

If They Aren't Cheating—They're Not Trying: **Some members of the Plaintiff Bar and their Experts have been pointing to the CDL Manual as an authoritative Standard of Care, despite conflicting—and even contrary—State Law.**



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Introduction

Most would agree that driving a Commercial Motor Vehicle (CMV) requires a higher level of knowledge, experience, skills, and physical abilities than that required to drive a non-commercial vehicle. In order to obtain a Commercial Driver's License (CDL), an applicant must pass both skills and knowledge testing geared to these higher standards. Additionally CDL holders are held to a higher standard when operating any type of motor vehicle on public roads. Serious traffic violations committed by a CDL holder can affect their ability to maintain their CDL certification.

The Federal Motor Carrier Safety Regulations ("FMCSR") provide that all drivers of commercial motor vehicles ("CMVs") must have the knowledge and skills necessary to operate a CMV safely.¹ The FMCSR sets forth the requirements for the substance of the CDL Manual, so as to include, *inter alia*, information on how to obtain a CDL and endorsements; the implied consent to alcohol testing; information on vehicle groups, the substance of the knowledge and skills that drivers must have; details of

testing procedures, including the purpose of the tests and state-specific information.²

The American Association of Motor Vehicle Administrators (AAMVA) is a tax-exempt, nonprofit organization that develops model programs in motor vehicle administration, law enforcement and highway safety. The association also serves as an information clearinghouse in these areas, and acts as the international spokesman for these interests. Founded in 1933, AAMVA represents the state and provincial officials in the United States and Canada who administer and enforce motor vehicle laws. AAMVA's programs encourage uniformity and reciprocity among the states and provinces. The association also serves as a liaison with other levels of government and the private sector. Its development and research activities provide guidelines for more effective public service. AAMVA's membership includes associations, organizations and businesses that share an interest in the association's goals. Interestingly, there are no particular requirements for membership.

AAMVA does not develop or provide materials for driver training. However, AAMVA does recommend completion of a recognized driver training program such as a Professional Truck Driver Training (PTDI) certified course.

AAMVA's Commercial Driver's License (CDL) Manual is a comprehensive test

preparation resource for CDL candidates. This manual is intended to prepare an applicant for the license and testing process; however, it is not a substitute for a certified driver training program.

Each state has its own Commercial Driver's License Manual and drivers should always use their state's manual to prepare for the knowledge and skills testing. Many states have their manuals available online. The CDL Manual is defined as a "driver information manual." A state must provide an FMCSA pre-approved driver information manual to a CDL applicant. The manual must be comparable to the American Association of Motor Vehicle Administrators' (AAMVA) "2005 CDL Test System (July 2010 or newer version) Model Commercial Driver Manual" which FMCSA has approved and provided to all state driver licensing agencies.³

Some members of the Plaintiff Bar and their experts have been pointing to the commercial driver's license ("CDL") Manual as an authoritative Standard of Care. In particular, many of the experts testifying for the plaintiffs will attempt to establish the CDL manual as the "industry standard" for driver conduct; and attempt to impose a continuing obligation on a CMV driver to know the contents of the CDL manual. Much of this is

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to support the "Reptile Theory," which has come into vogue by the Plaintiff Bar. This article surveys the patchwork of opinions that address the use and admissibility of the CDL Manual.

I. Cases in which the CDL Manual held was held to be the Standard of Care.

The United States District Court for the Western District of Kentucky, applying Kentucky law, concluded that the Kentucky CDL Manual and FMCSRs were appropriate sources by which to measure the defendant's duty of care in a trucking accident case.⁴

Specifically, the court found that the Kentucky CDL Manual sets out the standard of care for commercial truck drivers and the FMCSRs pertain to the knowledge and skills that states must test for in administering Commercial Driver's License exams.⁵ These regulations have been adopted by the Kentucky Transportation Cabinet into its own regulations.⁶ Because they are widely utilized and outline the degree of care and skill expected of a competent commercial driver, the court concluded that the CDL Manual and FMCSRs are appropriate sources by which to measure the defendant's duty of care.

