

FINDING THE GOOD EGG

Risk management begins with hiring the right people and ensuring they stay on the straight and narrow. Cutting corners could reduce safety and lead to overwhelming losses.

By Avery Vise

Editor's note: This is the third article in *CCJ's* The Cost of Risk series. The series resumes in August with an installment addressing the role of training in loss prevention.

In August 2000, a 17-year-old girl driving along Interstate 40 in Nashville slowed to avoid a road obstruction and was rear-ended by a tractor-trailer. She survived the impact but was trapped inside her vehicle, which burst into flames. She died on the scene of third- and fourth-degree burns and smoke inhalation.

Last December, a jury in Tennessee returned a verdict of almost \$6.9 million against the carrier, Vernon Sawyer Transportation; its parent, KLLM Transport Services; and the driver. The judgment included \$2.375 million in punitive damages.

Why punitive damages? The plaintiff's attorneys argued successfully that given the driver's record on chargeable accidents and moving violations, he never should have been hired under the standards used by KLLM companies. Moreover, lawyers contended that based on his record while a driver for Vernon Sawyer, he should have been terminated.

Negligent hiring and retention can be pitfalls for a trucking operation whose driver is involved in a major accident, says Michael Langford, a partner with the law firm Scopelitis, Garvin, Light &



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INDEXING THE RISK

To ensure that drivers meet qualification standards and that nothing is missed, carriers need simple, easy-to-follow tools. Great West Casualty Co. recommends that carriers use risk indexing during the hiring process. The goal of a risk indexing form is to ensure that motor carriers don't miss any steps in the qualification process and to provide a way to score drivers on individual performance within the criteria. The higher the overall score, the riskier the hire. For example, one moving violation in the past 36 months might be worth three points while three moving violations in the same period might rack up seven points. Some achievements, such as no more than three jobs in 36 months, might subtract points. The risk index form Great West distributes is intended as a guide. Carriers may choose to modify it to meet their particular qualification standards.

Review of Driver by Legal Driving Age*:

21 years of age and older	1 pt
20 years of age and younger	10 pts

Review of Driver by Verified Driving Experience:

Greater than or equal to 2 years of verified truck driving experience	1 pt
1 to 2 years of verified truck driving experience	5 pts
Less than or equal to 1 year of verified truck driving experience	10 pts

Review of Drivers by Medical Qualification

Medically qualified with long form examination on file	1 pt
Medically qualified with known medical conditions that requires review	5 pts
Medically unqualified	10 pts

Review of Drivers by Motor Vehicle Record (36 months)

0 moving violations in past 36 months	1 pt
1 moving violation in past 36 months	3 pts
2 moving violations in past 36 months	5 pts
3 moving violations in past 36 months	7 pts
4 moving violations or 1 serious violation	10 pts

Review of Drivers by Vehicle Accident Record

0 accidents in past 36 months	1 pt
1 accident in past 36 months (minor non-FMCSA)	5 pts
1 accident in past 36 months (major) (or multiple accidents)	10 pts

Professional Driver Risk Index Credit Points

Not more than 3 jobs in 36 months (all must be verified)	
Never having a license suspension	-1 pt
No 10 point assessments	
Completion of a Professional Truck Driver Development course (within past 12 months)	-1 pt

Risk Index Point Totals:

A score in the lowest risk percentile	4 pts
A score in a low risk percentile	5 pts
A score in the middle risk percentile	6 - 8 pts
A score in the upper risk percentile	9 - 12 pts
A score in the high risk percentile	13+ pts

*Age indicates meeting minimum age to drive a commercial vehicle in interstate commerce within the United States, plus complying with all I-9 immigration and homeland security regulations.

Source: Great West Casualty Co.

Hanson who specializes in trial court litigation. "The reason why everyone fears negligent hiring and retention is that that's what often gives rise to punitive damages, which often are uninsurable."

While avoiding large jury awards is a major worry, trucking operations should be concerned more broadly with avoiding the type of driver who is at risk for an accident in the first place. "The critical component of a risk management solution is getting the right person hired and retained," says Jeff Lester, vice president for safety, health and security at Ryder System Inc.

Each carrier has its own profile of the kind of driver that works best in that particular operation. The key is to establish and enforce driver qualification standards for new hires and to ensure that drivers maintain those standards.

