

A vertical strip on the left side of the slide shows a portion of the Statue of Liberty, including its crown and face, in a faded, light blue color.

# Best Practices for Reducing Auto Liability Losses

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# Liability

- Liability / Negligence
  - Failure to exercise that degree of care which a person of ordinary prudence would exercise under the same circumstances.
  - Test of Foreseeability
    - Determination that the actions were that of an ordinary person – reasonable man theory.

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# Liability Statutes

- Comparative Negligence
  - Joint and Several
    - Each defendant to whom some negligence is attributable is jointly and severally liable.
  - Last Clear Chance Theory
  - Cost of Defense -- Gratuity Pay

# Elements of Negligent Entrustment

- Driver was negligent on the occasion in question
- Driver's negligence proximately caused the accident
- Entrustment of a vehicle by the owner to an unlicensed, incompetent or reckless driver; and
- Owner knew, or should have known, the driver to be unlicensed, incompetent or reckless

See *Williams v. Steves Indus., Inc.*, 699 S.W.2d 570, 571 (Tex. 1985)

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# The Question is “How and when should you have known”

- The four key process areas that can be used in determining rather management should have known:
  - Driver Qualification
  - Dispatch
  - Vehicle Maintenance
  - Training

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# Driver Qualifications – *Field Skills versus Driving Skills*

- Two issues that face every private fleet:
  - Intrastate versus Interstate regulations – which ones apply and when
  - Are you hiring a individual based on their technical skills or for their driving ability
- FMCSR – CFR 49.391 are the minimum
  - State exemptions' vary from state to state regarding driver age, vehicle weight, radius, etc.

# Driver Qualifications – *Entrustment Error - #1*

- If the MVR didn't meet your criteria.
  - Are there notes in the file as to “why”
    - Use of question marks written on the application
    - Management sign-off
  - Does the background check agree with the driver statements?
    - Discrepancies noted
    - Driver notification
    - Disposition of the driver

ABC ELECTRIC  
EMPLOYMENT APPLICATION

**MOTOR VEHICLE RECORD QUALIFICATION**  
List all drivers licenses held within the past 5 years (include multiple licenses if you have them):

State	License Number	Type	Expiration Date

**CRASH OR ACCIDENT RECORD**  
List all motor vehicle crashes or incidents which resulted in property damage or injury within the past 5 years regardless of fault. If none, please check: ☐ None

Date	Vehicle Type	Nature of Crash/Accident	Fault	Charges	Fines	Injuries?

**TRAFFIC CONVICTIONS**  
List all motor vehicle convictions or incidents which resulted in property damage or injury within the past 5 years regardless of fault. If none, please check: ☐ None

Date	Type of Offense	Type of Vehicle

ECTRIC APPLICATION

**CRASH OR ACCIDENT RECORD**  
List all motor vehicle crashes or incidents which resulted in property damage or injury within the past 5 years regardless of fault. If none, please check: ☐ None

Date	Vehicle Type	Nature of Crash/Accident	Fault	Charges	Fines	Injuries?

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Date	Type of Offense	Type of Vehicle



# Driver Qualifications –

## *Entrustment Error - #2*

- Grandfathering the road test per CFR 49 – 391.33, items to consider:
  - If there are different vehicles, give a road test in each type.
  - Make sure it is long enough and covers the type of road conditions likely to be seen.
  - Include items such as pre/post trip, load securement, etc.



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## Dispatch –

### *Implied (scheduled) versus Forced*

- Within the transportation of goods or services there are two generally accepted terms used to describe dispatch practices -
  - Implied (scheduled) –
    - Driver has ultimate control when to reach the agreed upon delivery time
  - Forced –
    - Use of job sanctions against the driver for refusal to meet the time

# Dispatch –

## *Entrustment Error - #3*

- Dispatchers and managers are not aware of hours-of-service (HOS) requirements – 390.3.
- Unreasonable delivery times that the driver must adhere to meeting
- No documented hours-of-service audits
- No documented corrections to the driver
- No policy for driver disposition for falsification
- Repeated violations & not conforming to speed limits – 392.6

# Maintenance –

## *Pre/Post-trip, Periodic and Annual Inspection*

- Pre/Post Trip inspections – 392.7 & 396.11
  - *DVIR documentation retained for 90 days*
- Periodic equipment maintenance – 396.3
  - *every motor carrier shall systematically inspect, repair and maintain .....*
  - *required records – 396.3(b)*
- Periodic/Annual Inspection – 396.17
  - *every CMV shall be inspected .....*
- Inspection of motor vehicles in operation – 396.9
  - *every CMV shall be inspected .....*

# Trucker gets 20 years in death

Driver of rig with faulty brakes caused 2002 crash that killed girl, 11

By **ROBERT THARP**  
Staff Writer

A trucker with a history of accidents and traffic citations was sentenced to 20 years in prison Friday for driving a tractor-trailer with faulty brakes and causing a November 2002 crash that killed an 11-year-old girl.