While the court found that the Kentucky CDL provided the standard of care by which to judge the defendant's culpability, there were sufficient questions of fact remaining to preclude summary judgment.⁷

II. Cases in which the CDL Manual held was held NOT to be the Standard of Care.

In the context of a products liability case, the United States District Court for the Eastern District of Virginia concluded that Virginia's CDL Manual did not set forth the standard of care necessary to relieve the defendants from relying on expert testimony as to the governing standard of care.⁸ There, the plaintiff-driver, who had a valid CDL, was operating a fully loaded cement mixer truck, when the tread on the front right tire (the "subject tire") separated (the "tread separation"), resulting in a sudden loss of all air pressure. Plaintiff was caught completely off guard by this event and was

uncertain as to whether a tire failure had occurred. Plaintiff had not noticed any items of concern during his pre-trip inspection of the subject tire. The truck veered to the right and struck an embankment on the side of the road. The incident was investigated by a Virginia State Trooper, who concluded that Plaintiff took no improper action in response to the disablement.

At the time of the accident, the 2014 Virginia Commercial Driver's License Manual was in effect. It advised drivers facing a tire failure to:

Hold the steering wheel firmly. If a front tire fails, it can twist the steering wheel out of your hand. Keep a firm grip on the steering wheel with both hands at all times.

Stay off the brakes. Braking when a tire has failed could cause you to lose control. Unless you are about to run into something, stay off the brake until the vehicle has slowed down. Then, brake gently and pull off the road.

Check the tires. Even if the vehicle seems to be handling normally. Many times you won't know that a dual tire is flat unless you look at it.⁹

Contending that Plaintiff did not follow the guidance of the CDL Manual, the product defendants pled the affirmative defense of contributory negligence. Plaintiff moved for summary judgment on this defense, arguing that the defendants did not have an expert to set forth the applicable standard of care. Defendants argued that the CDL Manual established the standard of care.

After concluding that the defendants' experts did not base their opinions on the content of the CDL Manual, the court went on to consider whether the CDL Manual itself can obviate the need for expert testimony as to the applicable standard of care. In declining to allow the CDL Manual to represent the governing standard of care as a substitute for expert testimony on the subject, the court found that the CDL Manual was not enshrined as the one and only standard by the defendants' experts in the case at bar; rather, it was merely one of several sources consulted in arriving at their

opinions, and that it was not relied upon by any of them as the touchstone of what the plaintiff was expected to do.

The court went on to grant the plaintiff's motion for summary judgment and struck the defendants' contributory negligence defense. In declining to grant the defendants' motion for reconsideration, the court noted the federal regulatory requirement for states to make a CDL Manual available, but concluded that did not define the standard of care:

Here, the existence of the CDL Manual and the regulations relating to it may well be a "legislative fact." ... **The Court, however, does not perceive it to be a legislative fact that the CDL Manual defines the standard of care here.** The relevant regulations simply indicate that states must provide a CDL Manual to CDL applicants, that CDL drivers are required to have certain knowledge and skills, and that a CDL Manual must include information about the required knowledge and skills.¹⁰

The Court of Appeals of South Carolina affirmed a jury charge referencing the South Carolina CDL Manual, but only as harmless error.¹¹ On appeal, the County took exception to the portion of the trial court's jury charge referencing the CDL Manual, because doing so imposed a higher standard of care on the commercial driver when the CDL Manual guidelines do not carry the force of law. The appellate court noted that the County correctly pointed out that in pointing out that the CDL Manual does not carry the force of law.¹²

However, in reviewing a jury charge for an alleged error, the appellate court noted that it must consider the court's jury charge as a whole in light of the evidence and issues presented at trial, and, if, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error. In this case, notwithstanding the reference to the South Carolina CDL Manual, the Court of Appeals found that, on the whole, the trial court's jury instructions properly stated the appropriate standard of care such that

it did not believe the reiteration of some guidelines from the CDL Manual prejudiced the County.¹³

