



***Runaway Verdicts:  
Why do they happen and what  
are we going to do about them.***



PRESENTED BY

**MICHAEL LANGFORD**

PARTNER, SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY

# Case Studies



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# 2011 in Cobb County, Georgia Against Landstar

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- \$40 million verdict against Landstar for the death of 45 year-old gun dealer and injuries to his wife
- Verdict largely driven by CPA's projections that decedent's income would increase significantly



# 2012 in Porter County, Indiana Against Celadon

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- \$18.5 million verdict for death of 2 men, each earning about \$100,000/yr
- Celadon truck ran into rear of slow-moving vehicle on icy interstate
- Excess insurer in control of settlement and parachutes in its preferred counsel



# Common Issues in Landstar and Celadon Cases

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- Decedents were high earners and created a high floor for damages
- Cases tried in purportedly conservative venues
- Excess insurers in charge
  - Controlled settlement
  - Parachuted in their new counsel at 11<sup>th</sup> hour



# Evidentiary Rulings Drive Verdict Against Schneider?

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- Riverside County, California Jury Awards \$36.5 Million in June 2012
  - Disputed lane change accident
  - Husband and Wife from India visiting family
    - > Wife was temporarily paralyzed, underwent multiple surgeries and hospitalized for 2 months
    - > Allegation was that she would be confined to a wheelchair for the rest of her life, but . . .

# Factors Forcing Case to Trial for Schneider

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## Evidentiary Issues

- Surveillance taken in India showed wife up and walking - not admitted
- Evidence of much higher medical care costs in U.S. admitted even though Plaintiff had returned to India and evidence showed that her medical care costs in India would be much cheaper

# **Spoliation and Poor Safety Record Leads to Large Punitive Damages Verdict**

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**Santa Fe, New Mexico jury awards \$58.5 million in March 2013**

- \$11.5 million compensatory damages
- \$47 million punitive damages

**Male Decedent with spouse and five children**

- Mechanical engineer for local New Mexico company

**Truck driver collided with Plaintiff's vehicle while turning into motor carrier's lot.**



# Pre-Trial Factors for New Mexico Case

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- Case could have been settled within policy limits
- Non-transportation defense attorneys were hired to defend and try the case
- Pretrial rulings from Court



# Runaway Verdict Factors for New Mexico Case

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## Spoliation of evidence

- Driver's logs were destroyed
- Spoliation sanction – Court struck Defendant's primary defense that Plaintiff was partly at fault for failure to stop prior to impact

## Poor safety record of motor carrier

- Jury was angry with Defendants that trained, hired, retained and controlled the operations of the driver, not the truck driver



# What Causes These Runaway Verdicts?



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# Jurors Are More Liberal with Awards

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- Country is more liberal now than it was a generation ago
- Generation X and Generation Y have more of an entitlement and “share the wealth” mentality
- Juries no longer older, conservative types who have worked hard all their life
- Big verdicts beget big verdicts -- Is the shock of a \$10 million verdict gone?



# Well-Invested, Resourceful Plaintiffs' Attorney

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- Plaintiffs' bar well-organized and sharing with list serves
- Big dollars spent on experts who testify against industry
- Script writers and jury consultants
- Large teams of trial attorneys



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# Themes in These Runaway Verdicts?

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## High Floors with Specials

- Personal injury cases with life care plans
- Personal injury cases with diminished earning capacities
- Wrongful death cases with high earners and economists' opinions



# Excess Insurers Playing Roulette?

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- Are excess insurers picking the right cases to try?
- Are they using high/low agreements enough?
- Are they cooperatively working with the insured and primary insurer?



# All Those Documents!

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- Cases can produce millions of documents from FMCSA (via FOIA requests) or from motor carrier
- Plaintiffs' counsel take motor carrier rep's depositions and focus on everything but how the accident occurred
- Prior accidents and citations used for "negligent hiring/negligent retention" claims not found in other personal injury claims
- Industry is slow to lobby for changes in these laws unlike we have seen with the medical/products community



# Falling in Love with “Never” and “Always” Themes

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- Conservative venues can *never* produce runaway verdicts
- Juries will *never* award big monies to an unsavory plaintiff
- We will *always* win certain cases, i.e., plaintiff with drugs in system, plaintiff rear-ends us, plaintiff texting, etc.
- *Never* using Focus Groups and Mock Trials



# What to Do?

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## Heighten Safety Programs

## Make Smart, Early Decisions in Claims Investigation

- Preservation of Evidence
- Criminal Defense Assistance
- Empathic Adjusting



# Maintain Adequate Insurance

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## Role of Future Mandate for Increased Limits

- Since 1985, mandated limits of \$750,000 for interstate general carriers and \$1m or \$5m for haz mat carriers.
- FMCSA concluded that current limits are inadequate given inflation, especially with medical expenses.
- FMCSA has not yet recommended new limits but may publish in a report by November 2014.
- Required limits likely to increase by 2016. Could be between \$1.5 to \$4 million for non haz mat carriers.



# Maintain Adequate Insurance

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## How Much Insurance is Sufficient?

- How much equity are you trying to protect?
- How is your company structured?
- Do you regularly run in hostile venues?
- What is your risk tolerance?
- What's the premium?



# Examples of Hostile Venues

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- Philadelphia
- South Texas along the Border
- California
- West Virginia
- South Florida
- Madison and St. Clair Counties, Illinois
- New York City
- Clark County, Nevada



# What Happens If Your Insurance Limits Are Inadequate?

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- Try to convince plaintiffs to accept the limits.
- Disclosure of private financial information to plaintiffs.
- Out of pockets payments above limits to settle, with installments and collateral.
- Liquidation or bankruptcy.



# What to Do?

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- Create Sound Corporate Structure and Follow It
- Don't Take Undue Risks in Litigation



# QUESTIONS

Michael B. Langford  
(ph) 317-637-1777  
[mlangford@scopelitis.com](mailto:mlangford@scopelitis.com)



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