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## Get to Charleston!

By Jamie Hood

Katy and I hope you are planning to join us in Charleston this April! We have worked with Peggy and Evelyn to offer something for everyone. Whether you want to visit a nearby beach, spend an afternoon fishing, paddle through the creeks and estuaries, stroll down King Street, or tour Charleston's famous gardens, you can find it all during April in Charleston. Whether you regularly visit Charleston or if this is your first time, we can assure you that you will be back. Voted America's favorite small city for 13 years in row by *Condé Nast* and the South's best city by *Southern Living* year after year, Charleston's charm draws visitors all year long. But there is no time in Charleston like April!

Charleston is easily walkable where you will enjoy distinctive architecture, quiet and idyllic sidewalks, renowned boutiques, and shops. You don't need a guide to get lost in Charleston on a walk and find its charm. With a culinary scene that rivals many of America's biggest cities, you won't leave hungry either. Whether you are looking for decadent biscuits from Callie's Hot Little Biscuit to help clear a foggy head or a world class raw bar at Raw 167, you won't have to go far as they are both on King Street and nearby our hotel.

The meeting will be headquartered at Charleston Place - a luxury, full-service hotel situated between King and Meeting Streets adjacent to the Old Market in the middle of historic downtown. Surrounded by restaurants, bars, shops, art galleries, and remarkable architecture in literally every direction, your problem won't be finding things to do, it will be having to leave too soon.

Our Thursday morning CLEs will feature cutting edge talks from Kyle Dreyer on effective litigation management; Matt Bailey and Gray Beauchamp will teach us how to effectively use and present crash data; and Kori Carew will share her insights on concrete ways to use advocacy and organizational structures to break down barriers to diversity. Afterwards, you can spend the afternoon on a leisurely sail across the Charleston Harbor or aboard a private yacht with a small group of friends. For those looking for an active option, we are offering kayaking or a walking tour with our friend and favorite local tour guide. For the history buffs, make sure you check out the tour of the *H. L. Hunley* which became the world's first successful combat submarine following its sinking of the *USS Housatonic* on February 17, 1864. Bestselling author Clive Cussler helped lead a team to discover the sunken *H.L. Hunley* in 1995, and five years later she was recovered, preserved and remains intact today.

While there is always much to do in Charleston, we will of course arrange things that you would not be able to enjoy if you are visiting on your own. On Thursday evening, we will take a short ride or stroll up King Street to the William Aiken House where Evelyn and Ernie will host us for a Seersucker and Sundresses dinner and dance. This historic mansion dates back to 1807 and has become one of the most sought after wedding destinations in a city full of them. Enjoy the open-air piazzas as you catch up with friends new and old over cocktails. But we sure to wear your dancing shoes! After dinner, the band will kick it in gear, and we will enjoy dancing the night away. If you not a dancer, take the opportunity to enjoy the formal dining rooms and parlors that are well-appointed with collector's quality antiques and artwork. In the middle of the beautiful garden, you will find a spectacular two hundred year old magnolia tree though we will be a little too early to enjoy its fragrant blooms.

On Friday you will learn everything you need to know about the Murdaugh Murders (including how to pronounce the names so you sound like you know what you are talking about when you return home) as John T. Lay and company share what they learned as the court-appointed receiver to recover some \$9 million in stolen money. Stuart Mauney will provide

guidance to help us help those in our profession who struggle with the stress and strains of our profession. And, Jim Campbell will close out of CLEs with what we all need to do to dodge a nuclear verdict. After being educated, for those interested in a day on the water, there are three different options. We will have guided inshore fishing, a private yacht charter, and a ferry ride to tour Fort Sumter in the middle of the Charleston Day. If the water isn't calling your name, a curated tour of Middleton Plantation and Drayton Hall will show you Charleston's most magnificent gardens and one of the country's finest examples of Palladian architecture. If you love history and architecture, this is a must do. If history isn't your thing but you are going to Charleston and you want to do one thing besides enjoy the sun, the shopping and the culinary scene, do this. The preservation and restoration of this original gem is truly phenomenal.

On Saturday, after our entertaining general interest and business meetings, you will have time for a quick lunch before we board buses and head to the Bluff. This is our family farm located in the heart of the ACE Basin. Originally a rice plantation, the Bluff also served as the location for much of the filming of *Forrest Gump*. Surrounded by quiet and still, we will have a days' worth of activities from laser skeet shooting, pontoon boat rides along the Combahee River, hayrides, pickle ball, bocce, or just hanging out. Southern rock band Whiskey Run will keep things lively, and we will end the day with a local feast and a sunset to remember.

If you have any questions, know before you go. Shoot me an email: [james.hood@hoodlaw.com](mailto:james.hood@hoodlaw.com). Now, get to Charleston!

Cheers,  
Jamie and Katy

## Meet Your New ADTA Board Member Ed Wallis

My first ADTA meeting was in 1991 London as a young boy where I joyfully toured the new Lloyd's of London headquarters – described by some as the “ugliest building in the world – with my father and others, not having any idea I would one day become a member of ADTA myself. When I was in high school, my father was selected for a term on the ADTA

Board, and I saw firsthand how he approached the honor. My goal is to mimic what I saw firsthand as a teenager – to serve the organization, to invest in old and new relationships and to help my fellow lawyers (and our profession) any way I can over my term. I am excited about what ADTA is doing and believe our future is bright.

## What Happens in Vegas... Women of ADTA

By Natalie Leon



Delicious food, energetic hikes, live shows, and most of all amazing company – all were flowing on tap during the inaugural Women of ADTA Adventure Trip. Our weekend kicked off with breakfast at the Cosmopolitan hotel followed by a trip to the Springs Preserve botanical garden and butterfly habitat, where we visited some of Las Vegas' history and debated whether the recommended train ride was a fantasy or real.



We have pictures to prove the train actually exists. We then had an amazing dinner at the swanky STK steakhouse, followed by the entertaining Cosmopolitan

comedy show, The Opium.

