



Texas Two-Step for Commercial Motor Vehicle Litigation

On September 1, 2021, HB 19 went into effect, dramatically altering how personal injury litigation involving a commercial motor vehicle is handled in Texas. The bill thwarts plaintiffs' efforts to seek recovery from the employer of a driver as opposed to the driver alone. Under the law, a jury will have to find a driver liable for a motor vehicle crash **before** evidence of an employer's potential liability and exemplary damages can be presented to the jury. HB 19 provides employers of drivers a timeframe to file a motion seeking to split aspects of a trial. The first trial phase will determine the driver's liability and the amount of compensatory damages for the plaintiff. The second trial phase then determines the employer's direct liability, for claims such as alleged negligent hiring or training, and the amount of exemplary damages.

Under the new law, evidence of a defendant's alleged failure to comply with a regulation or standard may only be admitted in the first phase of the bifurcated trial if:

- (1) the evidence tends to prove the alleged failure to comply with the regulation was a proximate cause of the injury from the motor vehicle accident; and
- (2) the regulation or standard is specific and governs or is an element of a duty of care applicable to the defendant, applicable to the defendant's employee, or when the defendant's property or equipment are at issue.

Further, this new legislation alters the admissibility of photographic and video evidence in civil cases involving commercial motor vehicles. Now, expert testimony may not be required to admit a photograph or video of a vehicle or object involved in an accident, except for authentication purposes. Properly authenticated pictures or videos of a vehicle or object involved in a commercial vehicle accident are presumed admissible following this legislation. Prior to the passage of this legislation, it was possible that jurors could go through an entire trial and awarded damages to a plaintiff without ever having seen an image of the accident.

What does this mean for your business? Courts will now split the employer and the driver's liability into essentially two trials, reducing the exposure to personal injury damages for companies and adding an additional hurdle for plaintiffs' attorneys in order to introduce any "bad acts" of employers when determining compensatory damages. The change in the admissibility of evidence will allow more jurors to see images of the accident to evaluate the damage without expert testimony. Texas employers could see a reduction in insurance costs for commercial auto policies once insurance companies see reductions in the amount paid under their policies.

For more information, please contact [Wesley Walker](#).