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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE P. MANLAPIT, JR., and  
DORINE E. NORKO, AS CO-

Lead Case No. CV01-19-06625

DECLARATION OF V. PAUL HERBERT, CPSA, IN SUPPORT OF MANLAPIT PLAINTIFFS' JOINT  
MOTION FOR LEAVE TO AMEND COMPLAINTS TO ADD PRAYER FOR PUNITIVE DAMAGES  
**AGAINST DEFENDANTS ALBERTSON'S COMPANIES AND KRUEX FREIGHT TRANSPORT  
CORPORATION - 1**

ADMINISTRATORS OF THE ESTATE OF  
LAWRENCE P. MANLAPIT, III,  
DECEASED,

Plaintiffs,

vs.

KRUJEX FREIGHT TRANSPORT CORP.;  
KRUJEX TRANSPORTATION CORP.;  
KRUJEX TRANSPORTATION SYSTEMS,  
LLC; KRUJEX LOGISTICS, INC.;  
ALBERTSON'S COMPANIES;  
CORNELIEU VISAN; DANIEL VISAN;  
LIGRA VISAN; STATE OF IDAHO; STATE  
OF IDAHO DEPARTMENT OF  
TRANSPORTATION; IDAHO STATE  
POLICE; PENHALL COMPANY;  
PARAMETRIX, INC.; SPECIALTY  
CONSTRUCTION SUPPLY LLC; and DOES  
1 through 150, inclusive, whose names are  
unknown,

Defendants.

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STATE OF IDAHO,

Third-Party Plaintiff,

vs.

PAUL SEIDEMAN, TRESKO OF IDAHO,  
INC., PERSONAL REPRESENTATIVE OF  
THE ESTATE OF ILLYA D. TSAR,

Third-Party Defendants.

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STATE OF IDAHO,

Cross-Claimant,

vs.

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(Consolidated with Case Nos.  
CV01-19-23246, CV01-20-00653,  
CV01-20-02624, CV01-20-07803 and  
CV01-20-08172)

**DECLARATION OF V. PAUL  
HERBERT, CPSA, IN SUPPORT OF  
MANLAPIT PLAINTIFFS' JOINT  
MOTION FOR LEAVE TO AMEND  
COMPLAINTS TO ADD PRAYER FOR  
PUNITIVE DAMAGES AGAINST  
DEFENDANTS ALBERTSON'S  
COMPANIES AND KRUJEX FREIGHT  
TRANSPORT CORPORATION**

KRUJEX FREIGHT TRANSPORT CORP;  
KRUJEX TRANSPORT CORP; KRUJEX  
TRANSPORT SYSTEMS, LLC; CORNELIU  
VISAN; DANIEL VISAN; LIGIA VISAN,

Cross-Defendants.

### **DECLARATION OF V. PAUL HERBERT, CPSA**

I, V. Paul Herbert, declare and affirm as follows:

1. I am over the age of eighteen (18) and have personal knowledge of the facts set forth herein. My expert opinions presented herein are all stated to a reasonable degree of certainty in my fields of expertise: standard of care with respect to commercial trucking operations, motor carrier safety management policies and practices related to safety and compliance with Federal Motor Carrier Safety Regulations (FMCSRs), carrier responsibility in driver selection and retention, commercial driver standard of care, and the standard of care for a shipper before retaining the transportation services of an unrated motor carrier. My Curriculum Vitae is filed concurrently as **Exhibit A**.

2. I have been retained in the consolidated matters of *Manlapit v. Krujex Freight Transport Corp., et al.*, Lead Case No. CV01-19-06625; *Norko v. Krujex Freight Transport Corp., et al.*, Case No. CV01-19-23246; and *Estate of Lawrence P. Manlapit, III, v. Krujex Freight Transport Corp., et al.*, Case No. CV01-20-02624, District Court of Fourth Judicial District of State of Idaho, In and For County of Ada, for the purpose of reviewing materials produced in these cases, evaluating the facts contained therein, and providing the opinions and

conclusions I reach from those evaluations as they relate to the relevant and appropriate standards of care relevant to such facts. I was further asked to evaluate the actual levels of care exhibited by Illya Tsar and Krujex Freight Transport Corporation as a motor carrier and Albertson's Companies as a shipper of produce by freight and freight transportation. I was also asked to evaluate and discuss other operational aspects of the freight transportation involved in the June 16, 2016, accident, and causation.

3. Specifically, I was asked to review the provided materials and to render meaningful opinions, based upon my background and experience, concerning:

- 1) The reasonableness of the operation of the involved commercial motor vehicle by Mr. Illya Tsar comparing his actions on the night of June 16, 2018, to the industry standard of care for the drivers of such commercial motor vehicles under similar circumstances;
- 2) The adequacy of the fleet safety management programs in place at the time of the subject traffic collision by Mr. Tsar's employer, Krujex Freight Transport Corp. (KFTC), comparing their acts, errors and/or omissions to the then prevailing standard of care in the industry for companies operating such fleets of commercial motor vehicles. I was asked to specifically analyze the adequacy of their driver vetting, training, monitoring and supervision programs.
- 3) The efforts of Albertson's in vetting KFTC and/or Mr. Tsar before retaining the transportation services of KFTC, an FMCSA "unrated" carrier.

## **Materials Reviewed**

4. I have been provided and have reviewed the following materials:
  - 1) NTSB Preliminary Report;
  - 2) Illya Tsar Class A CDL;
  - 3) TEC Equipment Lease to Krujex Freight Transport Corp. (KFTC) re 2019 Volvo;
  - 4) NTSB Highway Factors Group Chairman's Factual Report and attachments;
  - 5) NTSB Vehicle Factors Group Chairman's Factual Report and attachments;
  - 6) NTSB Motor Carrier Factors Group Chairman's Factual Report and attachments;
  - 7) Idaho Vehicle Collision Report;
  - 8) Idaho State Police Traffic Collision Reconstruction and Analysis Report;
  - 9) Video Study – Speed from video;
  - 10) NTSB Onboard Image Recorder Timeline of events;
  - 11) Correspondence between KFTC and FMCSA requesting upgrade from Unsatisfactory to Conditional;
  - 12) Production by FMCSA to FOIA Request;
  - 13) KFTC Company Safety Profile;
  - 14) KFTC USDOT Compliance Review year ending 12/31/2017;
  - 15) KFTC Motor Carrier Management Information System Crash Report;
  - 16) KFTC's Response/Production to Plaintiffs' First Requests for Production of documents;
  - 17) KFTC Enforcement Case Report 7/18/2018 and related documents;
  - 18) Load Sheet for Illya Tsar, Trip #1700649;
  - 19) Load Sheet for Illya Tsar, Trip #1700661;
  - 20) Email from Breeland (Albertsons) to Krujex Freight Transport, 07/13/18;
  - 21) Albertson's Response/Production to Plaintiffs' First Request for Production of Documents;
  - 22) Safeway Invoice #960320WP;
  - 23) Washington Fruit & Produce Co., Invoice #404437;
  - 24) Email from Bennett to Breeland, 06/26/18;
  - 25) Master Motor Carrier Transportation Agreement between KFTC & Albertson's, 07.19.17;