The next day we bundled up for a hike in the gorgeous Red Rock Canyon. Who knew it could be so cold in Vegas? Even this resident Canadian member

was surprised and ill prepared, validating the feelings of our Southern members. But our guide, the adventurous path, the incredible views, and fantastic companionship resulted in an event



that was one of the highlights of the trip. We then gathered with some of our fellow DRI, FDCC, and IADC members for a cocktail party at the elegant and unique Cosmopolitan Chandelier Bar for an inaugural joint sister social event. From there, we enjoyed a traditional home style Italian meal at the fabulous Bautista's Hole in the Wall. Some of us continued on to the casinos and others found live music and danced the night away at a barbershop that housed a hidden speakeasy.

The official portion of the ADTA meeting ended at the Caesars Palace with an amazing presentation "Redefining Superwoman," led by Deborah St. Lawrence Thompson of Nelson Mullins (Baltimore, Maryland); Jessica Taylor, Licensed



Marriage and Family Therapist (Miami, Florida); Mary Biscoe Hall, Nelson Mullins; and our own ADTA President, Evelyn Davis, Hawkins Parnell (Atlanta, Georgia). The panel led a discussion about "superwoman or superperson syndrome" and practical strategies to avoid pitfalls associated with it. There is nothing better than a meaningful conversation that makes you feel seen, heard, and supported. This one did all of that and more. As I work through challenges of juggling life and career, the messages from the seminar continue to resonate with me and I use the tips learned to give myself a break when needed.

Sprinkled in amongst all of these scheduled activities were more cocktails and meals at top notch restaurants, walks through the strip, sightseeing in downtown Vegas, visiting the incredible display for Lunar New Year at the Bellagio Hotel, and gambling. There was truly something for everyone in the crowd.

What stood out most to me was the quality of time spent with an amazing group of women and the friendships fostered by this special and unique



weekend. It was truly a top tier event to establish relationships but, more importantly, it was good for the soul to connect with so many women who are now friends. Stay

tuned for more updates from Evelyn, Amanda, and the Women of ADTA committee for the next adventure weekend and other ideas to bring this experience of community to the ADTA membership at large.

## Like Father, Like Son.... Like Daughter?

By Deedee Gasch



When I get asked why I went into law, I am immediately transported back to being around 10 or 11 years old, growing up in my family home. I would hear noise from the kitchen in the middle of the night and go downstairs to find my dad at the kitchen table. Papers would be spread all over it. Exhibits marked. Depositions flagged and ready to use for impeachment. He would be pouring over evidence, usually preparing for trial. Thrilled that he either had company or an audience, even as a young child, I quickly became juror number one, watching my dad put on a mock trial at any hour of the day or night. During high school, he would let me go watch him try cases when I was out of school for the summer. While most of my peers were at the pool or the beach, I was at the Pitt County Courthouse learning the rules of evidence and civil procedure.

I came into this profession naturally. I never gave it much thought. Doing anything else just seemed like I was postponing the inevitable. Being a lawyer is in my blood – three generations of it in fact. My grandfather, after a successful career as a trial lawyer, went on to serve as a North Carolina Superior Court Judge. His son, my dad, is 76 years old and still practicing law and trying cases. My sister even followed suit and practices law as in-house counsel for Wells Fargo.

There are many lessons you learn watching the man you admire most hone his craft. In addition to having the ability to observe him while I was growing up, we were law partners for a while before I realized my passion was indeed on the other side of the “v”, leading me to ultimately return to my first love of defense work. My dad passed on to me the lessons he learned from his dad. Those include perseverance, determination, preparation, and an absolute refusal to ever back down or give up on something you believe in.

My grandfather and my dad established an incredible path to being a successful trial lawyer. I aim every day to make them proud and to honor my family. I know when I walk into a courtroom, I’m carrying on a tremendous legacy, and I will never stop being thankful for the privilege and opportunity to do just that.

*"In line with a general theme of attorney wellness, we thought it might be illuminating to approach three different lawyers in three different ages of their careers. What follows are some thoughts and ruminations by an attorney who passed the bar exam in November, by an attorney that has been practicing for 10 years, and finally from an "old" attorney who has been practicing for over 35 years" and still listens to 'Hey 19' by Steely Dan."*

## Reflections on Attorney Wellness – 1 Year Lawyer

**By Victoria Strickland**

I am learning that wellness is something that I have to practice often and be purposeful about doing so. In law school, I was often presented with fun activities devoted to helping law students manage stress and I had a built-in network of professors and staff members who would check-in often and provide accountability. From cuddly puppies during exam times to professors who would designate wellness activities as graded assignments, I didn't have to look very far to find an opportunity to practice wellness.

As a new attorney in a new city, wellness quickly fell to the way side. I did not devote equal time to learning how to practice law and practicing wellness. In addition, I was struggling trying to build a network of friends and colleagues in my new location. I had just started to begin building a network of support when the pandemic began and the new connections I had built suffered from the forced isolation. I am now focused on striking a more equal balance but it takes commitment. I know I cannot be passive about my wellness- I must deliberately carve out space and time for myself.

What do I do for wellness:

When I can get away for longer periods of time, I enjoy visiting family and traveling. I am working to get away from the idea that wellness has to involve big chunks of time or lots of planning. I am more focused on creating small everyday opportunities to practice wellness, whether that be taking a walk after work to clear my mind or small mental breaks throughout the day. This re-framing helps to make the idea of wellness more manageable and practical. Prioritizing my wellness doesn't have to be a grand

gesture or an overwhelming task- it can be something as easy and simple as stepping away and chatting with a coworker for a few minutes.

During COVID, my fiancée and I, like many others, began to feel restless after being cooped up in the house for so long. We began taking small road trips just to get out of the house. We traveled to the Davis Mountains and various cities in West Texas, driving around and taking in the scenery. This practice has survived beyond the pandemic and I enjoy getting away on the weekend, even if it is just for a few hours.

My expectations for employer:

I think the best circumstances are when an employer is also intentional about wellness and understands that positive work environments don't usually just happen accidentally, they are created. I appreciate work environments that invest time and effort into creating a positive workplace culture. Small gestures like frequent lunches together or celebrating birthdays really help to create moments for colleagues to get to know each other.

I also appreciate when workplace leadership knows its employees are healthier, more energized, and more capable to do the job when they have adequate time to rest and recharge. I look for environments where it is not frowned upon to take time away from work.

