

Navigating Trucking Trends and Litigation in 2023

By Mary Alexander

Driving may be the only viable transportation option for some motorists in California. With limited public transportation options, many commuters are forced to drive to work and appointments. In addition, the state's hospitable and warm weather often influences many to spend more time outdoors and take to the open road.

But California's roadways are more occupied by more vehicles than most other states, and the amount of 18-wheelers on the highways inevitably lead to more—and more destructive—traffic risks. According to the Federal Motor Carrier Safety Administration (FMCSA), there were 364 fatal crashes involving large trucks in California in 2020—nearly one per day—leading to 398 fatalities during a year characterized by lockdowns. The Insurance Institute for Highway Safety reports that more than two-thirds of the time, 68% of fatalities in truck crashes are passenger vehicle occupants.

According to the American Transportation Research Institute (ATRI), from 2010 to 2018, the average verdict over \$1 million for truck crashes jumped from \$2.3 million to \$22.3 million, a nearly 1,000% increase. Much to the chagrin of employers and defense counsel, a 2020 report also saw a

dramatic uptick in cases, particularly those with awards of more than \$1 million.

Let's discuss effective trial tactics and trends and legislation that could impact road safety and potential trucking litigation claims.

Establishing Fault and Checking Records

The plaintiffs' bar has received some criticism for naming several defendants in catastrophic and trucking litigations, but it is often warranted. A responsible party is just that—responsible—regardless of the magnitude of their role in the accident, whether it was on the scene or even during the hiring process.

A precedent-setting case regarding driver records, *Diaz v. Carcamo* (2011), was decided and affirmed in California courts. The jury in *Diaz* found the truck driver (Jose Carcamo) partially at fault for the collision, during which another defendant's car hit the truck Carcamo was driving, causing the car to literally fly over the divider on U.S. Highway 101. The car slammed into the plaintiff's SUV, causing severe and permanent injuries.

Carcamo and the other driver were found liable during the lawsuit. But the plaintiff's lawyer dug a little deeper and unearthed a negative driving history at trial.



**Mary E. Alexander of
Mary Alexander & Associates.**

When Carcamo's poor driving record and illegal resident status were exposed, Sugar Transport (his employer) was also found liable. The jury awarded the plaintiff more than \$17.5 million in economic damages and \$5 million in noneconomic damages to be paid by Carcamo, Sugar Transport, and the other car's driver. The Court of Appeal affirmed the decision.

The decision in Carcamo has been cited frequently for arguments involving vicarious liability and negligent entrustment. But it also underscores the importance of a driving record. In its 2022 report, *Predicting Truck Crash Involvement*, ATRI listed various ways in which accidents were likely to occur. Across all iterations of the ATRI Crash Predictor model, prior crash involvement has consistently been a strong indicator of future collisions. Its

analysis found that prior crash involvement increased the likelihood of a future crash by 113%, a statistic that was 28.4% higher than previous reports.

Plaintiffs' lawyers would do well to take a cue from Diaz. By obtaining all defendants' driving records, they may be able to demonstrate patterns of unsafe driving and increase the likelihood of a win for their clients.

Speed Limit Legislation in Motion at the Federal Level

Speeding is a national traffic risk. In 2022, the FMCSA reported that at least one driver-related factor was recorded in 32% of the large truck drivers involved in fatal crashes. This is compared to 55% of the passenger vehicle drivers involved in fatal crashes. According to the administration's data, "Speeding of Any Kind" was the most frequent driver-related factor for drivers of both vehicle types.

Steps are being taken to limit truck speeds, with Congress introducing bills like the Cullum Owings Large Truck Safe Operating Speed Act of 2021, which would require new commercial motor vehicles with a gross weight of 26,001 pounds or more to be equipped with speed-limiting technology. The proposed legislation was referred to the Subcommittee on Consumer Protection and Commerce in 2021 but has stalled since then (though it is not dead).

Dovetailing on the proposed concepts of Cullum, the FMCSA is reportedly exploring the concept of having trucks manufactured to limit their maximum speed.

Some agencies support the idea, suggesting it would theoretically reduce crashes altogether, as well as fatalities and catastrophic injuries. If the FMCSA's proposal is well-received, it could restart Cullum (or a similar new bill), and trucking companies would have a new law to follow, as well as a potential new liability. FMCSA may have a public statement by summer 2023, which could set the path for new regulations.

Keep an Eye on the 'Hours'

The COVID-19 pandemic's disruptions and subsequent supply chain issues forced the FMCSA to change its hours-of-service regulations in 2022, which allowed for expansions to the workday.

Though the disruptions have leveled off a bit, the U.S. is still in the throes of the pandemic which is likely why the FMCSA instituted these temporary changes. If changes to the hours-of-service regulations are announced in 2023, and accidents occur where, for example, a truck driver was found to have driven beyond the new allowable hours, then new claims could arise.

It is also worth noting that the FMCSA may unveil new driver-fitness safety rules to ensure that a driver is of sound mind and body to operate a truck.

A Note on Bottlenecks

Most California truck accidents occur on highways and according to ATRI's 2023 Top Truck Bottleneck List. California also has the unique (and unfortunate) distinction of being the only state to have three of the most congested

intersections in the U.S. Those intersections are:

- Los Angeles: SR 60 at SR 57
- Los Angeles: I-710 at I-105
- San Bernardino: I-10 at I-15

These slowdowns keep trucks on the road, which inevitably leads to more accidents.

More Driver-Related Factors That Contribute to Accidents

In addition to speeding, driver-related factors that are commonly cited are distractions (i.e. phone use and texting), as well as the influence of drugs and alcohol. When one considers how many driver-related factors contribute to accidents, it makes sense that trucking litigation claims are omnipresent on court dockets.

The Road Ahead

Recent developments in trucking data and litigation trends demonstrate the myriad ways in which trucking accidents can occur and how their aftermaths could play out in court. Proposed legislation is just one step in helping to keep our highways safer. But until meaningful legislation is passed, plaintiffs' lawyers will continue to send the message to unsafe drivers—and possibly their employers—by way of jury awards.

Widely recognized as one of San Francisco's top personal injury attorneys, Mary Alexander established her stellar reputation in the legal community after obtaining some of the largest and highest-profile verdicts and settlements in the state of California over the course of her career.