- 26) Consent in Lieu of a Special Meeting of the Shareholders and Board of Directors (of KFTC) – gift of Daniel Visan’s stock to Corneliu Visan), 01/01/15.;
- 27) Declaration of Gift (from Daniel Visan to Corneliu Visan); Acceptance of Gift; Corporate Acknowledgement; and Endorsement by Spouse and/or Domestic Partner 01/01/15.;
- 28) Certification that Corneliu Visan hold 1000 shares of stock in KFTC;
- 29) KFTC Drug and Alcohol Program Manual;
- 30) Heavy Trailer Registration, and letter to North Mill Credit Trust from Krujex Freight Transport Corp;
- 31) Final Trucking Settlement for Illya Tsar with KFTC & Check Stub;
- 32) FMCSA Compliance Manual (Table of Contents) published by JJ Keller, an industry accepted publisher of Trucking materials;
- 33) Photos of Zhuk’s 2003 Volvo tractor and other items;
- 34) Photos of fire damaged tractor/trailer driven by Tsar;
- 35) Photo of vehicles involved in accident;
- 36) MCS-90 and other endorsements;
- 37) Deposition transcript of Corneliu Visan and documents attached thereto;
- 38) Deposition transcript of Matt Geurts and documents attached thereto;
- 39) Declaration of Thomas M. Corsi, Ph.D.;
- 40) Illya Tsar’s Oregon Motor Vehicle Record showing prior suspensions and Idaho bench warrant;
- 41) NTSB Motor Carrier Attachment - TIT Transport Compliance Review HWY18FH015;
- 42) NTSB Motor Carrier Factors Post Crash Compliance Review;
- 43) TEC Provided ELD records for Illya Tsar from May 24, 2018 to June 16, 2018;
- 44) Dash cam video from the 2019 tractor trailer of the subject carrier (Exhibit 14 to Declaration of Clay Robbins, III);
- 45) Corrective Action Plan filed by Glostone Trucking Solutions, August 1, 2018, sent to FMCSA, Western Service Center;
- 46) Docket from the Fourth Judicial District of the State of Idaho, County of Ada, Case No. CR01-17-16527, regarding Illya Tsar.

## **Understanding of Facts**

5. This section is based on the following reports issued in connection with the fatal crash of June 16, 2018, by both the National Transportation Safety Board and the Idaho State Police: National Transportation Safety Board NTSB Chairman's Factual Report on Motor Carrier Factors (HWY18FH015); NTSB Chairman's Factual Report on Highway Factors (HWY18FH015); the Idaho State Police Vehicle Collision Report; the Post-Crash Driver/Vehicle Inspection and the Idaho State Police Traffic Collision Reconstruction and Analysis Report. These reports are regularly and reasonably relied upon by experts in the fields of motor carrier operations and safety to help understand the relevant causal links that lead to truck crashes. Following my review of the provided materials I have arrived at the following understanding of facts:

6. This multiple vehicle collision occurred on June 16, 2018 at approximately 11:32 P.M. on Interstate 84 near milepost 47 near Boise Idaho. This collision involved 7 vehicles. Road Construction was occurring at the time, and traffic was backed up in response to three of the four lanes being closed and all traffic having to merge into a single lane. A 2003 Volvo Tractor-trailer combination driven by Mr. Roman Zhuk had responded to the slowing traffic, and was slowing or stopped behind traffic. A 2008 Jeep Wrangler driven by Mr. Carlos Johnson was moving slowly in lane three behind the 2003 Volvo.

7. A 2019 Volvo truck-tractor and 2015 Great Dane Refrigerated trailer combination driven by Mr. Illya Tsar was traveling on eastbound I-84 approaching the rear of the Jeep Wrangler. Mr. Tsar failed to recognize and respond to the presence of stopped and slowing traffic ahead of him and maintained highway speed, colliding into the rear of the Jeep Wrangler at 62

miles per hour according to the data recorded by the onboard GPS and analysis of the dash cam system on the 2019 Volvo. The Jeep was shoved into and under the rear of the 2003 Volvo combination and the Jeep received extensive damage, and all three occupants inside were fatally injured. A fire then erupted causing further damage to the vehicles involved.

### **Qualifications**

8. I have been employed in the commercial motor vehicle industry for approximately 40 years in various capacities. I started out working as a “lumper” in 1971 when I was 14 years old loading produce into tractor semi-trailer commercial vehicle combinations for Floyd Terry Trucking in Exeter, CA. Shortly after turning 16 years old, I became employed as a dump truck driver in 1975 for Clark Construction in Portola, CA. In 1976 when I became 18 years old, I obtained a Commercial Driver License and began my employment as an 18-wheeler big rig truck driver hauling logs for C & M Trucking in Quincy, CA. Since then, I have driven many different types of commercial motor vehicle (CMV) combinations hauling a great variety of types of loads. Most of my experience is in hauling aggregates, logs, lumber, pipe, fuels, and heavy equipment in tractor semi-trailer, tractor double trailer and straight truck double pull-trailer combinations (triples). Over the duration of my 35+ year experience in the commercial motor vehicle industry I have regularly driven commercial motor vehicles (CMV’s - trucks and buses) of many different types and configurations hauling a variety of different loads. Throughout my career as a truck driver, I have been regularly employed as a “Driver Trainer” by trucking companies and given the responsibility to ride with and evaluate the driving habits of my fellow drivers. Also, while employed as a truck driver, I have been required to attend many regularly scheduled training



sessions or “safety meetings” where we were instructed in various principles and concepts of defensive and safe driving practices.

9. In 1981 I went to work with the Nevada Highway Patrol (NHP) as a State Trooper stationed in Reno, Nevada. Because of my background in the CMV industry and because I held a commercial driver license (CDL) I was assigned the daily task to drive our 44 passenger academy bus from our lodging location at the UNR campus to our classroom facility in Stead, NV. I also drove our bus transporting my fellow cadets to and from our shooting range on the Pyramid Lake Highway and to and from major traffic collision sites. While employed by the NHP I was given specialized training and assignments involving commercial motor vehicle accident investigation and enforcement. I also was able to participate in specific training opportunities concerning commercial motor vehicle inspection and operational standards including the Federal Motor Carrier Safety Regulations, the Federal Hazardous Materials Regulations and the Commercial Vehicle Safety Alliance’s (CVSA) North American Standard out of Service Criteria. It was while employed by the NHP that I was first introduced to “The Smith System” defensive driving program also commonly referred to as “The Five Seeing Habits” which utilizes the concepts known as “Space Cushion” and “Commentary” driving. While employed by the NHP as a State Trooper I was frequently assigned to investigate crashes occurring at the entrance to construction sites where lane reductions resulted in traffic queues preceding the vehicle’s entry into the construction project sites.

10. Since 1985 I have been employed in various capacities in the CMV industry having safety and compliance management responsibilities. I worked for two years as the Assistant

Director of Safety and Maintenance Activities for the California Trucking Association in West Sacramento, California, for three years as the Director of Safety and Personnel for Kings County Truck Lines in Tulare, California, and for one year as General Manager for American Refrigerated Transport in Bakersfield, California.

11. In each one of the above referenced positions, I was regularly required to provide training to our drivers concerning specific safe commercial motor vehicle operating principles and practices. While at the California Trucking Association I was regularly asked by trucking companies belonging to the association to provide safety training to their truck drivers. While employed by Kings County Truck Lines and American Refrigerated Transport I was expected to provide safety training to each one of our truck drivers at a minimum frequency of four times per year. This required me to visit each one of our terminals within California and Oregon every three months.

12. Since 1990 I have been the founder and owner of Western Motor Carrier Safety Institute, Inc., a safety and compliance consulting company through which I provide safety and compliance consulting services to several companies who operate fleets of commercial motor vehicles (trucks and buses). I teach a combination of safe truck and bus driving principles and practices which are contained in "The Smith System", The National Safety Council's Defensive Driving Course (DDC), and the principles and concepts contained within the various state Commercial Driver Handbooks or Manuals.