While my wellness is ultimately my responsibility and my priority, I do expect my employer to realize they also have a vested interest in my wellness and to help provide space for me to practice wellness.

## Reflections on Attorney Wellness – 10 Year Lawyer

**By Monique Wimberly**

Making the transition from law school to the practice of law brings on new challenges that require adaptation. There is no longer the constant fear and stress of worrying about the next exam or cold-call, however there is the added pressure of impressing partners or shareholders and of how your work can impact a client's life. It can be overwhelming at times and a detriment to one's health. In order to combat some of these new stresses and emotions, it is important to plan ahead and take time for yourself. Wellness has to be a constant, deliberate part of life.

Having recently graduated, my life as an attorney

has only just begun. Moving across the state and getting used to a new environment was initially difficult to deal with. I went about my day frantically trying to get my work done as efficiently and quickly as possible. I would, and still do, stress about how law school prepared me to think, but not prepare me to practice. I would spend hours researching how to do simple tasks that I felt I should have been prepared for. I learned that this is not the best way to go about a healthy lifestyle. It is important to be efficient and do the best you can for your client, however it is also important to know when to ask for help. It is much better to ask “stupid questions” than spend an exorbitant amount time stressing about why you can’t figure out what may be simple to others, but is foreign to you, such as the filing system or how to format documents. Asking questions is a huge part of wellness, as it further helps adapt you to firm life, and reduce the stress accompanied with a new job.

Another aspect of wellness is understanding there will be bad days and planning on how to deal with them. From the time I started college until now, I have made a conscious effort to work in physical exercise and time outdoors as much as possible. I try to run on a daily basis. However, on especially stressful days, I plan extra time to work in a longer run, or if there is no time, a walk around the firm’s building in hopes to see the sun. Being outdoors and getting fresh air has always improved my mental health. It is where I find time to zone out and think about my day or turn off being an attorney for a short while. For me, it is important to have time to think about things outside of work.

Going further on the subject of planning and wellness, I find it helpful to plan meals for the week. I am not organized enough to meal-prep for a whole week, but I buy simple ingredients that can make multiple easy meals. By making meals in advance, I have one less thing to worry about at the start of my day saving mental energy. Furthermore, what you eat can also impact how you feel and your mood for the day. Ensuring that I get the proper food with minimal work improves my day and takes away the stress of having to scramble in the morning or rushing to find food at lunch.

It is often the small little things, like working in a short walk, or planning a meal that can improve wellness overall. These activities alleviate stress, help keep a clear mind, and can often provide a well needed break from the overall hustle of being an attorney.

## Reflections on Attorney Wellness – 35 Year Lawyer

By Bradley Bains

Working as a lawyer, particularly an active trial lawyer is a fundamentally stressful position. The good times are fun, the busy times are sometimes exhilarating, but ultimately you will find yourself in a place where you are juggling way too many balls in the air. You have to deal with the stress, or frankly find another job. Sometimes a drink with friends does the trick, but given the high alcoholism rates amongst lawyers, it’s not a preferred solution.

As an older attorney from more of an individualistic upbringing, I don’t really expect my state of local bar associations to be a personal resources to help with my overall physical and mental wellness. I am certainly aware that the bar has resources for wellness assistance, and I’m not saying that reaching out to the bar is a bad idea; it’s just not for me. I believe it is hard for a statewide – or even a county wide – organization to administered limited resources efficiently across a broad geographical area.

Being a member of a mid-size (35 member) law firm, I do have higher expectations with regard to professional wellness. I think each of us – shareholders, associates, paralegals and staff – need to look out for one another, right, wrong, or indifferent. I fully expect everyone to pitch in for assistance, or even intervention, for all firm lawyers and staff – I believe this commitment to be both a personal and professional obligation. We are all here and in it together. I’ve been fortunate to see my firm’s committee to these ideals. In the past three and a half decades, we’ve paid for assistance and treatment when insurance didn’t. We’ve held more than one intervention. And we’ve supported both attorneys and staff when they chose to accept treatment. As actor Wilford Brimley said on more than one occasion, “It’s the right thing to do.”

But you cannot rely just upon the law firm or the bar; you have to look to what you can do to ensure your own personal wellness and to help others. We can always do better. Face it: if you’re going to participate fully in the practice of law (at least from a trial attorney standpoint), there will be times of high stress on all sides – work, home, family, external – and

all at once. There are a couple of things to keep in mind as you work through the stress: (1) You'd better like yourself, because if you don't, no one else will for very long. If you find yourself strung out, drugged out, or engaging in repeated bad behavior – you don't like yourself. You'll lose control and be self-destructive with respect to personal relationships, economic well-being, career development, or all of the above. (2) You'd better like the people you work with. I'm not talking about just your fellow partners/shareholders – you'd better really like and get along with your associate attorneys and your legal staff. You cannot overwork subordinates and be abusive (passive or active) to them without receiving serious blowback. I personally find comfort in the Bible's Golden Rule — do unto others as you would have them do unto you. Most religions and secular philosophies have a similar axiom. Without these guidelines, you may find yourself running smack into a brick wall. Remember, if you cannot stand yourself and those around you, no one will care to like you back.

To the extent I can give an advice to younger attorneys: You need to find something you like to do that is 100% not related to the area of the law you practice – maybe bird-watching, needlework, fishing, or bowling. Engage in something “mindless” to let your brain calm down. .

## The Federal Motor Carrier Safety Regulations: The Trucking Defense Lawyer Keys to Success (Part 3)

By Mike H. Bassett

### III. UNQUALIFIED DRIVER

Plaintiff's lawyers will often argue that CMV drivers should be held to a higher standard of care than the other drivers on the roads because they drive potentially more dangerous vehicles, and they are regulated more strictly by the FMCSRs. But most states reject this argument and find that regardless of the vehicle that they drive, their training, their years of experience, etc., CMV drivers should be held to a standard of ordinary care. See, e.g., *Jackson v. Reardon*, 392 So. 2d 956 (Fla. 5th DCA

1980), *Cervelli v. Graves*, 661 P.2d 1032 (Wyo. 1983), *Fredericks v. Castora*, 360 A.2d 696 (Pa. 1976), and *Thomas v. Settle*, 439 S.E.2d 360 (Va. 1994). The only state that appears to hold CMV drivers to a higher standard of care is Louisiana. *Theriot v. Bergeron*, 939 So. 2d 379 (La. App. 1 Cir. 2006). To identify and counter the “higher standard of care” arguments, it is crucial that the defense attorney be familiar with the regulations and qualifications of the drivers.

