Money and the Doers of Dastardly Deeds

I n the Apostle Paul’s letter to Timothy, his young assistant, he sets forth his advice on the management of the Church. It is here that Paul writes in 1 Timothy 6:10 that the “love of money is a root of all kinds of evil.” This sage advice has since been modified to say that “money is the root of all evil.” Sometimes, especially in the context of litigation, that rings true.

I am going to write today about Money as an actual character in the story of a civil case. I would submit that Money may be the most important character in many cases—and that we as trial lawyers ignore that fact (or assume it just will prove itself) to our great peril. Recognizing and developing that key component of many cases can do much to enhance its value to jurors’ understanding of the case.

Our cases are rarely “only” about the facts that the client relates to us in that first meeting. The events that bring the client into our office were, more than likely, set in motion long before the incident that brought the client in. There are very valid and important reasons for discovering these facts. Our job as trial lawyers is to show that the particular case being tried is truthfully larger than its own facts—and exploring, developing and presenting Money as a character in the story shows the true context of the other facts. That in turn shows the jury the true significance of this case beyond just this individual plaintiff. When we show the role
of Money in causing the harm, we reveal the truth that in blaming a single hardworking employee, the defense is dishonestly deflecting blame from the decision makers who listened more to Money’s influence than to their obligation to protect safety.

I first want to talk about the birth of Manuendo Jackson, Jr.

I have changed the names in this story, as the results of this case are confidential.

Our story begins at Jack Martin Hospital in the small town of Anderson, Texas. Jack Martin Hospital is a part of a small chain of hospitals. The main hospital in the chain is in a much larger town about 30 miles south of Anderson, as are the corporate offices for the hospital chain.

We are in one of those typical hospital rooms like one might see on any one of a half dozen “medical shows” that dot evening television. White walls, too-bright fluorescent lights, antiseptic smell and the electrical sounds of beeps, alarms and clicks. Jennifer Gomez is being watched by the nursing staff. She is in labor. She has carried her baby full term and has come to the hospital just after noon with labor pains.

The look of anxiety on her face betrays the fact that this is her first pregnancy. She is all alone. It is early afternoon on a week day in December so her mom is still at work. She is not married to the father of the child. He has shown little interest in her pregnancy or in this baby. His work dealing drugs allows him the flexible schedule that would enable him to attend this important event but he ignores Jennifer’s call to his cell phone while on her way to the hospital. Her mom simply says that he is “sorry” and that she could do much better.

She is hooked up to a fetal heart monitor. For now, the baby seems to be doing fine. The nurses, all very young, scurry about with determined and serious looks on their faces.

After a couple of hours, there are some notable changes in the fetal heart tones. Shortly thereafter, Jennifer’s water breaks. The amniotic fluid is meconium-stained green, meaning that the baby has been under stress and has passed stool into Jennifer’s uterus. This raises a red flag that the baby may have aspirated some of the meconium into his lungs.

One of the attending nurses notes late decelerations in the fetal heart tones. This is an ominous sign that can indicate fetal distress. Late decelerations occur as a result of the baby being denied sufficient oxygen and the baby’s body seeks to conserve the oxygen present to protect the vital organs. If the baby stays too long in this dangerous environment, he can suffer permanent brain damage.

The attending nurse notifies the doctor of this development. He is still in his office, seeing other patients. The nurse feels that his response shows less concern than she would expect under the circumstance. But he is the doctor and she is the nurse—so what could she do?

The nurse continues to check on Jennifer and how her labor is progressing over the next hour. The late decelerations continue. The nurse knows something should be done. Out of desperation she calls the obstetrician again. To her relief, he is on his way over. He instructs her to take Jennifer to the delivery room.

The nurse unhooks the monitoring equipment. She has to call several numbers to find an orderly to help her move Jennifer’s bed to the delivery room. After she has set the equipment up, the doctor comes in. Not counting the period of time before the nurse started monitoring of fetal heart tones, the baby has been in distress now for over an hour. The standard of good medical practice calls for a maximum 30-minute period from the first signs of fetal distress to delivery by c-section.

The obstetrician examines the fetal monitoring readout and calls for an immediate c-section to be performed. He orders the nurse to find the anesthesiologist and get him there, STAT! The nurse pages the anesthesiologist, but he doesn’t answer. She calls the doctor’s lounge—not there. She finally locates him by calling his cell phone. He has been unaware of Jennifer’s labor and is in his car on his way home. He is 15 minutes away. Other nurses rush in to help. Jennifer recalled later that there was mass chaos and that no one seemed to know what to do.