13. I have been retained by the North American Transportation Management Institute (formerly known as the National Committee for Motor Fleet Supervisor Training and

Certification) to instruct several of their courses throughout the western United States. The most commonly taught course was a 3 day course entitled “Motor Fleet Safety Supervision: Principles and Practices”. Other courses I taught several times were 2 day courses entitled “Advanced Motor Fleet Safety” and “Motor Fleet Trainer”. All of these courses possessed a major element of their curriculum pertaining to the topics of: What topics do I train my CMV drivers in? How often do I train my CMV drivers and for how long should the training sessions last? What format (classroom, in-vehicle) training do I utilize and when? What industry resources (videos, computer based interactive training, consultants, defensive driving courses, driving simulators, etc.) are available to assist me in my training efforts? How often should I ride with and evaluate the driving practices and habits of my CMV drivers? How do I handle and manage a truck or bus driver who has a poor driving record? What topics do I train my CMV drivers in and how frequently do I do it? What monitoring systems and services are available to the industry to monitor and control how my company’s CMV’s are being operated? How do I assure that each and every one of my drivers are adequately trained, medically qualified, and operating our CMV’s according to accepted industry safety standards, etc.

14. During these courses, as the instructor, I had the opportunity of leading many meaningful discussions concerning the above referenced questions and topics. In this position I was able to gain an understanding from my students concerning what they considered to be their obligation and the industry standard of care regarding what minimal truck and bus driver training and driver monitoring, supervision and control efforts and activities they owed to the motoring public who share the roadways with their trucks and buses. I continue to attend regularly scheduled

meetings of the California Trucking Association's and American Trucking Association's Safety Management Councils where such discussions regularly occur among the members pertaining to a motor carrier's responsibility to regularly and adequately train, monitor and evaluate their CMV drivers.

15. Since 1985 I have regularly been called upon to audit and evaluate the adequacy of the safety management programs of numerous trucking companies either as an auditor for the California Trucking Association's "Fleet Safety Contest" or as a hired consultant. During these audits I will typically evaluate the entirety of a company's fleet safety management program including the company safety policy manual, driver training records, driver qualification files, hours of service and log-keeping compliance, driver monitoring and supervision practices, accident reporting and evaluation procedures, vehicle maintenance procedures and record-keeping, etc.

16. Additionally, I have attended two 80-hour Traffic Collision Reconstruction courses, a 48 hour course entitled Advanced Commercial Motor Vehicle Accident Reconstruction, A Bus Accident Investigation and a couple of 40 hour courses entitled Inspection and investigation of Commercial Motor Vehicle Accidents.

### **Publications Authored**

17. I have authored one publication. It was an article pertaining to driving trucks safely on Interstate 80 over Donner Summit in the winter and was published in the Jan. 1991 issue of a trucking trade journal entitled "Go-West."

### **Prior Testimony**

18. I have provided expert testimony on the subject of commercial motor vehicle related safety standards in approximately 1,900 depositions and approximately 200 trials.

19. I also routinely testify concerning the standard of care for the operation and maintenance of commercial motor vehicles and concerning the standard of care in the industry for administering an adequate motor fleet safety and compliance management program.

### **Trucking Safety Standards**

20. The Federal Motor Carrier Safety Administration says: *“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... Driving a commercial motor vehicle is a big responsibility. It requires special skills and knowledge.*

21. Because of their large size and because of their heavy weight and disparate operational characteristics from regular private passenger motor vehicles, heavy commercial motor vehicles (CMV's) require a higher level of skill to safely operate them. Such vehicles also possess an increased capability to cause great bodily harm to others who must share the roadways with them. This exposure to harm to others when CMV's are operated in an unsafe manner especially impacts the safety to occupants of much smaller vehicles, to pedestrians, road workers, bicyclists

and motorcyclists. Operators of commercial motor vehicles such as tractor-trailer commercial vehicles are required to be specially licensed. Possession of such a Commercial Driver License and accompanying required endorsements is considered to be evidence of a minimum level of “Required Knowledge” and “Required Skills” as laid out in 49 CFR 383.111 – Required Knowledge and 383.113 – Required Skills, which are formulated for the purpose of assisting truck and bus operators to operate such commercial motor vehicles in a safe manner.

22. These components of “Required Knowledge” and “Required Skill” are also laid out in the various State Commercial Driver Handbooks which are patterned after “The Model Curriculum for Training Tractor-Trailer Drivers” which was published in the mid-eighties by the USDOT. This publication was then utilized in the development of a “Model Commercial Driver Handbook” which was published and distributed by the various State agencies which are given responsibility for the licensure of operators of CMV’s which contain safe driving standards expected for CMV operators to follow while operating CMV’s upon public roadways. Every such handbook which is issued by every State is patterned after a Model Commercial Driver’s Handbook which was published in the mid-1980s by The Essex Corporation in Goleta, CA, under contract with the USDOT for the development of a model manual which each State would pattern their respective individual Commercial Driver Handbooks as they came into compliance with the Commercial Motor Vehicle Safety Act of 1986, which required all States to begin licensing operators of commercial motor vehicles (CMVs) according to a national standard by April 1, 1992.

23. The safe truck driving principles and practices contained within this publication are accurately representative of the standard of care applicable to the operation of such a commercial

motor vehicle and serve as a guide to employers of truck drivers as to which standards are important and expected to be taught to their truck drivers who are engaged by them in the operation of commercial motor vehicles upon public roadways. A few of these commercial motor vehicle operational safety standards which employers of CMV operators are expected to teach to their drivers and assure compliance with are contained in *Section 2 – Driving Safely* and are summarized below.

24. Additionally, operators of large and heavy commercial motor vehicles are expected to be instructed in and knowledgeable about the **Federal Motor Carrier Safety Regulations (49 CFR 390.3 (e))**. These regulations are specifically designed to assure that operators of large commercial motor vehicles are capable, knowledgeable, competent and proficient in the operational differences and safety standards expected of them as operators of commercial motor vehicles.

25. Further, to the extent it is claimed that Mr. Tsar was not a “statutory employee” of KFTC, any such argument is simply misguided and reveals a fundamental misunderstanding of the obligations and responsibilities imposed by the FMCSRs. The FMCSRs apply to KFTC regardless of whether Tsar was paid as a “1099 independent contractor” or a “W2 employee” or pursuant to some other arrangement. In fact, the FMCSRs are designed to prevent KFTC from evading its obligations and responsibilities simply by labeling Tsar an “independent contractor.”

The FMCSRs define an “employee” as:

**any individual**, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. **Such term includes a driver of a commercial motor vehicle (including an**

**independent contractor while in the course of operating a commercial motor vehicle**), a mechanic, and a freight handler.

49 C.F.R. § 390.5 (emphasis added).

26. Simply put, Tsar was KFTC's statutory employee at the time of the crash and prior thereto.

27. The FMCSRs promote public safety by preventing motor carriers from delegating or evading responsibility by means of arbitrary classifications. One method of doing so is to eliminate the distinction between independent contractors, employees or owner-operators. Pursuant to 49 C.F.R. § 390.5, whether the driver is characterized as a direct employee, independent contractor or owner-operator is a moot point. Rather, if the motor carrier hires the driver to transport a shipment, the driver is the motor carrier's statutory employee, and the motor carrier has statutory control over the driver. Thus, 49 C.F.R. § 390.5 prevents KFTC from distancing itself from Tsar, or otherwise avoid its mandatory obligations imposed by the FMCSRs. Indeed, Mr. Visan has testified Tsar was operating under KFTC's authority at the time of the collision.<sup>1</sup> That admission eviscerates any attempt by KFTC to distance itself from Tsar for this horrific crash.

28. Mr. Visan was familiar with the FMCSRs, given a prior Safety Audit he was involved in, as well as his "substantial history of investigations with KFTC's predecessor company."<sup>2</sup> Mr. Visan also certified that he was familiar with the FMCSRs when signing the

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<sup>1</sup> Visan/KFTC 30(b)(6) deposition at pages 79-80, 85.

<sup>2</sup> Exhibit 111 to Visan/KFTC 30(b)(6) deposition.