Following a verdict for the plaintiff in state court in Michigan, a defendant appealed the trial court's denial of its use of the CDL Manual at trial.¹⁴ There, one of the defendants contended that the trial court abused its discretion when it excluded from evidence the CDL Manual. The defendant sought to introduce the entire CDL Manual as representing "all rules that individuals must abide by to become a licensed truck driver." The primary argument for the manual's admission rested on the defendant's inaccurate characterization of the manual's relationship to the federal regulation mandating the manual's creation and distribution. The defendant claimed that the CDL Manual is the equivalent of law because the applicable federal regulation "essentially adopts the CDL manual by reference."¹⁵

On appeal, the court noted that, although Michigan's Vehicle Code does clearly require a person who wishes to obtain a CDL to "pass knowledge and driving skills tests that comply with minimum federal standards prescribed in 49 C.F.R. part 383," the vehicle code does not indicate that the CDL Manual's content contains enforceable rules or regulations, the violation of which constitutes evidence of negligence. Rather, the court noted that the Legislature expressly incorporated into Michigan law sections of the CFR pertaining to motor carrier safety regulations, but no similar incorporation of federal regulations appears in the statutory provisions regarding commercial motor vehicles. Reasoning that statutes that relate to the same class of persons and share a common purpose should be read *in pari materia*, and the Legislature is presumed to know the consequences of its use or omission of statutory language, the court found the Legislature's express adoption of federal regulations pertaining to motorbus transportation and its omission of a similar statute pertaining to commercial motor vehicles is fatal to the defendant's contention that the trial court abused its discretion by declining to admit in evidence the CDL manual.

The court further observed that the trial court's ruling did not preclude the

defendant from utilizing the CDL manual for purposes of impeachment. Thus, the defendant was free to reference the content of the CDL Manual and inquire about specific manual guidelines while cross examining its co-defendant.¹⁶

III. Cases GRANTING motions in limine seeking to preclude the use or reference to the CDL Manual.

Last year, the United States District Court for the Northern District of Mississippi granted the defendants' motion to exclude the testimony of plaintiff's proffered expert, Rodney D. Ellis.¹⁷ There, the plaintiffs designated Mr. Ellis as an expert in commercial truck driving and the application of various regulations and guidelines for commercial drivers. Ellis' expert report and testimony focus primarily on the Federal Motor Carrier Safety Regulations ("FMCSR") and Mississippi's Commercial Driver License Manual ("CDL Manual"). Defendants contended that the bulk of Mr. Ellis' report is simply a series of copied and pasted sections of the FMCSRs and CDL Manual. In arguing that Mr. Ellis was qualified to render his proposed expert testimony, the plaintiffs pointed to Mr. Ellis' ten years of experience as a commercial truck driver.

The court was not convinced, reasoning that experience as a commercial truck driver, without more, does not make the driver an expert in regulations and guidelines applicable to commercial truck driving. To hold otherwise would permit any commercial truck driver to hold himself out as an expert in the field. Moreover, the plaintiffs did not reference any training that Mr. Ellis had pertaining to the CDL Manual.

The court went on to opine that, even assuming that Mr. Ellis were qualified to give his proffered opinions, his opinions were nevertheless unreliable. The court held that the overwhelming majority of Mr. Ellis' expert report was in fact mere copied and pasted portions of the FMCSRs and the CDL Manual, which, without more, cannot establish liability. Furthermore, immediately following the text of these regulations and guidelines, the court noted that Mr. Ellis simply opined, in conclusory fashion, that the driver failed to comply with the

respective regulation or guidelines, without connecting his opinion to any specific fact of the case. In so doing, the court found that Mr. Ellis failed to point to any specific act or omission that would have prevented the subject collision. Moreover, Mr. Ellis conceded that he completely ignored the decedent's actions leading up to the collision in forming his opinions.¹⁸