STRICT COMPLIANCE

You may go beyond regulatory minimums, but you must comply with the federal motor carrier safety regulations to the absolute letter. "If an accident happens and there's a lawsuit, plaintiff's counsels can find out a lot about the DOT regulations," Langford says. "If you have not complied in some way with Part 391 of the DOT regs, most attorneys will find a way to use that in court."

If carriers do want to go beyond regulatory minimums, Langford urges them to do so only if they intend to enforce those standards religiously. Even if you meet or exceed the regulatory minimums, you could find yourself in hot water before a jury if you don't consistently apply your higher standards.

"The clever plaintiff's counsel will argue that obviously the company thought a higher standard is reasonable and that the company violated that standard," Langford says. Compliance with the law is a solid defense, but the tactic has been known to work, he adds.

THE IMPORTANCE OF MVRs

The success of a loss control program rests squarely on the quality of drivers the carrier puts behind the

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wheel, says Jim York, manager of the transportation team for Zurich Services Risk Engineering. And a focus on driver quality starts with adhering strictly to that motor carrier's minimum eligibility criteria, says York, whose career in trucking includes time as an owner-operator, researcher and director of safety for the National Private Truck Council.

Among the criteria — age, experience, motor vehicle records (MVRs), accidents, employment history and, in some cases, criminal background — the most important may be MVR quality, York believes.

"We know that companies with a higher percentage of clean MVRs have better five-year loss histories than companies with poorer MVRs," York says. Best practices in this area are no more than three violations in three years, two in two years and one in one year, he says.

York contends that MVRs are generally more useful in screening drivers than even accident history. "Clearly, the most powerful predictor of future crashes is past crash history," he says. "But crashes are relatively infrequent events." If a carrier places too much faith on accident history alone, it may hire drivers who are at a high risk for future crashes.

There is research to suggest a correlation between traffic violations and crashes. Several years ago, the University of North Carolina's Highway Safety Research Center crunched the numbers on the 100 worst carriers in the state in terms of crashes. The center looked for relationships between typical enforcement measures and crash risk, says Ron Hughes, research associate for the center.

"In all cases, there seemed to be something there that relates crash risk to average moving violations per driver," Hughes says. In fact, that correlation of moving violations to crash risk appeared stronger than the correlation of driver or vehicle out-of-service rates to crash risk, he found.

Hughes notes, however, that the sample used in the UNC study was small, and he cautions against a sweeping conclusion that enforcing traffic laws is more important than enforcing out-of-service rules. The Highway Safety Research Center is considering a more extensive study to test its initial findings on a national basis.

When reviewing accidents, carriers should focus especially on the major preventable crashes — rear-end, lane change/merge and intersection, York says. A best practice in this area would be no major preventable crashes in three to five years, he says.

GOING FURTHER

Beyond opting for higher numbers on age, experience and so on, many carriers develop their own tools for identify-

ing drivers that work best. Some use personality tests or psychological profiles to assess how suited the driver is to the work and lifestyle. Others swear by extensive road tests.

"We are placing more emphasis on the applicant's actual ability to drive the truck in a safe manner," says Gene Brice, president of Idaho Milk Transport in Boise, Idaho. "This one area of pre-hire checks eliminates future accidents."

At each of Ryder System's 30 recruiting centers nationwide, the carrier has vehicles on hand to perform check rides, Lester says. The Ryder road test must be either 60 miles or a minimum of two hours in duration.

Other trucking managers use more novel screening tools. "While conducting the interview, I will ask to see the candidate's personal vehicle," says Doug Collins, director of corporate traffic/logistics for Utica, Mich.-based MNP Corp. "If the personal vehicle is a mess — trash in the back seat or truck bed — or if personal vehicle is dirty with cracked windows, the candidate might not be hired. If the candidate will not take care of his or her own personal vehicle, how can I expect the company vehicle to be taken care of?"

Another potential screening tool is headed carriers' way. Beginning this fall, commercial driver's license holders must pass a Transportation Security Administration background check in order to obtain or renew hazardous materials endorsements. Motor carriers won't have access to TSA's databases, but they can be assured that a driver with a hazmat endorsement will be free of recent convictions, arrests or incarcerations for certain major crimes.

ARE THEY STILL QUALIFIED?