Federal Motor Carrier Safety Administration's Form MCS-150 as the sole owner of and on behalf of KFTC.<sup>3</sup> He also admitted in his deposition to having been familiar with the FMCSRs.<sup>4</sup>

29. In addition to the above-referenced FMCSRs and Handbooks, the most commonly utilized defensive driving program in the trucking industry is *"The Smith System,"* which incorporates *its "Five Keys to Defensive Driving:*

1. – *Aim High in Steering,*
2. – *Get the Big Picture,*
3. – *Keep Your Eyes Moving,*
4. – *Leave Yourself an Out,*
5. – *Make Sure They See You."*

30. These 5 keys are also commonly called "The 5 Seeing Habits," which incorporate a system entitled *"Space Cushion Driving"* and *"Commentary Driving"* techniques, which incorporate driver training principles and concepts that require a CMV operator to always maintain a "Space Cushion of Safety" around their vehicles (especially in front of them) at all times. "Commentary Driving" incorporates a technique where the driver verbalizes what he/she is looking at, why they are looking at it, and how and why they are reacting to what they are watching.

31. Additionally, another very common defensive driving course is administered by the *National Safety Council* and is called their *Defensive Driving Course (DDC)*. This course teaches its students that there are three main components to driving defensively. They are:

- 1) - *"Recognize the Hazard",*
- 2) - *"Understand the Defense",*
- 3) - *"React Appropriately in Time".*

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<sup>3</sup> Exhibit 158 to Visan/KFTC 30(b)(6) deposition.

<sup>4</sup> Visan/KFTC 30(b)(6) deposition at page 29; Exhibit 111 to Visan/KFTC 30(b)(6) deposition.

32. This system essentially teaches drivers that they must be continually searching for “*potential hazards*”, watching cautiously to observe if potential hazards may transition or advance into “*hazards*”, and, if the potential hazards do transition into hazards, to understanding what action is necessary to best prevent a hazard from transitioning into an “*emergency*”. Once the appropriate “defense” is identified under this system, the professional CMV operator is required to react appropriately by implementing the appropriate defense within an appropriate time frame in order to successfully prevent a hazard from transitioning into an emergency.

33. Utilizing those safe driving standards contained in the Commercial Driver Handbooks, “The Smith System”, and the National Safety Council’s DDC program, employers of truck and bus drivers and the truck and bus drivers themselves are exposed to important commercial motor vehicle operational safety standards which, if routinely followed, will typically allow a CMV operator to prevent hazards from transitioning into emergencies by reacting appropriately to changing roadway, weather and traffic conditions. These are the standards which are applicable to all “*professional drivers*” and their employers and are representative of those safe CMV operational safety standards which they are expected to train and evaluate their drivers.

34. These **industry standards of care** are summarized as follows:

1. **Seeing**

- a. Through the Commercial Driver Handbooks and other industry driver training programs, operators of commercial motor vehicles are trained and expected to be looking ahead a minimum of 12-15 seconds. Additionally, “The Smith System,” the most commonly utilized defensive driver training program in the

industry teaches a driver to “*Aim High in Steering*” (looking down the road ahead of you a minimum of 15 seconds). This amount of “eye lead time” is necessary because of the reduced stopping and maneuvering capability that commercial motor vehicles typically possess. Looking sufficiently far enough down the road will allow drivers to watch situations developing in front of them and to accurately predict potential scenarios which may affect the safe operation of their vehicle. The manual says “*Look for Traffic – Look for vehicles coming onto the highway, into your lane, or turning. Watch for brake lights from slowing vehicles. By seeing these things far enough ahead, you can change your speed or change lanes if necessary to avoid a problem.*”

- b. By looking far enough ahead down the road, CMV operators will typically be able to identify hazards sufficiently ahead of them such as vehicles slowing, brake lights and turn signals activating, vehicles moving laterally within their lanes, traffic needing to merge into their lane from another lane, a transitioning vehicle from a freeway on-ramp, emergency or service vehicles ahead resulting in lane closures, etc. This advance notice allows the CMV operator to take the appropriate action such as slowing down or stopping as appropriate, moving left or right, etc. to be able to avoid involvement in a developing potential conflict situation. This is a very important truck driving safety standard for all CMV operators to have been regularly exposed to and evaluated in. A properly attentive CMV operator watches what needs to be watched and is sufficiently

attentive to his or her surroundings so as to avoid being surprised by the actions of surrounding drivers.

- c. This advance notice allows the CMV operator to take the appropriate action such as slowing down, stopping, moving left or right, etc. to be able to avoid involvement in a developing potential conflict situation. This is a very important truck driving safety standard for CMV operators to be regularly exposed to and evaluated in. A properly attentive CMV operator watches what needs to be watched and is sufficiently attentive to his or her surroundings so as to avoid being surprised by the actions of surrounding drivers. A commonly referred-to industry publication by the title of “Bumper to Bumper: The Complete Guide to Tractor-trailer Operations” simply states “...*a safe driver never gets into trouble in the first place. Safe drivers are calm, cautious and respectful. They take the time to see what is going on all around them. Safe drivers are so alert, so observant and so well prepared that they don’t get surprises. They can perform evasive maneuvers, but rarely have to. They see dangerous situations developing long before they happen and can take steps to avoid the danger. Safe drivers simply don’t have surprises*”
- d. Another widely-used publication in the CMV safety management industry is the “*Commercial Vehicle Preventable Accident Manual*” Third Edition, 1997 which is currently being printed and marketed by JJ Keller & Associates. This publication teaches CMV operators and their employers concerning the

importance of recognizing potential causes of traffic collisions and to take appropriate counter-measures in order to successfully prevent traffic collisions. By utilizing those safe driving standards contained in these referenced publications, “The Smith System”, and the National Safety Council’s DDC program, employers of truck drivers and truck drivers themselves are exposed to important commercial motor vehicle operational safety standards which teach them to be “seeing” what needs to be seen by utilizing appropriate “visual search” and “scanning” techniques which will allow a CMV operator to see what needs to be seen and to react to what needs to be reacted to in order to successfully prevent hazards from transitioning into emergencies.

## **2. Controlling Speed**

- a. Because of their limited ability to decelerate and because of the great potential for catastrophic harm possessed by CMV’s, it is imperative that truck and bus drivers be taught to comply with the standard for controlling speed as contained in the handbooks, publications, defensive driver training courses. The handbook says *“Driving too fast is a major cause of fatal crashes. You must adjust your speed depending on driving conditions. These include traction, curves, visibility, traffic, and hills...At 55 mph it will take about six seconds to stop and your vehicle will travel about the distance of a football field...Whenever you double your speed, it takes about four times the distance to stop and your vehicle will have four times the destructive power if it crashes. High speeds*

*increase stopping distances greatly. By slowing down a little, you can gain a lot in reduced braking distance.”* Additionally, this section of the handbook states “... *the safest speed is the speed of other vehicles. Vehicles going the same direction at the same speed are not likely to run into one another.*”

- b. When a CMV operator identifies a situation developing around them, such as slowing, stopping or stopped vehicles ahead, it is imperative that they anticipate other driver’s actions which might result in a conflict. An example is a freeway on-ramp ahead and the potential for merging vehicles to come into conflict while transitioning onto or off of the freeway. By observing hazards such as changing traffic conditions ahead in sufficient time and by properly reacting to that developing situation, the professional CMV operator adjusts his or her driving to developing traffic situations. Simply put, *when traffic ahead is slowing or stopping, when brake lights and turn signals are activating on vehicles ahead, especially vehicles traveling ahead of you in your lane, a prudent truck or bus driver will quickly reduce their speed and proceed with great caution until the reason for the brake lights and swerving, slowing, stopping vehicles ahead is evident.*

### 3. Managing Space

- a. It is imperative that operators of commercial motor vehicles be taught by their employers to manage the space all around their vehicles. The Commercial Driver Handbook says “*To be a safe driver, you need space all around your*