The delivery finally occurs 47 minutes later.
The umbilical cord is wrapped around his neck, torso and arm.

Baby Jackson is blue and unresponsive.

He is essentially dead for eleven minutes. His APGAR scores are zero at five minutes and zero at ten minutes. His lungs have to be suctioned, as he has meconium in them. The staff is working feverously to revive him.

Miraculously, little Manuealo Jackson, Jr. emits a weak cry. He has survived!

But shortly after delivery, Manny starts seizing. The seizures are grand mal seizures and will, if uncontrolled, cause brain damage on top of what he has already suffered. The decision is made to transfer him to a tertiary hospital in Dallas. Unfortunately, the weather is so bad that he cannot be taken by air ambulance and has to travel by land.

Sadly, despite excellent follow-up care, Manny will never be like other children. His brain damage from his lack of oxygen in the uterus is such that he can never walk or talk. He will never run through the piney woods of East Texas chasing butterflies. He will never go outside by himself and lay in the grass and feel the sun on his skin. He has to be fed through a gastrostomy tube in his stomach so he will never taste the sweetness of a ripe peach that grew in the orchard just down the road from his grandmother’s house. He will perpetually have the mental ability of a child only a few months old.

Proving that there was a delay in delivery which fell below the standard of good medical practice and caused this young man to be born with severe cerebral palsy is actually the easy part, believe it or not. Anoxic encephalopathy is what is contained in the records, caused by the brain being denied oxygen long enough to cause global damage. The first hints of underlying problems with her care came as Jennifer described the uncertainty that she sensed in the nurses charged with helping her in the delivery and the chaos that she described before the anesthesiologist arrived back to the hospital. The medical records confirmed numerous deviations from the standard of care by both the obstetrician and the nurses. It seemed that little Manny was the victim of a perfect storm of medical errors. The fact that he survived was a miracle.

The greater challenge of Manny’s and Jennifer’s case lay in proving that there was a failure to diagnose and treat Group B streptococcos. The defendants seized upon the fact that early cultures showed the presence of Group B strep in the vaginal canal. The recommendation at the time had been to treat with antibiotics prior to delivery, which was done, but there was a preliminary test on the placenta that showed possible Group B strep. A doctor from Martin Hospital reported this information to the treating neonatologist at the Dallas hospital where Manny was later transferred, and that doctor dutifully noted this report.

Another interesting facet of the case that involved an attempt by the hospital to conceal and bury truthful evidence. The hospital’s lawyers defended the case by saying that Manny’s terrible problems were due to Group B streptococcus bacteria. The defendants seized upon the fact that early cultures showed the presence of Group B strep in the vaginal canal. The recommendation at the time had been to treat with antibiotics prior to delivery, which was done, but there was a preliminary test on the placenta that showed possible Group B strep. A doctor from Martin Hospital reported this information to the treating neonatologist at the Dallas hospital where Manny was later transferred, and that doctor dutifully noted this report.

Although the final report showed negative for the bacteria, no further report was made to the referral hospital nor did the report make it into the chart at Martin Hospital. In fact, the defense never did produce the final report, despite three separate requests for the entire chart. Our theory was that the decision-makers at the hospital corporation were already acting to conceal share for fear of losing their jobs. Most of the digging was done through informal investigation. Since the hospital is located in a small town, it was relatively easy to locate a nurse that left in the few months before Manny’s birth.

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their egregious errors, even while little Manny was fighting for his life in the hospital in Dallas.

It was only through some excellent sleuthing work by one of my partners that the final report was located buried in a stack of boxes in a storage warehouse in Austin, Texas. Here is the report we found:

It turned out that the conspiracy went even deeper, as the pathology lab was owned at the time by the hospital corporation. We were never able to learn who gave the order to bury the report.

Several years ago a man named Clotaire Rapaille wrote a book called *The Culture Code*. Mr. Rapaille is a cultural anthropologist and marketing expert whose career has mainly focused on helping huge corporations peddle their wares. His client list reads like the Fortune 500. Companies like Ford, Proctor & Gamble, Chrysler, Folgers and others. He believes that if we go deep and examine our reptilian brain we can elicit predictable, subconscious responses.

