

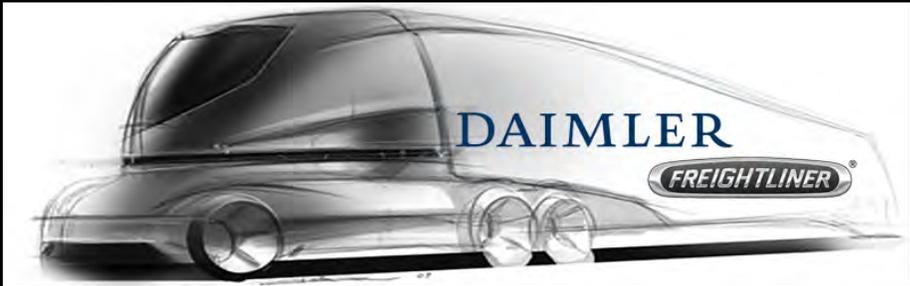
WINNING OVER THE JUDGE WITH PRE-TRIAL AND TRIAL MOTIONS



A Case Study from
Lacy v. Empire Truck Sales



Lacy v. Empire – Quick Facts



- This means we responded to three of every type of motion:
 - 1) Motions to Dismiss our Punitive Damages Claims
 - 2) Motions for Summary Judgment
 - 3) Motions to Exclude Experts
 - 4) Motions in Limine
- Pre-trial motions filed by Defendants= **75**
- Pages of Briefs filed by Plaintiffs= **Over 2,500**
- Trial Motions Filed = **10 (or the equivalent of 1 per day)**
- Number of hours on Westlaw= **Countless!**

MAJOR PRE TRIAL ISSUES

1) CONFLICTS OF LAW

- Alabama procedural law applied
- Florida substantive law applied

2) COMPARATIVE FAULT/SETTLEMENT/SET-OFF

- Florida is a Comparative Fault state but could not make its mind up on that issue for 20 years, creating a trail of confusing caselaw.
- DTNA and IMMI settled a few days before trial. Over the weekend before trial, I wrote a trial brief for the judge on comparative fault, settlement, and set-off to file on the first day of trial.
- The judge agreed that Empire could not mention the settlement, was not entitled to set-off, and could not put the verdict form up in opening and start assigning fault to DTNA and IMMI.
- This trial brief set the tone for trial and knocked out a major strategy for Empire of assigning fault to DTNA and IMMI based on settlement alone instead of on evidence.

MAJOR PRE TRIAL ISSUES – PUNITIVE DAMAGES

- To get punitive damages in Florida, the plaintiff must plead and prove that the defendant was grossly negligent.
- The Judge did not like our punitive damages claim against Empire. He just could not see how leaving a bolt off the LCR or letting Colin take the truck with the ABS light on constituted gross negligence. After I cited Florida caselaw to the Judge that said gross negligence can be based on the defendant's actions as a whole, he agreed to let the issue go to the jury:
- Empire made SEVEN decisions, that when taken as a whole, constituted gross negligence:
 - 1) Empire's employee, Mr. Morgan, unnecessarily loosed the control rod and did not properly replace the bolts. This loose control rod was the initial cause of Mr. Lacy's wreck.
 - 2) Empire failed to have a Senior Mechanic perform a Quality Inspection of Mr. Morgan's replacement of the seals, which would have revealed the loose control rod.
 - 3) Empire's employee, Mr. Morgan, failed to conduct a complete suspension inspection, which would have also revealed a loose control rod. Instead, Mr. Morgan corrected the first issue he came across and decided to go no further.
 - 4) Empire again failed to have a Senior Mechanic perform a Quality Inspection of Mr. Morgan's suspension inspection and subsequent airbag replacement
 - 5) Empire failed to diagnose and correct the ABS problem, as signaled by the illumination of the ABS light.
 - 6) Empire again failed to have a Senior Mechanic perform a Quality Inspection of the ABS problem
 - 7) Empire allowed Mr. Lacy to leave its lot without signing a disclaimer stating that he understood he was taking the truck with a potential ABS problem.
- The jury awarded **\$5 million in punitive damages.**

TIPS FOR RESPONDING TO PRE-TRIAL MOTIONS

- 1) Write your MSJ Facts as if you are preparing your opening statement
 - a) You want the Judge to be on your side before you even get to your argument
 - b) Read every deposition and go through all documents
- 2) Be concise with oral argument---to the point and honest
- 3) Know your cases---and their cases, too

MAJOR TRIAL ISSUES

- 3 Types of Trial Briefs
 - 1) Trial Briefs explaining the law
 - 2) Motions to Strike Defenses and Preclude Evidence
 - 3) Motions for Directed Verdict
- Tips
 - 1) Take notes throughout trial of the evidence that actually comes in to properly respond to Motions for Directed Verdict
 - 2) Utilize technology to your advantage
 - 3) Go through Defendant's jury instructions and verdict form as soon as possible and be ready to argue each in detail. Jury instructions and verdict forms can make or break your case.