*vehicle. When things go wrong, space gives you time to think and to take action. To have space available when something goes wrong, you need to manage space. While this is true for all drivers, it is very important for large vehicles. They take up more space and they require more space for stopping and turning. Of all the space around your vehicle, it is the area ahead of the vehicle – the space you’re driving into – that is most important.”*

- b. Concerning the practice of managing the space ahead of them, the industry standard of care teaches CMV drivers to always attempt to maintain a minimum of one second of following distance behind vehicles ahead for each 10 feet of their vehicle length. They are taught to add an additional second for speeds greater than 40 miles per hour. For a typical 70 foot long truck/trailer combination, one second for every 10 feet of his vehicle length would equal 7 seconds. When we add one second because he is traveling at a speed greater than 40 MPH, we have 8 seconds of following distance. For a truck which is traveling 55 MPH or 80 FPS, the minimal following distance this standard requires a CMV operator to maintain behind traffic ahead was 680 feet (8 Sec. x 80 FPS). Most specifically and pertinent to this matter, this is the space ahead which the operator of such a CMV should be carefully monitoring and managing at all times.
- c. The Smith System teaches drivers to be “**space cushion drivers**” by always maintaining an adequate space cushion of safety around their vehicles. They

accomplish this by being attentive to vehicles and other activities around them and by adjusting their speed and roadway (lane) position accordingly. This especially means creating and maintaining adequate space in front of and to the sides of the commercial motor vehicle. By always maintaining adequate space in front of their vehicles, CMV operators are not hampered by visibility obstructions caused by high profile vehicles travelling ahead of them. The practice of following a high profile vehicle at too close a distance effectively blocks the CMV operator's visibility of the roadway and any hazards ahead and prevents them from seeing what needs to be seen in sufficient time and distance to allow them to successfully take appropriate action necessary to prevent a hazard from transitioning into an emergency.

#### 4. Seeing Hazards

Concerning this very important commercial motor vehicle operation standard of care, the Commercial Driver Handbook says ..."*A hazard is any road condition or other road user (driver, bicyclist, pedestrian) that is a possible danger...you will have more time to act if you see hazards before they become emergencies...You should always be looking for hazards – they may turn into emergencies. Look for hazards and plan a way out of any emergency. When you see a hazard, think about the emergencies that could develop and figure out what you would do. Always be prepared to take action based on your*



*plans. In this way, you will be a prepared, defensive driver who will improve not only your own safety but the safety of all road users.”*

## 5. Distracted Driving

- a. Additionally, the Smith System teaches that one of the top ten causes of traffic collisions is in “*paying too much attention to too little*”. It is by keeping your eyes moving, scanning, exercising proper visual search techniques that a driver can “get the big picture” and be able to see and react appropriately to everything they need to see and react to in appropriate time. Seeing and reacting to the presence of a slower or slowing vehicle ahead would be a critical hazard for a truck driver to make sure that they are regularly paying attention to and to not allow their attention to be diverted for long periods of time away from a hazard which is available to be seen and recognized as a hazard.
- b. This safe driving standard is covered very well in the Commercial Driver Manuals – in Section 2.9 – Distracted Driving, which says: “*Whenever you are driving a vehicle and your attention is not on the road, you’re putting yourself, your passengers, other vehicles, and pedestrians in danger. Distracted driving can result when you perform any activity that may shift your full attention from the driving task. Taking your eyes off the road or hands off the steering wheel presents obvious driving risks. Mental activities that take your mind away from driving are just as dangerous. Your eyes can gaze at objects in the driving scene but fail to see them because your attention*

*is distracted elsewhere. Activities that can distract your attention include: talking to passengers; adjusting the radio, CD player or climate controls; eating, drinking or smoking; reading maps or other literature; picking up something that fell; reading billboards and other road advertisements; watching other people and vehicles including aggressive drivers; talking on a cell phone or CB radio; using tele-matic devices (such as navigation systems, pagers, etc.); daydreaming or being occupied with other mental distractions.*

- c. 2.9.1 – *Don't Drive Distracted* - If drivers react a half-second slower because of distractions, crashes double. Some tips to follow so you won't become distracted: Review and be totally familiar with all safety and usage features on any in-vehicle electronics, including your wireless or cell phone, before you drive. Pre-program radio stations. Pre-load you favorite CDs or cassette tapes. Clear the vehicle of any unnecessary objects. Review maps and plan your route before you begin driving. Adjust all mirrors for best all-round visibility before you start your trip. Don't attempt to read or write while you drive. Avoid smoking, eating and drinking while you drive. Don't engage in complex or emotionally intense conversations with other occupants.”

## **6. Accident Avoidance Techniques**

The State Commercial Driver Handbooks teach CMV drivers how to avoid a collision in the event of a “traffic emergency”. Here is the standard as related:

- a. 2.17 - Driving Emergencies - emergencies occur when two vehicles are about to collide. Vehicle emergencies occur when tires, brakes, or other critical parts fail. Following the safety practices in this manual can help prevent emergencies. But if an emergency does happen, your chances of avoiding a crash depend upon how well you take action. Actions you can take are discussed below.
- b. How to Stop Quickly and Safely - If somebody suddenly pulls out in front of you, your natural response is to hit the brakes. This is a good response if there's enough distance to stop, and you use the brakes correctly. You should brake in a way that will keep your vehicle in a straight line and allow you to turn if it becomes necessary. You can use the "controlled braking" method or the "stab braking" method.
- c. Controlled Braking - With this method, you apply the brakes as hard as you can without locking the wheels. Keep steering wheel movements very small while doing this. If you need to make a larger steering adjustment or if the wheels lock, release the brakes. Re-apply the brakes as soon as you can.
- d. Stab Braking - With this method you apply your brakes all the way and release brakes when wheels lock up. As soon as the wheels start rolling, apply the brakes fully again. (It can take up to one second for the wheels to start rolling after you release the brakes. If you re-apply the brakes before the wheels start rolling, the vehicle won't straighten out.)

- e. Don't Jam on the Brakes - Emergency braking does not mean pushing down on the brake pedal as hard as you can. That will only keep the wheels locked up and cause a skid. If the wheels are skidding, you cannot control the vehicle.

## 7. Roadway Factors

*Poor lighting* - In the daytime, there is usually enough light to see well. This is not true at night. Some areas may have bright street lights, but many areas will have poor lighting. On most roads you will probably have to depend entirely on your headlights.

## 8. Human Factors

- a. *Vision* - People cannot see as well at night, in adverse weather, or in dim light. Also, the eyes need time to adjust to seeing in dim light.
- b. *Glare* - Drivers can be blinded for a short time by bright light. It can take several seconds to recover from glare. Even two seconds of glare blindness can be dangerous. A vehicle going 55 mph will travel more than half the distance of a football field during that time. Do not look directly at bright lights when driving. Look at the right-hand edge of the road or your traffic lane.
- c. *Fatigue and lack of alertness* - Fatigue and lack of alertness are bigger problems at night. The body naturally wants to sleep. Most drivers are less alert at night, especially after midnight. This is particularly true if you have been driving for a long time. *Drivers may not see hazards as soon or react as quickly, so the chance of a collision is greater. If you are sleepy, the only safe*

*cure is to get off the road and get some sleep. If you don't, you risk your life and the lives of others.*

Driver fatigue is a significant cause of collisions. The following is data taken from various resources regarding the serious issue, and dangers of fatigued driving:

- 1) *NHTSA Drowsy Driving Research and Program Plan – “Current estimates range from 2 percent to 20 percent of annual traffic deaths attributable to driver drowsiness. According to NHTSA, annually on average from 2009 to 2013, there were over 72,000 police-reported crashes involving drowsy drivers, injuring more than an estimated 41,000 people, and killing more than 800, as measured by NHTSA’s Fatality Analysis Reporting System (FARS) and National Automotive Sampling System (NASS) General Estimates System (GES).<sup>6</sup> FARS is a census of all fatal crashes that occur on the Nation’s roadways. NASS GES contains data from a nationally representative sample of police-reported crashes that result in fatality, injury, or property damage.”*

*[https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/drowsydriving\\_strategicplan\\_030316.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/drowsydriving_strategicplan_030316.pdf)*

- 2) *“According to the National Sleep Foundation, about half of U.S. adult drivers admit to consistently getting behind the wheel while feeling drowsy. About 20% [admit to falling asleep behind the wheel](#) at some point in the past year – with [more than 40%](#) admitting this has happened at least once in their driving careers.”*

<https://www.nsc.org/road-safety/safety-topics/fatigued-driving>

- 3) *“Nearly 20 percent of the 182 major NTSB investigations completed between January 1, 2001, and December 31, 2012, identified fatigue as a probable cause, contributing factor, or a finding. Human fatigue is both a symptom of poor sleep and health management, and an enabler of other impairments, such as poor judgment and decision making, slowed reaction times, and loss of situational awareness and control. Fatigue degrades a person’s ability to stay awake, alert, and attentive to the demands of controlling their vehicle safely. To make matters worse, fatigue actually impairs our ability to judge just how fatigued we really are.”*

[https://www.nts.gov/safety/mwl/Documents/MWL\\_2016\\_factsheet01.pdf](https://www.nts.gov/safety/mwl/Documents/MWL_2016_factsheet01.pdf)

#### **Adequacy of Fleet Safety Management Program**

35. In addition to these prior-mentioned industry-wide accepted safe commercial motor vehicle operational standards, there are also standards for the proper administration of a commercial motor vehicle safety management program which KFTC should have complied with, but fell grievously short. These standards are found in such publications as **“Motor Fleet Safety Supervision Principles and Practices”** published by the North American Transportation Management Institute. These concepts are contained within the chapters entitled: Safety, a Management Function, Selection, Hiring the Proper Employee, Driver Selection, In-vehicle Testing, Training of Employees, Training of

Drivers, Communication, Supervision, Driver Supervision, Preventability of Accidents and, Managing the Safety Function.

36. Additionally, such publications as “**Safety for the Long Haul**” which is published by the American Trucking Association contains such standards as those found in *Chapter 10 – Carrier Safety Management* which contains such topics as: Safety Problems Managers Must Address, Overview: Safety Management Practices and Goals, Driver Recruiting and Selection, *Driver Training, Driver and Carrier Safety Evaluation, Behavior-based Safety Management, A Management-Driver Safety Performance Matrix and, Safety Culture & Management Professionalism.*

37. Additionally, the Federal Motor Carrier Safety Regulations contain several individual regulations which require a motor carrier to assure that it is “knowledgeable of and comply with, all regulations contained in this subchapter which are applicable to that motor carrier’s operations.” Additionally, the regulations also state that “Every driver and employee *shall be instructed* regarding and shall comply with, all applicable regulations contained in this subchapter.” 49 CFR 390.3(e).

38. Another widely used publication in the industry which addresses the preventability of accidents is the “**Commercial Vehicle Preventable Accident Manual – A Guide to Countermeasures**”. This manual was commissioned by the USDOT and intended to be used as a tool in the commercial vehicle industry to assist those who are employed in the industry and given specific responsibility for investigating company involved traffic collisions, determine the

preventability of such collisions, and, to implement necessary countermeasures which are designed to prevent the occurrence of future such collisions.

39. Additionally, 49 CFR 391 lays out a detailed procedure that an employing motor carrier must follow when hiring and qualifying a driver. The regulation states, in part “... The rules in this part establish minimum qualifications for persons who drive commercial motor vehicles as, for, or on behalf of motor carriers.”

40. It is vital for a company which employs drivers who operate large commercial motor vehicles to consistently implement and administer an adequate fleet safety management program. A vital part of this program is driver training, driver monitoring, driver supervision, etc. It is vital for a motor carrier to comply with this industry standard of care and to *properly and adequately train, monitor and supervise* the operators of their commercial motor vehicles on these well-recognized industry standards.

41. At the time of the June 16, 2018 fatal collision, KFTC was an interstate motor carrier, issued U.S. Department of Transportation number 2314662. It began operations in 2012, and was gifted to the current owner, Defendant Corneliu Visan, in 2015 from his brother.<sup>5</sup> Defendant Visan was President, Secretary, and also the sole shareholder of KFTC at the time of the June 16, 2018 fatal collision.<sup>6</sup>

42. Prior to becoming sole owner of KFTC, Defendant Visan served as Vice President of Krujex Transport Corporation, a different motor carrier also owned by his brother. Krujex

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<sup>5</sup> NTSB’s Motor Carrier Factors Group Chairman’s Factual Report.

<sup>6</sup> Visan/KFTC 30(b)(6) deposition at pp. 15-16; Exhibit 111, pp. 3570-3575.



Transport Corporation operated under a different USDOT number and was inactive at the time of the subject collision. That entity, however, had undergone six Compliance Reviews of its safety operations by the Federal Motor Carrier Safety Administration (“FMCSA”), which revealed woefully inadequate safety practices. Defendant Visan was Vice President of Krujex Transport Corporation during the Compliance Reviews performed in January 2011, May 2011, November 2011, and October 2012. Notably, the Compliance Review performed in January 2011 resulted in Krujex Transport Corporation receiving an “Unsatisfactory” Safety Fitness Rating. The Compliance Reviews conducted in May 2011, November 2011, and October 2012 all resulted in Krujex Transport Corporation receiving a “Conditional” Safety Fitness Rating.<sup>7</sup>

43. At the time of the June 16, 2016, fatal collision, Defendant Visan was familiar with FMCSRs as a result of the FMCSA’s Compliance Reviews and investigations into Krujex Transport Corporation’s safety qualifications. Defendant Visan was also familiar with the FMCSRs as a result of participating in KFTC’s safety audit conducted by the FMCSA as part of the New Entrant Assurance Program. Defendant Visan also certified he was “familiar with the Federal Motor Carrier Safety Regulations” when he submitted Form MCS-150 to the FMCSA on behalf of KFTC in April 2017. In his deposition, Defendant Visan also testified he was familiar with the FMCSRs.<sup>8</sup>

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<sup>7</sup> Exhibit 111 to Visan/KFTC 30(b)(6) deposition; pp. 3570-3575.

<sup>8</sup> See MCS150 from April 2017; Visan/KFTC 30(b)(6) deposition at p. 29; Exhibit 111, p. 3571.

44. Since beginning operations and obtaining its USDOT number in 2012, KFTC had never undergone a Compliance Review by the FMCSA and, thus, did not have a Safety Fitness Rating.<sup>9</sup>

45. The NTSB Motor Carrier Factual Report noted that “based on its roadside inspection data, before the crash, [KFTC’s] driver out-of-service rate was 16.7 percent, which was above the national average of 5.5 percent.”<sup>10</sup> KFTC’s driver out-of-service rate was even higher in 2017; specifically, in late November 2017, KFTC’s driver out-of-service rate was 37.5%—over seven times the national average.<sup>11</sup> KFTC’s driver out-of-service rate continued to far exceed the national average despite the fact the FMCSA sent a “warning letter” to KFTC in December 2016 notifying it of “a trend in the violations identified during roadside inspections” and “significant non-compliance in the area(s) of **Hours-of-Service Compliance**.”<sup>12</sup> The FMCSA expected KFTC to take “corrective action” as a result of KFTC’s safety performance and compliance problems.<sup>13</sup> It did not, prior to the crash

46. The FMCSA conducted a Compliance Review of KFTC’s safety operations in the immediate aftermath of the June 16, 2018 fatal collision. The Compliance Review uncovered numerous violations leading KFTC to receive an “Unsatisfactory” Safety Fitness Rating based on

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<sup>9</sup> NTSB’s Motor Carrier Factors Group Chairman’s Factual Report at pp. 2-7; Visan/KFTC 30(b)(6) deposition at p. 19; exhibit 111, pp. 3570-3575.