For example, Rapaille formulates one or two-word labels that are metaphors for our base reaction to certain products, professions or ideas. He says that the code word for doctor is "hero" and the code word for nurse is "mother" or "caretaker". As those of you know that handle this kind of work, even the best medical malpractice cases are lost much more than they are won. Rapaille gives us some scientific insight to back up the anecdotal evidence that many of us have after years of practice. I can still remember my first boss telling me one time, "show me a law firm with a bunch of medical malpractice cases and I will show you a pocket of poverty!"

Many on our jury panels believe that doctors can do no wrong. Many jurors believe that as long as doctors "try" to do the right thing, they should be excused even if they technically violated the standard of good medical practice. bad things can happen and "at least they didn't mean to!". Even if the doctor was negligent, jurors are afraid that care will be denied them when they are in need of medical help. Add to that large hurdle trying to sue a nurse—or, as Rapaille says, "mom"—and you see the incredible uphill battle any lawyer faces in trying to win one of these cases.

Without doing the work to discover the story of Money's role in this tragedy, the jury would only have a group of hapless nurses thrust into a situation they didn't create and were ill-equipped to handle. The jury would see the poor doctors who did their very best they could with a bad situation. The only way out of that frame was to find all of the responsible parties—and no party was more responsible than Money.

Rapaille's work tells us that the code word for hospital is "processing plant" or "factory". With that frame, and evidence of cost-cutters coming in at the insistence of the corporate executives, more accurate and more powerful themes emerge. It is a case where the doctors and the nurses can be the heroes and the caretakers who were crippled in their mission by the corporation's staffing cuts. And the jurors can be heroes as well—as they are saving their community from a company that clearly puts profits over people. Even innocent little babies like Manny.

An area of the legal practice where Money is ever present and influential is in commercial vehicle wrecks. Money, as a character, drives in the short cuts that trucking companies will take in hiring. Call it greed, call it a misguided attempt to gain a competitive edge, but we have found that most commercial motor carriers that we go up against do a poor job of complying with the rules laid out for them in the regulations and industry materials.

Money, of the type that drives decision-making, appears only when someone pays the company to move goods from Point A to Point B. No one pays the trucking company does not get paid to train, and no one pays the trucking company to put much energy into hiring. No one pays the company to be strict on the maintenance of their trucks. That character of Money cares about bodies to drive the trucks that move the goods—and Money prefers that the companies use the fewest number of bodies possible to accomplish the mission.

There are rules about the number of hours of actually driving the trucker can perform without rest, but Money does not like those rules. Money sees those rules as directly conflicting with the basic function of a trucking operation. All of the non-driving down the road from point A to point B activities such as the greenback fuel the corporation thrives on away. Follow the rules, and Money will visit some other trucking company and avoid yours.

If a trucking company is engaged in intrastate commerce, it is governed by the Federal Motor Carrier Safety Regulations (FMCSR). Further, in some states, even motor carriers who confine their work to intrastate commerce may be subject to the FMCSR. To make this determination, one should check his or her individual state, as many states have adopted the FMCSR to apply even to companies who confine their services to intrastate commerce.

The FMCSR provides the minimum standards for regulating the trucking industry. The rules often offer fertile grounds for showing violations by trucking companies. The main motivation of many motor carriers seems to be to get drivers employed and get those drivers behind the wheel delivering freight without paying a lot of attention to just who these people are—people they entrust to drive these 80,000-pound 18-wheelers on our public streets and highways.

There are, however, minimum standards set out in 49 CFR § 391.1. That section establishes minimum qualifications for persons who drive commercial motor vehicles and the rule also establishes minimum duties of motor carriers to make sure their drivers are qualified.
If one believes in the “Reptile” theory of trying cases, trucking cases have, as a part of their standards, the prevention of fatalities and injuries and keeping the motoring public safe from trucks and buses. An individual can look to 49 C.F.R. §391 to find out what the minimum safety rules are for hiring a commercial motor vehicle driver. It is surprising how often these simple, foundational rules are ignored. Stressing the fact that these rules provide the very least that a commercial motor carrier must do, the absolute bare minimum, resonates with jurors. It especially matters when jurors hear the proof about the dangers posed to the motoring public by the vehicles operated by commercial carriers on our public streets and highways.