Jaun Olds, a third-generation truck driver, cried and asked for mercy during a sentencing hearing after he pleaded guilty to felony manslaughter charges this month.

"I'm not a monster," he said. "I'm a man who was trying to do a job, and I messed up. ... Regardless of what anyone thinks or doesn't think about me, I care."

The 39-year-old Elm Mott resident was hauling about 47,400 pounds of concrete in a truck that had only two of its 10 brake components functioning, investigators said.

Mr. Olds acknowledged that he had falsified his truck's trip log to indicate that he had inspected the



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**Jaun Olds,**  
who had a history of accidents and citations

truck before starting his trip from Waco to Dallas.

The 18-wheeler was traveling more than 60 mph on northbound Interstate 35E when Mr. Olds entered a construction zone between Parkerville and Belt Line roads in Lancaster. Mr. Olds said he began trying to stop the truck as he went over a rise in the highway and saw the traffic ahead.

"I tried everything I could on that truck, and it wouldn't stop," he said.

Vehicles were at a standstill when Mr. Olds' truck plowed into the GMC extended-cab pickup in which Elizabeth Hampton was riding with her older sister and parents. Investigators found only 11 feet of skid marks from the tractor-trailer.

"I remember thinking, 'I've been rear-ended,'" said Elizabeth's

father, David Hampton. "But it just didn't quit. ... When we finally quit moving, I knew it was bad."

Trapped inside what one witness described as "a big ball of metal" under the front of the truck, the family members began calling out to each other.

"Beth didn't answer," he said.

The surviving relatives were trapped more than two hours inside the wreckage before rescuers were able to free them.

Although Mr. Olds, 39, blamed his employer for not providing him with a safe vehicle, he testified that he was ultimately responsible for the accident.

Mr. Olds had received at least 11 traffic citations dating back to 1993, including charges of careless driving, speeding and following too closely. He had also been in seven accidents since 1997. Despite

his long record of infractions and accidents, he spoke reverently of his profession and described it as his heritage.

"I was responsible for the truck," he said. "My responsibility didn't stop with delivering the load. My responsibility was with everyone else on the highway."

Prosecutor Keith Robinson said in closing arguments that the case called for the maximum 20-year prison sentence.

"It's not just about the brakes," he said. "Had he just bothered to look, this wouldn't have happened. Had he bothered to pay attention to traffic conditions ... all his actions ... we wouldn't be here today."

Family members said they were pleased with the sentence imposed by District Judge Janice Warder. By law, Mr. Olds must serve at least 10 years in prison before he's eligible for parole.

"What he did and how he drove, if it doesn't ... justify the maximum sentence, I don't know what does," Mr. Hampton testified. "It's like a part of our life just stopped. There's a hole there that's just not going to go away."

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# Maintenance –

## *Entrustment Error - #4*

- No documented audits of DVIR's against maintenance records.
- No supporting documentation of maintenance procedures, e.g. time line.
- No supporting documentation of periodic maintenance procedures.
- No supporting documentation for complying with repairs for “Out-of-Service” items.

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# Training –

## *Types of Training*

New employee with no CDL

or

Experienced employee but new to you

or

Experienced long term employee

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# Training –

## *Entrustment Error - #5*

- Too much reliance on complying only with FMCSR Part 380.
- Too much reliance on previous employer's driver training.
- Failure to keep good records on the training being given to each driver.
- Failure to show corrective training.



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# Safety Performance Measures

*How are we performing?*

- Outcome Measures
  - Crashes per million miles
  - Preventable crashes per million miles
- Process Measures
- Progress Measures

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# Progress Measures

## *Entrustment Error # 6*

- Measure your failures instead of your successes
  - There is no predictive value in Outcome Measures if a case goes to the jury.
  - Even a decreasing crash rate still gives the wrong impression.



# Q and A