<sup>10</sup> See NTSB’s Motor Carrier Factors Group Chairman’s Factual Report at pp. 5-6; See Ex. A to the Melville Declaration previously filed on December 16, 2020 in support of Defendant Albertson’s motion for summary judgment.

<sup>11</sup> See Ex. E attached to the Declaration of Spencer Melville in Support of Defendant Albertson’s Companies, Inc.’s Motion for Summary Judgment.

<sup>12</sup> See Ex. 132 to Visan/KFTC 30(b)(6) deposition; see also Visan/KFTC 30(b)(6) deposition at pp. 54-56; Motor Carrier Factual Report, pp. 4-5, 7-9, 13-14.

<sup>13</sup> *Id.*

its past operations, on or about July 18, 2018.<sup>14</sup> Overall, there were 22 violations.<sup>15</sup> The FMCSA sent a letter to KFTC, dated July 20, 2018, advising of the “Unsatisfactory” safety rating and identifying the violations of the various safety regulations found during the Compliance Review.<sup>16</sup> The FMCSA cited KFTC for failing to obtain the driving records of its drivers prior to hiring them (49 C.F.R. Part 391.51(b)(2)).<sup>17</sup> In fact, the Compliance Review noted that at the time of the June 16, 2018 fatal collision, Illya D. Tsar was within his first 30 days of employment, yet KFTC had not obtained his MVR (Motor Vehicle Records). His past driving history was atrocious, as will be discussed below. The Compliance Review also cited KFTC for using Mr. Tsar to haul loads despite the fact Mr. Tsar had not completed and furnished an employment application (49 C.F.R. Part 391.21(a)). In addition, the Compliance Review cited KFTC for failing to investigate the background of the drivers it hired in a timely manner (49 C.F.R. Part 391.23(a)). This violation covered the specific failure of KFTC to investigate the background of Mr. Tsar.<sup>18</sup>

47. The Compliance Review also found deficiencies in the manner that KFTC managed its driver hours-of-service. Specifically, the Compliance Review found that KFTC failed to require its drivers to record their duty status using ELDs (49 C.F.R. Part 395.8(a)(1)(i)). One of the cited drivers was Mr. Tsar, who kept false paper logs since he incorrectly claimed that the ELD on the 2019 Volvo tractor he was operating at the time of the crash was not functioning. In addition to

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<sup>14</sup> See NTSB’s Motor Carrier Factors Group Chairman’s Factual Report at p. 5; Ex. 111 to Visan/KFTC 30(b)(6) deposition; see also Visan/KFTC 30(b)(6) deposition at pp. 19-20.

<sup>15</sup> *Id.*

<sup>16</sup> See Ex. 136 to Visan/KFTC 30(b)(6) deposition; see also Visan/KFTC 30(b)(6) deposition at p. 21.

<sup>17</sup> See NTSB’s Motor Carrier Factors Group Chairman’s Factual Report at pp. 6-7; Ex. 111 to Visan/KFTC 30(b)(6) deposition.

<sup>18</sup> *Id.*

failing to require its drivers to use electronic logging devices (ELDs) for recording hours-of-service, the Compliance Review cited KFTC for making, or permitting drivers to make, a false report regarding duty status (49 CFR Part 395.8 (e)(1)).<sup>19</sup>

48. The Compliance Review uncovered violations associated with controlled substance and alcohol testing violations, such as KFTC's failure to ensure drivers undergo testing for controlled substances and alcohol, failure to maintain records for five years, and failure to provide educational materials explaining the requirements of 49 C.F.R. Part 382.<sup>20</sup> It also uncovered other miscellaneous violations such as KFTC's failure to keep an accident register, using a driver not medically examined or certified, and numerous inspection and maintenance record keeping issues.<sup>21</sup>

49. During the period leading up to the fatal collision on June 16, 2018, it is clear KFTC had major, persistent, longstanding deficiencies in its safety management programs/policies and driver performance. The FMCSA's "Recommendations" are vast and reveal KFTC and Defendant Visan's utter failure to have any sufficient safety policies and procedures in place prior to and at the time of the June 16, 2018, fatal collision.<sup>22</sup>

50. Regarding the violations identified above, Defendant Visan admitted to the FMCSA on August 1, 2018, that they were caused by the following:

These violations occurred because [KFTC] did not have a process in place to ensure that all drivers had Driver Qualification files completed and containing the required documentation set forth by the FMCSA, including employment applications and investigations into our drivers' employment and driving histories. Because we did

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *See Ex. 111 to Visan/KFTC 30(b)(6) deposition; Visan/KFTC 30(b)(6) deposition at pp. 21-22.*

not have a process in place ensuring completion of driver files, we failed to maintain crucial documents, including record of our drivers' medical certificates and records of the verification of the National Registry status of each of our drivers' medical examiner. Further, we did not have a practice in place to conduct annual reviews of driving records to verify that our drivers continued to qualify for safety-sensitive functions.

and

These violations occurred because [KFTC] did not have Hours of Service policy in place to ensure drivers were held accountable for accurately following the Hours of Service rules as set forth in §395 of the FMCSA guidelines. Our company also did not have a log auditing process in place at the time to ensure drivers were held accountable for accurately following the Hours of Service rules as set forth by section §395 of the FMCSA guidelines. Further, [KFTC] was frequently using rental trucks that had their own ELD systems. Our drivers did not have the proper training to utilize each different type of ELD the rental trucks were offering, and therefore resorted to paper logs when they did not have success with the ELD installed.<sup>23</sup>

51. Defendant Visan confirmed the violations accurately described the manner in which KFTC operated in 2017 and 2018.<sup>24</sup> In summary, prior to this crash, KFTC never had a process in place to maintain driver qualification files and did not review driving records to assure their drivers qualified for safety sensitive functions; KFTC did not have an hours of service policy in place and did not hold their drivers accountable for following hours of service rules; KFTC also did not audit their drivers' logs to hold their drivers accountable; KFTC did not have any training programs in place and specifically did not train their drivers on utilizing the ELD devices on the rental trucks used by KFTC in its business (such as the 2019 Volvo involved in the fatal collision). As a result, KFTC drivers were allowed to and did falsify their hours of service records.<sup>25</sup> Such

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<sup>23</sup> See Ex. 123 to Visan/KFTC 30(b)(6) deposition; Visan/KFTC 30(b)(6) deposition at pp. 30-35.

<sup>24</sup> Visan/KFTC 30(b)(6) deposition at pp. 33, 35.

<sup>25</sup> See NTSB's Motor Carrier Factors Group Chairman's Factual Report at p. 7; see also Ex. 2 to Robbins Dec. previously filed (MANLAPIT 000400-000411, MANLAPIT 000537-000560, MANLAPIT 000565-000580).

omissions constitute, in my opinion, egregious deviations from the above-referenced well-recognized standards of care applicable to KFTC.

52. After submitting a post-crash Corrective Action Plan and receiving the acceptance of that plan by FMCSA, KFTC's Safety Fitness Rating was changed to "Conditional" on or about August 21, 2018.<sup>26</sup> Importantly, when advising KFTC of its "Conditional" Safety Fitness Rating in a letter dated August 22, 2018, the FMCSA stated as follows:

This CONDITIONAL rating is the result of a review and evaluation of your safety fitness completed on August 21, 2018. A CONDITIONAL rating indicates that your company does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences of violations listed in 49 C.F.R. 385.5(a-k).