#### A. Minimum Standards

The FMCSRs have established - and lay out - several minimum standards for drivers of CMVs in §380 and §383. *Yellow Freight System, Inc. v. Amestoy*, 736 F. Supp. 44 (D. Vt. 1990). §380 of the FMCSRs lays out the minimum training requirements for drivers of longer-combination vehicles (“LCVs”). Generally, all drivers of LCVs must go through training to drive LCV doubles and/or LCV triples and also must meet all of the requirements of LCV drivers for the specific LCV they are wanting to drive. 49 C.F.R. §380.201(a); 49 C.F.R. §380.107(b).

The prospective drivers must successfully complete the LCV-specific training program which teaches the necessary knowledge and skills for driving either LCV doubles or triples. The training must include an orientation, training on basic operations, training on safe operating practices, training on advanced operations, and training on non-driving activities. 49 C.F.R. §380.201(a). The training must include classroom training sessions and behind the wheel training sessions. 49 C.F.R. §380.201(b). The prospective drivers must pass all the knowledge and skills tests throughout his or her training with a score of 80% or higher to successfully complete the training program. But if the prospective driver does not obey traffic laws or gets into a preventable accident during any of the tests, then the prospective driver will automatically fail the program. *Id.*

§383 of the FMCSRs lays out the minimum commercial driver's license standards. This section is there to ensure requirements are put in place to reduce and/or prevent accidents, deaths, and injuries that could occur. Pursuant to §383.21 and §383.23, a driver must have successfully passed the required tests for a Commercial License Permit or Commercial Driver's License in order to operate a CMV and cannot have more than one driver's license.

Any person that operates a CMV, who receives a conviction for driver violations in any motor vehicle, must notify his or her employer and the driver's

State of domicile within 30 days of the conviction. 49 C.F.R. §383.31. The driver must also notify his or her employer of any suspension, revocation, or cancellation of his or her CDL license by the close of business of the day following his or her suspension, revocation, or cancellation. 49 C.F.R. §383.33.

§383 also lays out the 20 general areas that all CMV drivers must learn and be tested on during his or her CDL knowledge and skills tests mentioned in §380. These general areas include: (1) safe operating regulations; (2) safe vehicle control system; (3) CMV safety control systems; (4) basic control; (5) shifting; (6) backing; (7) visual search; (8) communication; (9) speed management; (10) space management; (11) night operation; (12) extreme driving conditions; (13) hazard perceptions; (14) emergency maneuvers; (15) skid control and recovery; (16) relationship of cargo to vehicle control; (17) vehicle inspections; (18) hazardous materials; (19) mountain driving; and (20) fatigue ad awareness. 49 C.F.R. §383.111.

This section also lays out the specific skills that drivers must have as well as the requirements to obtain the various other endorsements needed to drive additional vehicles and materials. But keep in mind that these are only the minimum standards; the employer can require more stringent standards if he or she sees fit. 49 C.F.R. §390.3(d).

## B. The Qualification Process

The FMCSRs also lay out a list of minimum qualifications for CMV drivers. First, to be qualified as a CMV driver, the person must be at least 21 years old, read and speak English sufficiently, be able to safely operate the type of CMV he or she drives, physically qualify, provide the employer with the violations or certificate required by §391.27, not be disqualified from driving, and successfully completed a driver's road test. 49 C.F.R. §391.11. But the process of qualifying is much more than these 8 general qualifications.

First, the driver must complete and submit an application that contains all the background and character information required under §391.21 to his or her employer, signed by the driver.

Next, it is the motor carrier's obligation to contact all past DOT-regulated employers for the prospective driver from the past 3 years, obtain all driving records in the states that the prospective driver has lived and/or worked the past 3 years, and make a written record of everyone that he or she contacted. 49 C.F.R. §391.23. The motor carrier also must obtain all records relating to the prospective driver's drug/

alcohol testing from all previous DOT employers. 49 C.F.R. §382.413; 49 C.F.R. §391.23.

Next, the prospective driver must participate in a drug and alcohol test as described in §382.103 and as discussed later in this paper. The prospective driver must also participate in a road test. 49 C.F.R. §391.31. The driver must be tested on the vehicle that he or she is intending to drive, on his or her skills at performing the required operations, and for a duration to provide an accurate evaluation of his or her skills. *Id.* The driver must also have a medical examination done. 49 C.F.R. §391.43.

Prospective drivers also have a couple items that must be completed each year of employment. The first is an annual inquiry and review of driving records. 49 C.F.R. §391.25. Motor carriers, at least once a year, must receive and review each driver's driving record for the last 12 months to determine whether they are qualified to continue driving. *Id.*

And lastly, the driver must provide the motor carrier "a list of all violations of motor vehicle traffic laws and ordinances (other than violations involving only parking) of which the driver has been convicted of or forfeited bond or collateral on." 49 C.F.R. §391.27. In addition, according to §391.51(a), the motor carrier must keep a "driver qualification file for each driver that it employs."

## C. Disqualifications

There are also several factors that could disqualify a driver from driving a CMV. And if a driver has a CDL or CLP and is disqualified, then they are not allowed to drive a CMV, and an employer cannot allow a disqualified driver to drive for any reason. 49 C.F.R. §383.51. Generally, a driver is disqualified if (1) the driver losses his or her driving privileges by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege or (2) the driver is convicted of a criminal and/or other disqualifying offense while on-duty and is employed by a motor carrier. §391.15(a)-(c).

A disqualifying offense consists of "driving under the influence of alcohol," driving under the influence of a prohibited drug, using, possessing, or transporting a prohibited drug, leaving the scene of an accident, or being convicted of a felony while using a CMV. 49 C.F.R. §391.15(c)(2). §383.51 separates the disqualifications into 4 main sections: major offenses, serious traffic violations, railroad-highway grade crossing offenses, and violating out-of-service.

