 CFR 396.11 requires daily reporting of defect or deficiency in trailer brakes and brake connections, coupling devices, lamps and reflectors, tires, wheels and rims, and emergency equipment. In this litigation environment motor carriers are challenged to continue as best as possible in exercising vigilance in driver training and a risk-appropriate safety program together with the constant attention required to maintain safety.

No one takes satisfaction in litigation, particularly arising from vehicular accident, and especially where there is loss of life. As the industry considers what this verdict means, the entire range of companies and professionals that touch the humble 53' trailer, from manufacturers to lessors, carriers, and drivers, can also benefit from taking pause to recognize that safety is a *process* with tangible milestones. It saves lives, it is complex, it changes every day, and it is never done.

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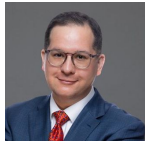
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