Following a unanimous jury verdict in favor of the defendants in a Florida state court, the plaintiff sought JNOV or a new trial, in part, because the trial court excluded the Florida CDL Manual.¹⁹ There, the court observed that the CDL Manual is used as a guide by those who obtain a commercial driver's license and operate commercial motor vehicles in Florida, as it contains information on various Florida laws and federal regulations governing the operation of commercial motor vehicles. At trial, the plaintiffs offered the entire CDL Manual into evidence when the defendant driver was on the stand. The defendant objected on hearsay grounds. At sidebar, counsel for the plaintiff stated that he wanted to ask the driver about various portions of the Manual, and that he wanted it admitted as evidence. The court then ruled that it was not going to let the entire CDL Manual into evidence, but that the manual could be used to refresh the recollection of a witness. Throughout the rest of the trial, counsel for the plaintiffs attempted to use certain pages of the manual to refresh various witnesses' recollections about headlight limitations and braking capabilities of a tractor trailer, but did not attempt to admit the entire Manual into evidence.

In denying the plaintiffs' post-trial motions, the court held that the plaintiffs did not properly preserve the issue of whether the entire CDL Manual should have been admitted into evidence, finding plaintiffs' single offer of proof to have been inadequate. As to plaintiffs' challenges that relevant individual pages of the CDL Manual should have been admitted, the court held that the plaintiffs again failed to properly object and explain how the individual pages were not hearsay or were exceptions to hearsay. The court went on to hold that, even assuming that plaintiffs had preserved these issues, the court was nonetheless

correct in refusing to admit the manual into evidence because the vast majority of the material contained therein is irrelevant, and the manual constitutes hearsay without an exception.²⁰

IV. Cases DENYING motions in limine seeking to preclude the use or reference to the CDL Manual.

Breaking with state court precedent, the United States District Court for the Middle District of Pennsylvania denied defendants' motions *in limine* to exclude expert reports that relied on the CDL Manual.²¹ As the court summarized the holding of the Superior Court of Pennsylvania's affirmation of the preclusion of the CDL Manual:

Authoritative texts are not admissible for the truth of their contents; they may not be read to the jury or admitted as substantive evidence. However, such manuals or texts may be used to cross-examine experts as to their familiarity or concurrence with the information, after the material has been established as standard and authoritative by expert testimony.

Here, appellant did not offer to present any expert testimony to establish the manual as an authoritative text during trial, despite her argument to this court that certain of her expert witnesses could have done so. Under these circumstances, we cannot hold that the trial court abused its discretion in precluding reference to the manual as presented by appellant.²²

In denying the defendant's motion *in limine*, the court reasoned that their argument suggests that experts must only rely on law and regulations in forming their opinions, which is clearly not the case under Federal Rule of Evidence No. 703. Further, the court observed that because the CDL Manual is among the bases upon which a CDL is issued, it is therefore relevant and probative to the issues in this case. Finding that the CDL Manual "provides a standard by which a particular action in the commercial driver field may be judged, the court

concluded that it is therefore presumptively relevant, given that the document offers driving instruction for commercial motor vehicle drivers. The court found that this information, along with the expert's explanation of its application, would be helpful to a jury in understanding the instructions the driver was presumably aware of when driving and what training he had, or should have, received.

The court concluded that, at trial, should plaintiff's expert testify as to the authoritative nature of the CDL Manual and establish that it is a document upon which experts in his field generally rely, he would then be permitted to explain the relevant CDL Manual requirements and the extent to which he relied on the Manual in forming his opinions. Although the Manual itself may not be admissible at trial, and plaintiffs conceded that it could not be read to the jury, the plaintiffs' experts would nevertheless be allowed to rely on it in offering their opinions.

The court went on to address the defendants' argument that the plaintiff's experts' opinion should also be precluded because they failed to indicate which CDL Manual, that of Tennessee or that of Pennsylvania, which he relied upon to reach his conclusions, and that he failed to specify the edition of the Manual. The court found these arguments were proper material for cross-examination, but not enough to exclude the expert's proffered testimony. Among the reasons relied upon by the court included a lack of showing that there is a substantive difference between the CDL Manual utilized in Tennessee and that used in Pennsylvania that is relevant to the conduct of commercial motor vehicle drivers and their employers in the case.