Depending on the type of vehicle and the number of previous offenses, the driver will receive

disqualifications for differing periods of time. 49 C.F.R. §383.51. Major offenses include offenses such as driving a CMV with a revoked, cancelled, or suspended CLP or CDL, refusing to take an alcohol test, and negligently causing a fatality. Major offense penalties can range from 1 year to life. 49 C.F.R. §383.51(b).

One step down are the serious traffic violations. The serious traffic violations consist of the following: driving 15 mph (24.1 kmph) above the speed limit; reckless driving; improper/erratic lane changes; following a vehicle too closely; a traffic violation in connection with a fatal accident; driving without a CLP or CDL; driving without a CLP or CDL in your possession; driving a vehicle/material without the proper CPL, CDL, or endorsement; texting while driving; and using a hand-held phone while driving. 49 C.F.R. §383.51(c). The penalty for a serious traffic violation can range from 60 days to 120 days. 49 C.F.R. §383.51(c).

The next step down are the railroad-highway grade crossing violations. Railroad-highway grade crossing violations consist of the following: failure to slow down and check that tracks are clear; failure to stop before reaching a crossing that is not clear; failure to stop before driving onto the crossing when required; failure to have sufficient space to drive through a crossing; failure to obey an enforcement official or traffic control device; and “failure to negotiate a crossing because of insufficient undercarriage clearance.” 49 C.F.R. §383.51(d). The penalty for a railroad-highway grade crossing violation can range from no less than 60 days to no less than 1 year depending on the violation and the number of previous violations. 49 C.F.R. §383.51(d).

Lastly, there are the out-of-service violations. The penalty for out-of-service violations can range from 180 days to 5 years. 49 C.F.R. §383.51(e).

#### D. Hours of Service

Hours of service is a subject any competent Plaintiff’s attorney is going to try and exploit. And it makes sense. In our experience, if a jury believes that an accident was caused by a CMV driver being fatigued, they are likely to award significantly hire damages.

And their main focus will likely be on the 15-minute logbook, fuel and toll receipts, trip reports, speed, total miles, etc. Sarber and VanIngen, The FMCSA—It Is No Longer Just a Tool to Regulate Trucking Companies!, Trucking Law Seminar (2008). But the good news for the defense is that this is

sometimes a difficult argument to prove. Hours of service violations do not necessarily create fatigue in drivers. But it is still important to have a firm grasp and understanding on the hours-of-service regulations in §395.

§395.3 states that no person should operate a property carrying CMV without meeting the maximum driving requirements under this section. The requirements the driver must meet are as follows:

1. He or she must take a “10-consecutive hour off duty” break before any trip;
2. He or she can “only drive during a period of 14 consecutive hours after coming on duty from 10 consecutive hours off duty” and he or she “may not drive after the end of the 14-consecutive hours without first taking 10-consecutive hours off duty;”
3. He or she “may drive a total of 11 hours during the 14-hour period” but the driver must take a break if more than 8 hours have passed since the driver’s last sleeper-berth period of at least 30 minutes or off-duty period; and
4. He or she cannot be allowed or required to drive after having been on duty for (1) 60 hours in 7 consecutive days if the motor carrier employer doesn’t operate CMVs every day, or (2) 70 hours in 8 consecutive days if the motor carrier does operate CMVs every day. And the driver is allowed to have at least a 34-hour period of off-duty time after any 7 or 8 consecutive day drive.

49 C.F.R. §395.3.

§395.5 provides the maximum driving time requirements for any drivers driving passenger-carrying vehicles. Drivers of passenger-carrying vehicles are not permitted to operate a CMV for more than 10 consecutive hours or for more than 15 on-duty hours after an 8 hour off-duty period. *Id.* Drivers of passenger carrying vehicles also are not permitted to drive after being on duty for 60 hours in 7 consecutive days if the motor carrier does not operate CMVs every day or for 70 hours in 8 consecutive days if the motor carries does operate CMVs every day. 49 C.F.R. §395.5.

But there are some exceptions to the hours-of-service requirements. One of the exceptions arises if there are adverse driving conditions. §395.1(b)(1) states that if a driver encounters adverse conditions while driving and is unable to complete the run safely within the maximum driver period, he or she

is allowed to drive a maximum of 2 extra hours to complete the run or find a safe place to stop. Another exception arises when there is an emergency. §391.5(b)(2) states that if a driver encounters an emergency condition while driving, the driver is allowed to complete the run if it could reasonably be completed absent the emergency.

### E. Out of Service Orders

If a driver were to violate the hours-of-service regulations or the driving log requirements, the driver could be declared out of service. 49 C.F.R. §395.13. A driver is required to record his or her duty status daily and must ensure that it is current for the previous 7 days. If a driver violates one of the regulations and is thus placed out of service, the driver may not operate a CMV until the driver has been off duty for 10 consecutive hours. 49 C.F.R. §395.13(d)(1).

Within 24 hours of receiving an out of service form, the driver must deliver or mail a copy to the person or place that the motor carrier has designated to receive it. 49 C.F.R. §395.13(d). After the motor carrier has been notified that a driver has received an out of service form, the motor carrier must fill out the "Motor Carrier Certification of Action Taken" portion of the form and then deliver it to the Division Administrator or State Director Federal Motor Carrier Safety Administration. 49 C.F.R. §395.13(c).

## I. DRUGS AND ALCOHOL

All regulations regarding drugs and alcohol apply to all employees, employers, and CMV operators. 49 C.F.R. §382.103(a). These regulations are important to ensure the safety of all CMV operators and the public. They are also important in preventing any accidents/injuries that could possibly arise because of a use and or misuse of drugs and alcohol while performing "safety sensitive functions."

§382 defines safety sensitive functions as "all time from the time the driver begins work or is required to be ready to work until the time he/she is relieved from work." The safety sensitive functions can include waiting to be dispatched, inspecting the CMV, driving, loading/unloading the vehicle, time spent in the CMV other than for purposes of sleeping in the sleeper berth, etc. 49 C.F.R. §382.107.

