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HASSAN v. WILLIAMS AND ABF FREIGHT, INC.
New Jersey Appellate Division Weighs Admissibility of Employee-Driver Termination Letters, an Employer's Statements about a Driver's Failure to Follow Safety Protocols, and Accident Preventability Determinations in Commercial Motor Vehicle Accident Cases

On April 13, 2021, the New Jersey Superior Court, Appellate Division rendered a decision in the matter of Hassan v. Williams and ABF Freight, Inc., No. A-3336-18, 2021 WL 1380211 (N.J. App. Div. 2021) which is likely to have far-reaching evidentiary implications in future commercial motor vehicle accident lawsuits in New Jersey.

By way of background, in Hassan, Defendant-driver, Roland Williams was operating a tractor-trailer for defendant ABF Freight System, when he rear-ended Plaintiff, Ahmed Hassan, who was driving a FedEx tractor-trailer. Hassan filed a lawsuit claiming personal injuries sustained in the crash that were alleged to have been caused by Williams' negligence. At the conclusion of trial, the jury found both drivers negligent, but Hassan slightly more so (51%), resulting in a no-cause judgment for the Defendants. Hassan appealed the judgment, arguing that the trial court erroneously excluded statements by ABF officials that Williams could have prevented the accident, that he drove recklessly, and that he violated ABF safety protocols.

The Appellate Division agreed with Hassan, and in doing so, held that an employer's statements about an employee-driver's failure to follow company safety protocols do not constitute "ultimate issue" evidence (i.e., statements that suggest how a plaintiff's claims should be decided or otherwise offer a legal conclusion that the defendant driver's conduct was negligent) and therefore, should have been admitted into evidence for the jury's consideration.

In addition, while evidence of the employee-driver's termination was properly excluded from evidence as a "remedial measure" (See New Jersey Rule of Evidence 407), the Appellate Division nevertheless determined that portions of the termination letter discharging the employee "due to [his] recklessness resulting in a serious preventable accident while on duty" should have been admitted either as an admission or as probative evidence of the driver's failure to follow his training and comply with company safety policies at the time of the accident. Accordingly, the no-cause judgment was reversed and the case was remanded for a new trial.

The Appellate Division's decision in Hassan should serve as a cautionary tale to all employers when conducting investigations into root accident causes and when making determinations regarding preventability. Moreover, while evidence of an employee-driver's post-accident termination will almost always be inadmissible at trial, statements contained within the termination letter itself may be admissible. As such, careful consideration should be given to the language of such a letter, in particular, the reason(s) provided, if any, for discharge.