

Transport Topics **Online**

Updated: 3/13/2009 10:45:00 AM

Opinion: Defending Spanish-Speaking Truckers

By Cynthia Huerta
Attorney at Law
Lorance & Thompson



This Opinion piece appears in the March 9 print edition of Transport Topics. [Click here to subscribe today.](#)

Hispanics have responded to the need of U.S. carriers for longhaul truck drivers. The Bureau of Labor Statistics has reported that in 2007, 23% of the estimated 1.6 million tractor-trailer drivers in the United States were Hispanic. That percentage will grow in tandem with the Hispanic population of the United States, which the Census Bureau puts at 44.3 million today, with 66.3 million projected by 2020.

As Spanish-speaking drivers increase within the transportation industry and become involved in litigation, trucking company defense attorneys are faced with a number of challenges.



If your Spanish-speaking driver winds up getting sued following an accident, the plaintiff's lawyer will use the driver's limited English skills to prejudice juries, mainly by claiming that the driver doesn't meet the Federal Motor Carrier Safety Regulations' minimum language requirements for driving a commercial motor vehicle.

Plaintiff lawyers also will claim the driver's alleged language deficiency establishes negligent hiring, retention, supervision and training on the part of the trucking company. For example, the lawyer might claim that because your safety training materials are in English, Hispanic drivers won't understand them.

The plaintiff lawyer's basic plan is to get awards for exemplary damages by convincing the jury that your Hispanic driver isn't qualified to drive a CMV on U.S. highways and that trucking companies that hire people who don't speak English to operate big rigs put lives in danger.

The stakes are high, but your counsel can take three important steps to prepare for litigation drivers who claim to speak little or no English and help them to be better witnesses:

1. Establish the driver's ability to speak, read and write English.

The FMCSR don't require a truck driver to be fluent in English. They say a person is qualified to drive a CMV if he or she can:

- Read and speak enough English to converse with the general public.

- Understand highway traffic signs and signals written in English.
- Respond to official inquiries.
- Make entries on reports and records.

If your driver admits during litigation he can't speak, read or write in English, it may have dire legal consequences for the defense — and might not even be true. Many Hispanic truckers have confessed to me they don't speak, read or write English, but in conversation it becomes apparent that the driver is simply shy about using English and knows far more than he gives himself credit.

He may be quite capable of getting notice of a load from an English-speaking dispatcher and asking for help if he doesn't understand something. He may be able to read road signs, fill out a logbook in simple English and communicate with police officers or department of transportation officials.

With defense counsel's help, it's more than likely your driver can overcome his timidity enough to show a jury he's able to speak, read and write English well enough to satisfy the minimum FMCSR requirements.

No. 2: Help the interpreter to help the driver in court.

Using an interpreter in court or in a deposition doesn't negate the driver's ability to speak sufficient English. Spanish is simply the driver's first language and the one he understands best in an important legal proceeding.

However, just as the English spoken in the British Isles differs from the version spoken in this country, with a different accent, word definitions and slang, the same is true for Spanish. The defense should be aware of this possibility and make a list of interpreters whose Spanish transcends regions. Poor communication between the driver and his interpreter can make the driver look bad.

When your driver is to be presented for deposition, find out where the interpreter learned Spanish and, if possible, arrange for an interpreter from the driver's homeland — or at least make sure the interpreter knows where the driver is from and uses the idiom of that country or region.

Before the deposition, defense counsel also should make sure the translator is familiar with trucking lingo and provide the interpreter with a list of terms likely to come up.

When the defense counsel doesn't speak Spanish, consider hiring your own interpreter to attend the driver's deposition. I have been in many depositions where the interpreter incorrectly translated or omitted material, compromising the driver's testimony. Your own interpreter can advise defense counsel when an error in translation should be corrected on the spot, and not days later.

No. 3: Establish your driver's citizenship status ahead of the deposition.

The FMCSR don't require an individual to be a U.S. citizen to drive a truck, but plaintiff lawyers love bringing up immigration status during deposition. I instruct drivers not to answer questions about their citizenship during deposition — and to tell me their status ahead of time. The deposition is not the place to discover your driver is an undocumented alien.

It is regrettable that when your loyal, hardworking Hispanic driver appears in court, your defense attorney must deal with the probability that at least some of the jurors, and possibly even the judge, will be biased against “foreigners.” But by carefully preparing witnesses, showing that your driver meets the FMCSR’s minimum language requirements, making an ally of the interpreter and not allowing the driver’s citizenship to become an issue, the chances of a favorable outcome are immensely improved.

The author, a lawyer with Lorance & Thompson PC, Houston, specializes in trucking law and represents trucking companies involved in personal injury litigation.