### A. General Regulations

Under §392.4, a driver is not allowed to "possess, be under the influence of, or use" any Schedule I substance, amphetamine, narcotic, or other drug

that would prevent the driver from safely operating a vehicle while on duty. §392.5 also states that a driver is also not allowed to use, have physical possession and control of, or be under the influence of, alcohol while on duty. The driver must wait at least 4 hours after consuming alcohol to drive, operate, or be in physical control of his or her CMV.

Further, drivers are not allowed to remain on duty or even report for duty if they have an alcohol concentration of 0.04 or more. 49 C.F.R. §382.201. Also, employers who know that a driver has an alcohol concentration of more than 0.04 must not allow a driver to operate and/or perform any CMV functions for any reason. *Id.*

Similarly, drivers are not allowed to continue their shift or even report to duty if the driver has used any prohibited substance. The one exception is if the driver was given instructions by a doctor and has confirmed that the substance will not negatively affect the driver's ability to drive. *Id.* Further, an employer must not knowingly allow a driver to drive a CMV after having used a prohibited substance. 49 C.F.R. §382.213.

Employers are also allowed to require all drivers to provide the employer with information regarding any therapeutic substances that the drivers are using. Additionally, if the driver has completed a substance test and tests positive - or alters a test sample in any way - the driver is not allowed to continue performing his/her duties or report to duty until further instruction is given to them. *Id.*

Drivers and employers are not only regulated while the CMV is being operated, but there are also regulations governing alcohol and controlled substance consumption prior to reporting for duty and following an accident. Prior to reporting for duty, drivers are not allowed to consume alcohol within 4 hours of performing any safety-sensitive functions. 49 C.F.R. §382.207. Employers also have a similar duty.

No employer with actual knowledge of a driver having consumed alcohol within 4 hours of duty should allow that driver to operate a CMV. *Id.* Similarly, following an accident, a driver that is required to take a post-accident alcohol test must not consume any alcohol for at least 8 hours after the accident occurred, or until he or she completes the post-accident alcohol test. 49 C.F.R. §382.209.

### B. Testing Regulations

There are several drug and alcohol tests required prior to and during employment. All employers

must ensure that all required drug and alcohol testing is conducted in accordance with §40 of the FMCSRs. §40 provides the parties with instructions regarding who can conduct drug/alcohol testing, what procedures to use to conduct these tests, how to conduct them, and the responsibilities that different parties have. Generally, all employers must meet all the requirements and procedures under §40 and all employers are responsible for all actions of their employees in carrying out the DOT requirements regarding drug and alcohol testing. 49 C.F.R. §40.11. It is also important to ensure that only authorized persons according to §40 are conducting the required and or necessary tests.

### 1. Pre-Employment Testing

Prior to employment there are several tasks that need to be completed regarding drug and alcohol testing. First, the employer must request and/or obtain all drug and alcohol information regarding the employee from any of his or her employers in accordance with §40.25. Second, the new employee must undergo pre-employment drug testing before he or she is allowed to operate a CMV, unless the new employee meets one of the exceptions. 49 C.F.R. § 382.301. The exceptions are as following:

- a. The driver has been drug tested through a drug testing program within the previous 30-days; *and*
- b. Was tested within the last 6 months or was randomly tested within the last 12 months while participating in the program; *and*
- c. There is no knowledge of violating the drug use rules within the last 6 months from the former employer.

49 C.F.R. § 382.301(b).

The employer also may - but is not required to - have new employees participate in a pre-employment alcohol test. If the employer chooses to perform a pre-employment alcohol test on new employees, it must be done after making an offer of employment and prior to the driver conducting any safety-sensitive functions. The employer also must treat all employees the same.

Therefore, if the employer chooses to perform a pre-employment alcohol test on one employee, then the employer must perform such testing on all incoming employees. Lastly, if the employer chooses to perform pre-employment alcohol tests, the employer must not allow the employee to begin work unless the result of the test is less than 0.04.

49 C.F.R. § 382.301(d).

### 2. Post-Accident Testing

Another required test related to drugs and alcohol, as mentioned earlier in this paper, centers around post-accident testing. Following an accident, an alcohol test will be administered to each of the drivers involved if: (1) the accident involved a fatality or (2) the CMV driver receives a citation within 8 hours of the accident **and** the accident involved bodily injury to any person who received immediate medical treatment **or** at least one of the vehicles was towed from the scene. 49 C.F.R. § 382.303(a).

Also, a drug test must be done after certain accidents. It must be done (1) if the accident involved a fatality or (2) the CMV driver receives a citation within 32 hours of the accident if the accident involved bodily injury to any person that required immediate medical treatment **or** at least one vehicle had to be towed away from the scene. 49 C.F.R. § 382.303(b). It is also important to note that an employer may allow a driver to continue to drive pending the results of a drug test if there are no restrictions imposed by § 382.307.

### 3. Random Testing

While under employment, every driver will be subjected to random drug and alcohol testing. All employers must follow all the requirements of random drug testing under §382.305. Pursuant to §382.305, all drivers must submit to all random drug and alcohol testing during the course of their employment. 49 C.F.R. § 382.305(a).

As of February 2019, the "minimum annual percentage rate for random alcohol testing shall be 10 percent of the average driver positions." 49 C.F.R. § 382.305(b)(1). Further, as of January 1, 2020, the minimum annual percentage for random drug testing has increased from 25 percent the previous year to 50 percent of the average number of driver positions. <http://disa.com/news/dot-drug-testing-requirements-for-2020>.

When making the selection for random drug and alcohol testing, this must all be done by a "scientifically valid method such as a random number table or a computer-based random number generator" which uses some number that is corresponds to the different drivers. 49 C.F.R. § 382.305(i)(1). Each driver must have an equal chance of being selected for the random drug and alcohol testing each time there is a selection and each driver that is selected must be tested during the allotted

time. 49 C.F.R. § 382.305(i)(2)-(3). Even if an employee has previously been selected for testing, the employee will still have the same chance of being selected for all other random drug and alcohol testing that may be done. The random drug and alcohol testing must not be announced, and the selections are reasonably spread throughout the year. 49 C.F.R. § 382.305(k). The driver has the potential to be tested at any point and if selected must report for testing as soon as possible. 49 C.F.R. § 382.305(l)-(m).