Notwithstanding its holdings, the court agreed with the defendants that there should not be any testimony that commercial motor vehicle drivers are subject to an increased or higher standard of care, noting that the defendants were permitted to raise objections at trial should the plaintiff's expert imply a higher standard of care is applicable to commercial motor vehicle drivers than to other motor vehicle drivers.²³

The Middle District of Pennsylvania came to a similar conclusion when it denied

defendants' motion *in limine* to exclude the expert report of the plaintiff's expert, Ken Lacey.²⁴ There, the plaintiffs sought to have Mr. Lacey testify at trial regarding the applicable standard of care and whether driver breached that standard in the operation of his tractor-trailer truck. Mr. Lacey based his opinions on the federal regulations and the New York CDL Manual, and specifically opined that, based on the guidance provided in the Manual, a properly licensed CMV driver should know to reduce his speed based on road conditions and visibility. Mr. Lacey also opined that the Manual admonishes drivers to slow down when visibility is limited so they can stop within the distance they can see ahead.

In seeking to exclude Mr. Lacey's testimony, the defendants pointed out that the New York CDL Manual does not inform the applicable standard of care for a driver operating a CMV on the roadways, but merely provides assistance to applicants seeking to obtain their CDL, such that the Manual's specific proscriptions amount to nothing more than suggestions or recommendations with respect to already-licensed CMV drivers.

The court agreed that the New York CDL Manual does not carry the force of law or regulation, nor does the manual itself establish a statutory standard of care.²⁵ Thus, the court concluded that the mere deviation from the guidance provided by the New York Manual does not constitute negligence per se. However, the court held that, in technical cases such as the one at bar, expert testimony is necessary to illuminate the applicable standard of care.²⁶ Because experts are permitted to rely on facts or data in the case that the expert has been made aware of or personally observed in reaching their conclusions, the court held that Manuals promulgated pursuant to federal regulation and is substantively similar to manuals published in all fifty states, may constitute such facts or data.²⁷

The court went on to hold that, provided Mr. Lacey does not opine on the ultimate legal issue of whether the defendants' conduct was negligent or reckless, and that Lacey's testimony does not characterize the guidance provided in the New York Manual as a "law" or "regulation" in

itself, but merely uses it as a basis for his expert opinion on the applicable standard of care in the trucking industry with respect to the safe operation of a commercial motor vehicle and on any breach thereof by the defendants, his testimony is relevant and therefore admissible.²⁸

The United States District Court for the District of New Mexico denied the defendants' motion to exclude Roger Allen and partially denied their motion to exclude the Kansas CDL Manual.²⁹ In moving to exclude Mr. Allen's testimony about Kansas law and the Kansas CDL manual, the defendants argued that such testimony is not relevant to or probative of New Mexico law or the issues in this case. The plaintiffs asserted that the defendants' attempt to argue about Kansas law "is simply a red herring" because their driver holds a Kansas CDL, the Kansas CDL manual was therefore his source of training, and all relevant portions of the CDL manuals of Kansas and New Mexico are identical.

In the alternative, the defendants argued that the Kansas CDL Manual would be misleading to the jury and also contended that New Mexico law sets the standard of care for this case, and it is not set by the CDL Manual. Plaintiffs urged that the Kansas CDL Manual should be disclosed to the jury because the driver possessed a Kansas CDL and he testified that he learned, in part, how to drive his tractor-trailer from studying the Kansas CDL.

The court held that that the Kansas CDL Manual would not be admissible for substantive purposes; however, Mr. Allen's testimony regarding Kansas law and the Kansas CDL would nonetheless be admissible. Finding the probative value of Mr. Allen's testimony of this material to be high, the court reasoned that the jury should be aware of the resources Mr. Allen relied upon to form his opinions and why he utilized those particular resources. The court held that this information would assist the jury in determining Mr. Allen's credibility and the weight to give his testimony. Comparatively, the court found the unfair prejudicial effect of this information would be low. Regarding the Kansas CDL, the court held that any confusion it may cause the jury could easily be dispelled during cross-examination or by a limiting instruction, if

necessary. Concluding that the probative value of this information substantially outweighs its minor unfair prejudicial effect, the court refused to bar Mr. Allen's testimony of Kansas law, Kansas policy, Kansas guidelines, or any resources that he may have utilized to form his opinions, including the Kansas Commercial Driver's License Manual.³⁰