The rules make clear that the rules “shall not be construed to prohibit an employer from requiring more stringent requirements” when it comes to safety of the trucking operation. The FMCSR also has its own rules of construction that make clear that "shall" is used in the imperative sense. In other words, whenever “shall” is used, this is of vital importance.

It is important to emphasize the purpose of the rule set forth in 49 C.F.R. §383.1, as that purpose is something that every juror will be interested in … safety:

§383.1 Purpose and scope.

(a) The purpose of this part is to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner.

Section 391.11 provides that a person shall not drive a commercial motor vehicle unless he/she is qualified to drive one and, conversely, a motor carrier shall not require or permit someone who is not qualified to drive a commercial motor vehicle to drive one. The rule goes further to say, in terms relevant to the first case example discussed in this paper, that one is qualified if he/she-

§391.11 General qualifications of drivers.

(a) A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. Except as provided in §391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he/she—

(1) Is at least 21 years old;

(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(3) Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;

(4) Is physically qualified to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of this part;

(5) Has a currently valid commercial motor vehicle operator’s license issued only by one State or jurisdiction;

(6) Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by §391.27;

(7) Is not disqualified to drive a commercial motor vehicle under the rules in §391.15; and

(8) Has successfully completed a driver’s road test and has been issued a certificate of driver’s road test in accordance with §391.31, or has presented an operator’s license or a certificate of road test which the motor carrier that employs him/her has accepted as equivalent to a road test in accordance with §391.33.

Money will encourage the trucking company to interpret those rules loosely, if not ignore them altogether. Money says “this guy’s driving record is checkered, but chances are he’ll be fine.”

The FMCSR also has some strict requirements for the items that must be contained in the driver’s application for employment. These are contained under §391.21:

§391.21 Application for employment.

(a) Except as provided in subpart G of this part, a person shall not drive a commercial motor vehicle unless he/she has completed and furnished the motor carrier that employs him/her with an application for employment that meets the requirements of paragraph (b) of this section.

(b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him/her, and must contain the following information:

(1) The name and address of the employing motor carrier;

(2) The applicant’s name, address, date of birth, and social security number;

(3) The addresses at which the applicant has resided during the 3 years preceding the date on which the
application is submitted;

(4) The date on which the application is submitted;

(5) The issuing State, number, and expiration date of each unexpired commercial motor vehicle operator’s license or permit that has been issued to the applicant;

(6) The nature and extent of the applicant’s experience in the operation of motor vehicles, including the type of equipment (such as buses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he/she has operated;

(7) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;

(8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;

(9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;

But that’s not all. The FMCSR also requires that the applicant swear to several requirements as set forth above under §391.21. The burden is then placed on the prospective motor carrier employer, by §391.23, to conduct an investigation of its own to determine whether the applicant has been truthful in his/her answers on the application.

§391.23 Investigation and inquiries.

(a) Except as provided in subpart G of this part, each motor carrier shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971:

(1) An inquiry, within 30 days of the date the driver’s employment begins, to each State where the driver held or holds a motor vehicle operator’s license or permit during the preceding 3 years to obtain that driver’s motor vehicle record.

(2) An investigation of the driver’s safety performance history with Department of Transporta-

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each State required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver’s employment begins and be retained in compliance with §391.51. If no motor vehicle record is received from the State or States required to submit this response, the motor carrier must document a good faith effort to obtain such information, and certify that no record exists for that driver in that State or States. The inquiry to the State driver licensing agency or agencies must be made in the form and manner each agency prescribes.

These are more rules that Money finds to be a nuisance. Money doesn’t come to a trucking company because it spends a lot of time and effort investigating applicants. Money comes when the company puts a driver in the truck and sends that driver down the interstate.

In addition to the comprehensive minimum standards contained in the FMCSR there are industry standards that almost every trucking company personnel and safety director will agree are industry standards. One of those standards is the Motor Fleet Safety Manual, published by the National Safety Council. This is a must-have for any lawyer working on a trucking case. Other publications to aid motor carriers include those published by J.J. Keller & Associates. Look at that organization’s website (www.jjkeller.com) and you will find resources for motor carriers, which in turn lay out the industry standards that motor carriers must follow.

Regarding hiring, the Motor Fleet Safety Manual says that the ability to avoid accidents is the main criterion for driving performance. No matter how well-qualified a driver may be in other job requirements, repeated accidents can indicate a bad investment.