## Wellness in Verse

By Christopher Morris

After a couple of years of practice, my mentor brought to my office a laminated card, about 10" by 4", with a poem on it. It has been tucked into my desk blotter for decades. At the time, I think I needed the reminder that there is more to life than the billable hour. I pull it out once in a while to remind me of what really matters. It is an exercise in my own mental wellness. The poem is "The Trip" by Robert Hastings. I have read it in other places and there are other versions which are longer. I don't know if his edits were intentional or simply because of the size of the card but here is what he gave me:

### The Trip

*Tucked away in our subconscious is an idyllic vision.  
We see ourselves on a long trip that spans the continent.  
We are traveling by train. Out of the windows we drink  
the passing scene of cars on nearby highways,  
of children  
waving at crossings, or cattle grazing on a distant hillside,  
of smoke pouring from a power plant, of row upon row  
of corn and wheat, of flatlands and valleys, of mountains  
and rolling hillsides, of city skylines and village halls.*

*But uppermost in our minds is the final destination.*

*On a certain day at a certain hour we will pull into the station.*

*Bands will be playing and flags waving. Once we get there*

*so many wonderful dreams come true and the pieces of our lives will fit together like a completed*

*jigsaw puzzle. How restlessly we pace the aisles,*

*damning the minutes of loitering--waiting, waiting, waiting for the station.*

*"When we reach the station, that will be it!"*

*"When I put the last kid through college."*

*"When I have paid off the mortgage!"*

*"When I get a promotion." "When I reach the age of retirement, I shall live happily ever after!"*

*Sooner or later we must realize there is no station,*

*no one place to arrive at once and for all.*

*The joy of life is the trip. The station is only a dream.*

*It constantly out distances us.*

*"Relish the moment" is a good motto.*

*Yesterday's a memory, tomorrow's a dream.*

*It isn't the burdens of today that drive men mad.*

*It is the regrets over yesterday and the fear of tomorrow.*

*Regret and fear are the twin thieves who rob us of today.*

*So, stop pacing the aisles and counting the miles.*

*Instead, climb more mountains, eat more ice cream,*

*go barefoot more often, swim more rivers,*

*watch more sunsets, laugh more, cry less.*

*Life must be lived as we go along.*

*The station will come soon enough.*

## New Members

### Cara Harris

#### Taylor, Stafford, Clithero & Harris, LLP

Before moving to civil defense, Cara spent almost thirty years as an Assistant Attorney General of the State of Missouri, where she served as Chief Counsel of both the Labor Division and the Litigation Division. She received both her undergraduate and law degree from the University of Missouri, Columbia. Cara has been married to her husband Warren (also a lawyer) for 30 years.



### P. Shane O'Neill

#### Weinberg Wheeler Hudgins Gunn & Dial

Shane prosecutes and defends complex and high-exposure commercial, tort, product liability, premises liability, and transportation matters in state and federal courts across the United States. Shane has been recognized as a Super Lawyers Rising Star (2017-2018) and then as a Super Lawyer in Civil Litigation Defense (2020-2021); additionally, he was honored as "On the Rise" in 2018 by Fulton County Daily Report. He is a member of the Georgia and Massachusetts state bars. Believing in the importance of manipulating data to efficiently manage and value his cases, Shane is the co-founder of DataGavel, which is a tort litigation platform for defendants and their outside counsel. Shane grew up in New England and Ireland. He obtained his undergraduate degree from Bowdoin College and his law degree from Suffolk University School of Law. Shane enjoys spending his "free" time with his wife, Beth, and children, Finn (6) and Lucy (4). In his (limited) personal time, Shane enjoys golfing.



### Vincent Palmiotto Clyde & Co US LLP

After graduating from the University of Akron School of Law, Vincent started his career with the Judge Advocate General in the US Marine Corps at Camp Lejuene, North Carolina. Since reinterring civilian life, he has been a litigator and trial attorney with a focus on the defense of complex product liability matters, toxic torts, and personal injury litigation. AV rated by Martindale-Hubbell, Vincent is a member of DRI and the West Virginia Bar Association.



### Bill Pollock Ragsdale Liggett PLLC

Bill graduated from the University of South Carolina and practices primarily in the areas of construction, trucking, and product liability. He has been named Insurance Litigation Lawyer of the Year, Top 100 Lawyer in North Carolina, Super Lawyers, Best Lawyers, Legal Elite, and Trial Attorney of America. Bill is on the Board of Directors for the North Carolina Association of Defense Attorneys, American Board of Trial Advocates, DRI Construction Law Steering Committee, North Carolina Bar Professionalism Committee, and has been featured in *Business North Carolina Magazine*. In addition to spending time with his two kids, Bill enjoys traveling, playing golf, and drinking wine.



### Andrew Rice Cray Huber Horstman Heil & VanAusdal LLC

Andrew is a partner who practices in the areas of complex tort litigation, including trucking, personal and commercial auto, diacetyl, insurance coverage, construction and premises liability. He received his Juris Doctorate from DePaul University College of Law. He has also served as a Qualified



#### For more information on ADTA please contact:

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Arbitrator for numerous Cook County Mandatory Arbitrations since 2002. In college at Michigan State University, Andrew was a member of the varsity swim team and remains a fan of Michigan State sports.

**Jill Cranston Rice**  
**Dinsmore & Shohl LLP**

Jill is the chair of the Government Relations practice group and a member of the firm's Board of Directors. Following an undergraduate degree from the University of Kentucky and her law degree from West Texas University College of Law, she now focuses her practice on government relations, insurance, and health care law. She has been a registered lobbyist in West Virginia for more than 20 years and has lobbied on behalf of various businesses and industry sectors. Jill is rated AV Preeminent in Martindale-Hubbell and has been repeatedly recognized by Best Lawyers and Super Lawyers. In 2021, The National Law Journal recognized her as a Trailblazer in Insurance Law. Jill is on the DRI - Lawyer Representing Business Board of Directors and is a diplomat and past president of the Defense Trial Counsel of West Virginia. She volunteers with Read-A-Loud West Virginia, Junior Achievement, and the Junior League.