The United States District Court for the District of Wyoming held that the Wyoming CDL Manual did not set for the applicable standard of care in a trucking casualty case, but refused to limit the testimony of the plaintiffs' expert, Lew Grill, including his references to the Manual.³¹

The court found that Mr. Grill had worked in the trucking industry since 1968 as a truck driver, truck driving instructor and trainer, and consultant for truck-driving schools and possesses numerous trucking licenses and extensive trucking experience. The court held that Mr. Grill's opinion was sufficiently reliable and relevant because it is apparent Mr. Grill's proposed testimony is based on "good grounds," in that his conclusions were based on his extensive experience in the trucking industry, the CDL Manual, and numerous other trucking publications.

The court also noted that Mr. Grill applied his experience and knowledge to the facts of the case to reach his conclusions, and therefore concluded that Mr. Grill's opinions were reliable.

The court went on to conclude that Mr. Grill's proposed testimony was relevant and would potentially assist the jury in reaching a verdict in this case. In so holding, the court was unpersuaded by the defendants' argument that Mr. Grill's use of the CDL Manual was irrelevant. The court reasoned that the CDL Manual identifies "information that truck drivers should know and consider" when operating semi-trucks and "is substantively uniform to those published by all other states." Moreover, the court found that the CDL Manual provides standards that, if violated, may cause motor vehicle accidents. Thus, the court reasoned, the jury may consider standards applied by the CDL Manual when determining whether the defendants were negligent in this case and whether that

negligence ultimately caused the subject accident. Notwithstanding its holding, the court provided that the defendants may still have the opportunity to object at trial during Mr. Grill's testimony if the testimony strays into topics or opinions lacking relevance.

The court stressed that the plaintiff was not contending that the CDL Manual is a statutory standard of care, and noted that Mr. Grill himself admitted that the CDL Manual is a model for truck drivers to follow. The court concluded that, while an expert witness may not state legal conclusions, experts in civil cases may testify in the form of an opinion or inference as to ultimate issues to be decided by the trier of fact if the testimony is not otherwise objectionable. Here, the court pointed out, Mr. Grill proffered an opinion that the defendants violated the CDL Manual, which the court agreed was not the legal standard of care in this case. The court concluded that, although Mr. Grill's testimony goes to the ultimate issue of the case, *i.e.*, the defendants' negligence and causation, but it stopped short of instructing the jury on the law. Accordingly, the court found Mr. Grill's proposed testimony would be permissible. However, the court stressed that Mr. Grill would not be permitted to testify that the defendants were negligent or actually caused the accident, as those are questions of fact fall within the province of the jury.³²

In another case dealing with Lew Grill, the United States District Court for the Eastern District of Michigan refused to limit certain opinions that Mr. Grill proffered with regard to the CDL Manual.³³ There, the defendants argued that the CDL Manual is irrelevant and inadmissible to prove negligence *per se*. The court agreed that evidence of a violation of the CDL Manual would not be admissible to prove negligence *per se*. The court observed, however, that the driver's knowledge of the CDL Manual and his alleged failure to apply that knowledge in the circumstances of this case would be relevant to the jury's determination on the ultimate issue of his negligence. The court rejected the defendants' reliance on prior precedent³⁴ in support of their position that the CDL Manual did not contain enforceable rules or regulations, the violation of which constitutes evidence of

negligence. While the court held that Mr. Grill could not testify that a violation of any regulation or rule amounts to negligence per se, the court noted that the earlier decision did not exclude reference to the CDL Manual altogether, holding that the content of the Manual could be used for purposes of impeachment and that the defendant was free to reference the content of the manual and inquire about specific manual guidelines" on cross-examination.