It has been fairly well established that a driver who has had frequent motor vehicle accidents in the past will continue to have frequent accidents in the future. This is one of the oldest and most reliable predictive factors.

The Motor Fleet Safety Manual says that people who are high-risk applicants might tend to minimize or conceal a bad driving record so it is incumbent on the managers to check out their driving record and to contact previous employers. This Manual further says that the selection of proper drivers is so important that it can account for at least half of the success of the program.

Another standard of the trucking industry is referred to as the “Rule of Three”. Per the Rule of Three, if a driver receives three citations or is involved in three preventable collisions, or any combination of the two, which totals three in a three-year period, the motor carrier should seriously call into question the se-
lection/retention of that driver in the motor carrier's operation.

An oil field trucker ignored a yield sign and pulled in front of our client. The trucker caused a T-bone collision at highway speeds. Our client was taken by ambulance to the emergency room. By all indications, he should have been hurt far worse than he was. One would look at his vehicle and think that it was possible that someone did not survive the crash. The client suffered a concussion and a cut over his eye. He was making a decent recovery from the collision but we sought to delve further into the matter, choosing not to chalk the case up to only a simple ignoring-a-yield-sign case and nothing more. My partner wanted to know the back story. He discovered it was really ugly.

In commercial vehicle cases, we always request the company to produce the driver qualification file. In this case, *Taylor v. Bagley Well Service*, we requested the driver qualification file for the yield sign-ignorer, Robert Garcia. His employer, Bagley Well Service, is an oil field service company whose website touts their safety training and safety record. Among the litany of safety training that Bagley claims to their customers they offer, they list FMCSA Driver Training. But upon closer inspection, the facts paint a little different picture.

We started oral discovery with the deposition of Mr. Garcia, the driver, and then we deposed Bagley Well Service's Human Resources/Safety Director. The following are some of the answers that we got from Bagley's person in charge of day-to-day operations concerning the company's efforts, or lack thereof, to comply with the federal regulations.

Q: Is there anybody here who Bagley Well Service has designated as a certified trainer?
   A: No.

Q: Do you know what the Federal Motor Carrier Safety Regulations are?
   A: No.

Q: Prior to giving an employee the keys to a Bagley Well Service vehicle, does Bagley Well Service provide that employee any training on how to safely operate a motor vehicle on a Texas highway or roadway?
   A: No.

Q: Did y'all provide Mr. Garcia with a copy of the Federal Motor Carrier Safety Regulations prior to this wreck?
   A: No.

Q: Prior to this wreck, did Bagley Well Service provide Mr. Garcia with a copy of the Texas Commercial Motor Vehicle Driving Manual?
   A: No.

Q: I'm going to show you what is purported to be a “Motor Vehicle Driver's Certification of Violations.” You see that?
   A: Yes.

Q: Do you agree with me this is a document that y'all ask new employees or employees to fill out?
   A: Yes.

Q: And before you ask someone to fill this out, they need to be an employee of Bagley Well Service. You would agree?
   A: Yes.

Q: Go to the application date of Robert Garcia. The first time Robert Garcia ever applies to become an employee of Bagley Well Service is March 23rd, 2017; is that correct?
   A: Yes.

Q: Yet Bagley Well Service has produced a document saying they certified his driver certification on February 26th, 2017; is that right?
   A: Yes.

Q: A month before he even applies.
   A: Yes.

Q: You agree with me somebody did some White-Out on this?
   A: Yes. She was too lazy to make a copy, so she whited out the other employee's name. I can tell you exactly what she did.

Q: Now, Ms. Sharpe, that was an employee under your direct supervision, correct?
   A: Yes.

Q: You and I both know that the information contained in Exhibit 1 on page 85 is incorrect and falsified.
   A: Yes.

Q: Page 86 is a document titled “Entry-Level Driver Training Certificate.” Did I read that correctly?
   A: Yes.

Q: A document titled “Entry-Level Driver Training Certificate.”
   A: Yes.

Q: That's not Beatrice Bagley's handwriting, is it?
   A: No.

Q: This is another falsified training document?
   A: Yes.

Q: The truth of the matter is Robert Garcia never received the Entry-Level Driver Training Certificate, did he?
   A: No.