**Ryan Richman**  
**McCarter & English, LLP**

Ryan is a partner in his firm's Newark office, concentrating in product liability; mass torts and consumer class actions; pharmaceutical and medical device litigation; environment and energy litigation; and construction and real estate litigation. A graduate of Rutgers Law School, he quickly gained recognition as an upcoming attorney, receiving the Younger Lawyer of the Year Award from the New Jersey Defense Association; the 2018 Pro Bono Award from Kids in Need of Defense; Rising Star recognition from Super Lawyers; and recently the Professionalism Award from the New Jersey State Bar Association. Ryan volunteers as the current



chairperson of the Board of the New Jersey Defense Association and is a Trustee for the Trial Attorneys of New Jersey. When not at work, he spends time with his wife, Anastasia Latsos (also a lawyer) and his children, Zoe (5) and Nicky (3).

**Elizabeth Skane**  
**Skane Mills LLP**

Elizabeth Skane is a 1993 Dean's List graduate of the School of Foreign Service at Georgetown University. She earned her law degree at the University of San Diego in 1996 and admitted to practice in 1996 in California, and in 1999 in Nevada. She specializes in the areas of public entity, professional liability, employment, premises and products liability, construction transportation. Liz is AV Rated with Martindale Hubbell, and was published in the 2005 edition of AM Best's Directory of Recommended insurance attorneys and adjusters. She has been published in San Diego Magazine and Las Vegas as one of the top lawyers in her field every year since 2005. Between 2011 and 2015, Liz was further honored with Martindale Hubbell's recognition by placement on the Bar Register of Preeminent Women Lawyers. She is admitted to practice in state and federal courts in the State of California and the State of Nevada. Liz is a member of the San Diego County Bar Association, the Nevada Trial Lawyers Association, the Association of Southern California Defense Counsel, San Diego Defense Lawyers, Las Vegas Defense Lawyers, Professional Liability Underwriters Association, Council for Litigation Management, and the American Bar Association.



**Andres Soto**  
**Mills Shirley LLP**

Andy received his law degree from the University of Texas and practices primarily in the areas of commercial litigation and civil disputes involving international transportation, construction, landlord-tenant, personal injury, admiralty, and insurance. Andy was named a Texas Super Lawyers Rising Star from 2020-2022 and was voted Galveston County's Outstanding Young Lawyer in 2015. In addition to general litigation practice in both trial and appellate



courts, Andy focuses his practice on matters involving interstate and international transportation, federal regulations, and maritime law. Andy and his wife Alanna have two sons, Samuel and Simon.

### **Holly Tysse Crowley Fleck PLLP**

Holly practices in commercial and tort litigation. Holly graduated from the University of Wyoming College of Law with Honor, Order of the Coif, in 2015 and graduated from the University of Wyoming with a B.A. in Political Science and minors in Philosophy and Criminal Justice in 2012. During law school, Holly served as Senior Staff to the law review, and participated in the Energy, Environmental and Natural Resource Clinic. After law school, Holly clerked for the Honorable Judge Skavdahl in the United States District Court for the District of Wyoming. She serves on the Board of Directors for the YMCA of Natrona County, and from the Fall of 2016 to the Spring 2018, served as Treasurer of the Sheridan County Bar Association. Holly was born and raised in southwest Wyoming and enjoys taking advantage of all the outdoor activities the state has to offer.



them ABOUT their membership. The final goal is to market to non-members who may be good candidates for membership. Members of the ADTA role is to engage our social media posts by liking, commenting, and sharing.

We also have a private membership Facebook group and LinkedIn group through which we share information and are able to network beyond the Annual Meeting and Fireside chats. If you haven't joined the private groups yet and/or if you are interested in being on the social media committee, contact Jessica Burgasser at [jburgasser@wlbdeflaw.com](mailto:jburgasser@wlbdeflaw.com) to connect!

## **Committee Reports**

### **Social Media and Marketing Committee By Jessica Burgasser**

Do you have a passion for sharing the virtues of your membership with others? Then this is a great committee for you!

Our committee has three goals: (1) market to members; (2) educate members; (3) and market to non-members. The actual content preparation is largely done via Peggy and our marketing partner, Golden Shovel. Our committee, in partnership with our Executive Committee, is responsible for dictating what information we want Golden Shovel to prepare and providing the necessary information. Golden Shovel then prepares "content" for our committee to review and approve. Marketing offerings of the ADTA to our members is the primary goal so they are aware of webinars, social engagement opportunities, and our Annual Meeting events. Another goal is to market to our members information to educate

# Association of Defense Trial Attorneys (ADTA)

12507 Palomino Court  
Tampa, FL 33626

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I would like to nominate \_\_\_\_\_  
(proposed member's name)

for (Prime)(Associate) membership in the Association of Defense Trial Attorneys (ADTA). Please send an application to

\_\_\_\_\_ (name of applicant)

Firm \_\_\_\_\_

at \_\_\_\_\_

Office telephone \_\_\_\_\_ (city) \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) Office Fax \_\_\_\_\_

Year admitted to practice in my state \_\_\_\_\_ Email \_\_\_\_\_

\_\_\_\_\_  
Name of Member (Print)

\_\_\_\_\_  
Signature of Member

Name of applicant's spouse (if available) \_\_\_\_\_

Home Address (if available) \_\_\_\_\_

Return to: **Jeanne Loftis, Bullivant Houser Bailey, P.C., Suite 800, One SW Columbia Street, Portland, Oregon 97204**

Telephone: (503) 228-6351

Email: [jeanne.loftis@bullivant.com](mailto:jeanne.loftis@bullivant.com)

#### Membership Requirements:

A trial lawyer doing principally civil defense work in insurance and self-insurance activities, with more than five (5) years defense trial experience is eligible.

**Prime Members:** The first lawyer member from a firm is the prime member. There can only be one Prime Member from any town, city or metropolitan area of less than a million population. One additional Prime Member is allowed for each additional one million population, or portion thereof, for a city or metropolitan area.

**Association Member:** Partners or associates of a Prime Member are eligible and encouraged for membership as Associate Members, at the will of the Prime Member.