The court went on to hold that the plaintiff was precluded from suggesting that the defendant was not qualified to obtain his CDL, but would nevertheless be free to establish the knowledge that the defendant was expected to possess, as defined by both the FMCSRs and the CDL Manual, while operating his commercial vehicle.³⁵

The United States District Court for the Northern District of Georgia weighed in on this issue when the defendants sought to exclude the testimony of the plaintiff's expert, Whitney G. Morgan.³⁶ Specifically, the defendants moved to exclude the following conclusions proffered by Mr. Morgan:

It is my opinion, within a reasonable degree of probability in the field of commercial vehicle compliance, enforcement and safety that Southwind Trucking and Mr. Detky demonstrated a conscious disregard for the applicable safety regulations and for the safety of other motorists and highway users, including the Rickers. It is also my opinion that Mr. Detky and Southwind caused and/or contributed to the cause of the accident involving the Rickers. **The conduct of both Mr. Detky and Southwind fell well below the safety standards established by the FMCSR's and CDL Manual**

for the protection of others.

Compliance with the applicable safety requirements, which are established for safe operation and protection of the public, are a clear duty of all commercial motor vehicle operators, and the facts of this case demonstrate both knowledge and willfulness on the part of Mr. Detky and Southwind Trucking.³⁷

The court analyzed Mr. Morgan's conclusions and granted, in part, the defendant's motion, holding that Mr. Morgan's expert report, as a whole, simply sought to offer expert testimony on ultimate issues for the jury. The court acknowledged that it is inappropriate to allow Mr. Morgan to testify as to what the Federal Motor Carrier Safety Regulations provide and mean, or to allow him to opine expressly that the conduct of Defendants violated certain Federal Motor Carrier Safety Regulations.³⁸ The court concluded that Mr. Morgan was not permitted to testify as to what the regulations at issue mean, or to testify that the defendants violated those regulations.

The court went on to find that Mr. Morgan's testimony did not meet Federal Rule of Evidence 1006's requirements for a summary witness, his views as to the regulations or rules are not admissible under that Rule. The court therefore denied the plaintiffs' request to use Mr. Morgan as a summary witness. The Court also refused to allow Mr. Morgan to testify that the defendants' conduct amounted to conscious disregard for risks.

Despite its decisions, the court held that Mr. Morgan would be permitted to state that, in his opinion, the defendants' conduct fell below the general standard of care, reasoning that the rest of the defendants' arguments failed to take into consideration Federal Rule of Evidence 704, which allows

an expert to express an opinion on an ultimate issue. Mr. Morgan's expert report indicates that he is offering his opinion as to what he believes the applicable standard of care is, and the reasons that he believes the defendants' conduct fell short of that standard of care.

The court stated that it would resolve any lingering concerns about ultimate issues for the jury by instructing the jury that they are ultimately to make the decisions concerning causation and negligence. For those reasons, the court declined to exclude Mr. Morgan's opinions, except for Mr. Morgan's opinion stating that the defendants evidenced "conscious disregard" for risks.³⁹

Conclusion

As these cases illustrate, the questions of whether the CDL Manual should be admitted or even referenced at trial, let alone whether it should be deemed authoritative, are answered differently by state and federal judges around the country. Based on a close reading of the cases discussed in this article, the authors submit that the CDL Manuals should not be admissible, as the true standard of care is found in the laws of the various states, and not in what amounts to a study guide used by aspiring commercial vehicle drivers seeking to obtain their CDLs.

The opposite conclusion would be akin to holding a lawyer to knowledge of the law as summarized in bar exam review materials, rather than the actual statutes and case law of a given jurisdiction. Clearly, it would be better for all concerned if both lawyers and truck drivers, once obtaining their respective licenses, should move beyond their tutorial summaries and rely directly on the laws that are on the books in their respective jurisdictions. 

Endnotes

1 49 CFR § 383.110.

2 49 CFR § 383.131 (a)(1).

3 49 CFR § 383.181.