Carriers should consider driver qualification an ongoing process. "The second biggest part of minimum eligibility criteria is ensuring that everyone — new and existing drivers — meets them," York says. It's not enough to hire the people who meet your standards. You must ensure that they continue to meet your standards.

Federal regulations establish minimum requirements for keeping qualification files current, but those rules don't require the kind of continual monitoring of safety performance that's needed to manage risk effectively. Carriers need systems for tracking the ongoing safety performance of their drivers.

A tracking system can be as simple as a card system using green, yellow and red adhesive dots or as complex as a driver risk management system modeled on the Federal Motor Carrier Safety Administration's SafeStat system, York says.

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A three-dot file card system simply involves creating a file card on every driver. Drivers with spotless records would receive green dots. Those with one or two blemishes would get yellow dots. Drivers at the edge of acceptability would get red dots.

The idea, York says, is to quickly focus resources and intervention where needed. Drivers with yellow dots might be scheduled for follow-up training or a discussion, while those with red dots might be notified of their status and be given a safety improvement plan.

A more elaborate approach is a coaching/intervention matrix, which is a tracking method used by Wal-Mart Transportation at its 37 distribution centers, York says.

For each terminal, there is a three-ring binder that holds the rolling 24-month safety performance of each driver assigned to the terminal. Each time there is a lapse, an appropriate box is checked. And each time there is a check, the manager records the remedial action taken. Each response is stronger than the previous one, leading to eventual termination if the driver fails to improve.

Perhaps the most sophisticated approach to driver monitoring is to apply the concept behind FMCSA's SafeStat to each driver in the company, York says. Taking into account various safety metrics and assigning a weight factor by time and severity, SafeStat spits out a score that is intended to represent the safety risk of a carrier.

Motor carriers could do the same, York says, by building a database on drivers based on data obtained from several sources, including MVRs and the carrier's accident register and profile. Based on the time and severity weighting, the carrier would assign a score to each safety element on, for example, a 0 to 100 scale. "It really needs a relational

database application so that you can quickly pull information from other source," York says.

DECISIVE ACTION

As troublesome as negligent hiring may be in a lawsuit, negligent retention is more dangerous, Langford says. Juries may forgive a carrier's failure to unearth old problems that a driver may have concealed. But they are quite unforgiving when carriers continue to employ drivers with poor or marginal records while under their dispatch. "You have lost the ability to plead ignorance," he says.

Although non-compliance with hiring standards is a concern, some situations call for immediate termination, Langford says. One situation might be a major accident where the driver is at fault. "In my opinion, if you have a driver that has tested positive for drug and alcohol and that test arose out of an accident, terminate." If a driver's medical condition caused the accident, that's another situation in which immediate termination may be warranted.

Immediate termination bears its own risk, however. That driver's cooperation might be needed to defend a subsequent lawsuit. It's a tough choice, but Langford contends that carriers probably should worry more about the consequences if the driver is involved in a future accident.

If it's a close call, Langford recommends that carriers solicit opinions from other carriers, peer associations or outside attorneys. "If the driver is involved in another accident, I can present evidence that the owner did not take this lightly."

And there may be alternatives to termination. A carrier might put a driver on administrative leave pending an investigation, Langford says. Or it may be able to offer employment in a warehouse or in a dispatch position.

The key with any safety program, York argues, is that the carrier defines roles, trains people to support those roles, implements systems to track performance and administers rewards and discipline consistently. In the final analysis, a carrier's thorough and consistent application of its qualification criteria may be as important as the choice of criteria. ■

ARE OWNER-OPERATORS BAD NEWS?

A just-released study sponsored by the Federal Motor Carrier Safety Administration found that only slightly more than a third of 148 motor carriers identified as among the nation's safest used owner-operators. The study, conducted by The Supply Chain Management Center at the University of Maryland's R. H. Smith School of Business, also found that only 7 percent of the 148 carriers hired 50 percent or more of their drivers as owner-operators.

The study, "Best Highway Safety Practices: A Survey About Safety Management Practices Among the Safest Motor Carriers," addresses driver hiring, training and monitoring as well as vehicle maintenance. The researchers plan another study to explore those practices in detail.

For more information, including links to relevant federal regulations, resources and technologies available to help qualify drivers for the FMCSA-sponsored study on best practices, visit www.ccmagazine.com and click on The Cost of Risk under "Featured Links."