Q: Bagley Well Service, if they were acting reasonably and prudently with regard to Robert Garcia, would have trained him
When we depose those flesh-and-blood humans, we need to explore their relationships with Money, and how Money influences their decisions. If we fail to explore Money’s role in the story in discovery, and if we fail to present Money’s role in the story at trial, jurors will not understand the full truth of what led to our client’s harm. It is unfair to expect jurors to do justice if they are led to believe that it was a random, unpredictable coincidence that our client was hurt, when the truth is that it was Money that pulled the pin on the grenade.
under oath here, you’re not going to be under oath so that they can give you the motor carrier. You’re not going to be under oath so that they can send it to you. That’s what you were asking, no?

Q: Let’s look at page 3, “Safety Certification.” On page 3 did you verify to the federal government that you had in place a system and an individual responsible for ensuring overall compliance with FMCSRs?

A: If the company will not be on compliance—if what you’re asking about, page 3, if it was not current or there will be regulations like you are asking, they would cancel that automatically.

Q: My only question is: Did you swear to the federal government that you had in place a system and an individual responsible for ensuring overall compliance with the FMCSRs?

A: There’s no oath here. You just fill out the papers and you send them. That’s all.

Q: Do you see at the top of the page where it says “Applicant’s Oath”? Do you see that?

A: I am looking at it.

Q: Is that similar to the oath that you took here today to tell the truth?

A: You’re talking about papers and you are talking about an oath.

Q: You don’t think you can take an oath on paper?

A: I don’t know.

Q: When you signed this, did you read it?

A: No.

Q: Was it explained to you by Ms. Morales?

A: It could have been that she read it, because she’s a professional and she does that daily.

Q: Did you know that you were swearing to the things contained in this application?

A: I don’t know.

Q: Do you have an accident register?

A: Are we talking about that accident or another?

Q: I’m talking about for any accidents required under the CFRs?

A: I don’t remember.

Q: Do you have in place policies and procedures consistent with USDOT regulations governing driving and operational safety of motor vehicles?

A: No.

Q: The truth is, you don’t have any written rules, policies or procedures; isn’t that true?

A: I don’t have anything in writing. I don’t know.

Q: When you hire a driver, do you give them a copy of the Federal Motor Carrier Safety Regulations?

A: To the driver? I don’t give anything to the drivers.

No one was paying this company for the time it would take to stock copies of the FMCSR, develop policies consistent with USDOT regulations and train drivers. To get Money to come to this company, the company just claimed it complied with those rules, and lied about it.

We should always request that the trucking company produce the commercial vehicle owner and operator the following (at a minimum):

- Complete personnel file;
- Complete driver qualification file as defined by 49 CFR § 391.51;
- Copy of driver’s driving record for past five years;
- Copies of any annual and/or periodic reviews;
- Safety audits;
- Traffic citations;
- Performance evaluations and/or employee reviews;
- Disciplinary actions;
- Alcohol and/or drug test results.

We have found extremely revealing evidence when comparing the driver qualification file to these basic foundational requirements for the qualification of a commercial vehicle driver. Proving the refusal of a commercial motor carrier to comply with the minimum requirements provided by the FMCSRs and industry standards goes a long way towards winning the liability fight.

The summation would be that Money is as much of a character in the story of our cases as the flesh-and-blood humans. When we depose those flesh-and-blood humans, we need to explore their relationships with Money, and how Money influences their decisions. If we fail to explore Money’s role in the story in discovery, and if we fail to present Money’s role in the story at trial, jurors will not understand the full truth of what led to our client’s harm. It is unfair to expect jurors to do justice if they are led to believe that it was a random, unpredictable coincidence that our client was hurt, when the truth is that it was Money that pulled the pin on the grenade.

When Money influences those in charge—in hospitals, in trucking companies, and in any organization—to ignore or defy the rules, jurors need to understand that. Showing Money’s role in the story drives the search for responsibility to right where it should be. Juries see that a particular catastrophe was almost predestined to occur. The unwillingness of the people at the top to equip a driver, a nurse, or any other employee with the tools needed to do their jobs safely happens when Money has taken a seat in the boardroom, and then shouts over anyone who tries to speak up for safety. It is Money who leads those at the top to betray the obligation that we all owe each other to never needlessly endanger another.

Endnotes

1. I recently came in contact with a company which, as a part of their services, locates insider witnesses. To-date, I have not used them but the business is called Strategic Information Group and the website is www.strategic.com.

2. See 49 C.F.R. §390.3.

3. See 49 C.F.R. §390.7(b)