4 *Tingle v. Cornelison*, 2018 U.S. Dist. LEXIS 211084 (W.D. Ky. Dec. 14, 2018)(citing *Hyman & Armstrong, P.S.C.*, 279 S.W.3d at 113; *Boland-Maloney Lumber Co.*, 302 S.W.3d at 686; *Daugherty v. Runner*, 581 S.W.2d at 16; *Shetler v. ALDI, Inc.*, 2012 U.S. Dist. LEXIS 112056, 2012 WL 3264937 (W.D. Ky. Aug. 9, 2012)).

5 49 C.F.R. § 383.1(a).

6 601 KAR 1:005 § 2.

7 *Tingle* at *7.
8 *Benedict v. Hankook Tire Co.*, 286 F. Supp. 3d 785 (E.D. Va. 2018).
9 *Id.*
10 *Benedict* at *13 n.4 (emphasis added).
11 *Johnson v. Horry Cty. Solid Waste Auth.*, 698 S.E.2d 835 (Ct. App. 2010).
12 *Id.* at 840 (citing *McCourt v. Abernathy*, 457 S.E.2d 603, 606 (1995)).
13 *Johnson*, 698 S.E.2d at 839-41.
14 *Holmes v. Edward Bauer & LJBeal & Sons*, 2003 Mich. App. LEXIS 1139 (Ct. App. May 15, 2003).
15 *Id.* at *5-6.
16 *Holmes* at *5-8. The United States District Court for the Eastern District of Michigan distinguished the *Holmes* opinion in *Malburg v. Grate*, 2014 U.S. Dist. LEXIS 125648 (E.D. Mich. Sep. 9, 2014), discussed *infra*.
17 *Pennington v. UPS Ground Freight, Inc.*, 2018 U.S. Dist. LEXIS 66330 (N.D. Miss. Apr. 18, 2018).
18 *Pennington* at *3-5.
19 *Registe v. LinkAmerica Express, Inc.*, 2015 U.S. Dist. LEXIS 35288 (M.D. Fla. Mar. 18, 2015).
20 *Registe* at *25-29.
21 *Botey v. Green*, No. 3:12-CV-1520, 2017 U.S. Dist. LEXIS 89122 (M.D. Pa. June 9, 2017).
22 *Botey*, at *6-7. (quoting *Christiansen v. Silfies*, 446 Pa. Super. 464, 667 A.2d 396 (Pa. Super. Ct. 1995)).
23 *Id.*
24 *Hood v. Sellers*, 2018 U.S. Dist. LEXIS 117987 (M.D. Pa. July 16, 2018).
25 *Id.* at *5 (citing *Benedict, supra*, at 790-91)).
26 *Id.* (citing *Benedict, supra*, at 791, 796).
27 *Id.* at *5-6. (citing *Botey, supra*, at *3).
28 *Id.*
29 *Asbury v. MNT, Inc.*, 2014 U.S. Dist. LEXIS 167724 (D.N.M. Aug. 6, 2014).
30 *Asbury* at *16-25.
31 *Lundquist v. Whitted*, 2016 U.S. Dist. LEXIS 194741 (D. Wyo. May 25, 2016).
32 *Lundquist* at *8.
33 *Malburg v. Grate*, 2014 U.S. Dist. LEXIS 125648 (E.D. Mich. Sep. 9, 2014).
34 *Holmes v. Bauer, supra*.
35 *Malburg* at *11-13.
36 *Ricker v. Southwind Trucking, Inc.*, 2006 U.S. Dist. LEXIS 97161 (N.D. Ga. July 13, 2006).
37 *Ricker* at *21-22 (emphasis added).
38 *Id.* (citing *Bammerlin v. Navistar Int'l Transp. Corp.*, 30 F.3d 898, 900 (7th Cir. 1994) ("The meaning of federal regulations is not a question of fact, to be resolved by the jury after a battle of experts. It is a question of law, to be resolved by the court."); *Police Ret. Sys. of St. Louis v. Midwest Inv. Advisory Serv., Inc.*, 940 F.2d 351, 357 (8th Cir. 1991) (noting it was error for court to allow expert witness to lecture jury about what statute meant)).
39 *Ricker* at *23-24.