Immediate action must be taken to correct any deficiencies or violations discovered during the compliance review. Your operation was found to be deficient with respect to the applicable safety regulations in the following areas:

Part 391	QUALIFICATIONS OF DRIVERS
Part 395	HOURS OF SERVICE OF DRIVERS
Part 390	GENERAL REGULATIONS
Part 392	DRIVING OF MOTOR VEHICLES
Part 396	INSPECTION, REPAIR AND MAINTENANCE
Part 382	CONTROLLED SUBSTANCE AND ALCOHOL USE AND TESTING <sup>27</sup>

KFTC remained "Conditional" until it officially ceased business operations in 2020.<sup>28</sup>

53. Defendant Visan also testified KFTC did not have any training program provided to its drivers on ELDs and did nothing to monitor the hour of service compliance for KFTC's drivers

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<sup>26</sup> Exs. 111 and 114 to Visan/KFTC 30(b)(6) deposition; Visan/KFTC 30(b)(6) deposition at p. 36.

<sup>27</sup> Ex. 114 to Visan/KFTC 30(b)(6) deposition; Visan/KFTC 30(b)(6) deposition at p. 36.

<sup>28</sup> Visan/KFTC 30(b)(6) deposition at pp. 36, 37.

in 2017 and 2018 even though that was his responsibility.<sup>29</sup> This constitutes an extreme deviation from the recognized and accepted standards of care.

**KFTC hires Illya D. Tsar**

54. The Motor Carrier Factual Report prepared by the NTSB contains an extensive description of Mr. Tsar's commercial driving experience and record of violations along with an assessment of his compliance with hours-of-service regulations through an examination of his paper logbooks.<sup>30</sup>

55. Mr. Tsar's driving record prior to joining KFTC (obtained by reviewing the Commercial Drivers' License Information System) showed numerous convictions and multiple license withdrawals between 2009-2017.<sup>31</sup> He had been subject to two license withdrawals from New York: one beginning on February 1, 2017, and the other on April 3, 2017. Both were reinstated on August 2, 2017. These withdrawals were for having two and three serious violations within three years, respectively.<sup>32</sup> A copy of Mr. Tsar's driving record from the State of Oregon DMV confirms this observation, as does a copy of the docket from the Fourth Judicial District of the State of Idaho, County of Ada, Case No. CR01-17-16527, reflecting the issuance of a bench warrant against Tsar for a failure to appear at a court hearing on a charge for driving on a suspended license.<sup>33</sup>

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<sup>29</sup> See Visan/KFTC 30(b)(6) deposition at pp. 58, 59.

<sup>30</sup> See NTSB's Motor Carrier Factors Group Chairman's Factual Report at pp. 9-14.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at pp. 9-10.

<sup>33</sup> See Robbins Declaration in Support of Opposition to Albertson's Motion for Summary Judgment, Ex. 4.

56. Mr. Tsar also operated his own company, TIT Transportation (USDOT number 1725754) from 2008 to 2015.<sup>34</sup> His company, however, was placed out of service by the FMCSA for having an “Unsatisfactory” Safety Fitness Rating.<sup>35</sup> The FMCSA’s Compliance Review that led to Mr. Tsar’s company being placed out of service revealed numerous violations, including Mr. Tsar operating a commercial motor vehicle with a suspended Oregon license, logbook issues, and numerous record-keeping violations.<sup>36</sup>

57. Prior to hiring Mr. Tsar, Mr. Visan admits that he did virtually nothing to vet this prospective driver’s competency and never inquired into his past driving record or driving background/experience.<sup>37</sup> In my opinion, this constituted an egregious violation of the applicable standard of care by someone (Visan) who was aware of the applicable FMCSRs.

58. While driving a commercial motor vehicle under KFTC’s operating authority, Mr. Tsar was required to maintain a record of his driving and off-duty status by means of an ELD. KFTC stated that Mr. Tsar informed the company that the ELD on the 2019 Volvo truck he was operating at the time of the crash was not functioning. As a result, Mr. Tsar kept paper logs for his duty status during the time period leading up to and including the June 16, 2018 fatal crash. According to Mr. Tsar’s paper logs (reviewed and recounted in the NTSB report), he was off-duty on June 15 until 8:30 p.m., on-duty, but not driving from 8:30 p.m. until 9:00 p.m., and then driving from 9:00 p.m. until midnight.<sup>38</sup>

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<sup>34</sup> See NTSB’s Motor Carrier Factors Group Chairman’s Factual Report at pp. 9-14.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Visan/KFTC 30(b)(6) deposition at p. 80-81; Ex. 111 to Visan/KFTC 30(b)(6) deposition.

<sup>38</sup> See NTSB’s Motor Carrier Factors Group Chairman’s Factual Report at pp. 7-8, 13-14.



59. Pursuant to the Motor Carrier Factual Report, the NTSB obtained the ELD from the 2019 Volvo tractor and found that the ELD was, indeed, functional during the relevant time period.<sup>39</sup> Examining the ELD in comparison with Mr. Tsar's paper logs (recovered after the accident) showed significant discrepancies. For example, the ELD reflected that Mr. Tsar began driving at 5:54 a.m. (on June 15) and drove for various intervals of time until 1:00 a.m. on June 16. Thus, Mr. Tsar was on-duty throughout the day on June 15 in direct contradiction to his paper logs that showed him to be off-duty during the day on June 15. On June 16, Mr. Tsar's paper logs stated that he was off duty in his sleeper berth from 1:00 a.m. until 2:00 p.m. However, the ELD showed that Mr. Tsar began driving on June 16 at 7:15 a.m., in direct contradiction to his paper logs. He drove a series of relatively short segments (ranging in length from 15 minutes to 3.5 hours) as he headed to Boise, Idaho, on this leg of his cross-country journey to Massachusetts. During the trip on June 16, Mr. Tsar stopped the vehicle several times, with the ELD recording non-moving periods that were 2.5 hours long or less, and he continued driving until the crash at 10:32 p.m.<sup>40</sup>

60. From my review of the above-referenced material and also from my review of the Idaho State Police Collision Report and the Idaho State Police Traffic Collision Reconstruction and Analysis Report and the dash cam video onboard the crash 2019 Volvo, I have concluded, based on my background and experience, that a cause of the subject crash was the KFTC driver's failure to respond to the slow-moving traffic queue ahead, more likely than not due to performance

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<sup>39</sup> *Id.* at pp. 7-8.

<sup>40</sup> *Id.* at pp. 13-14.

lapses associated with fatigue. This conclusion is premised on the reported ELD recording of the movements of the crashed 2019 Volvo Truck showing that Tsar had limited opportunities to rest before the subject crash. The ELD recordings, as reported by the NTSB, establish lengthy on-duty hours in the two days before the crash and limited opportunity for sleep. This indicates that Tsar, more probably than not, did not obtain adequate sleep during this period. The crash occurred late at night when people are more disposed to fatigue. Moreover, the dash cam also shows Tsar's inability to maintain his vehicle's lane position leading up to the crash, as well as his complete lack of response to the traffic queue as he came upon it. All are consistent, in my opinion, with fatigue-related lapses in driver vigilance.

61. Based upon my background and experience outlined above, I know that driver fatigue results in driver performance impairments that contribute to road crashes, including impaired vehicle lateral control,<sup>41</sup> decreased attention,<sup>42</sup> more frequent response lapses,<sup>43</sup> and increased reaction time.<sup>44</sup> The dash cam video and NTSB Motor Carrier Factual Report reflect that Mr. Tsar exhibited all these indicators of fatigue before the crash. Fatigue is a major road safety challenge with some recent estimates suggesting it is involved in up to 17% of fatal crashes and 13% of crashes inflicting serious injuries.<sup>45</sup> Based upon the foregoing, it is my opinion that driver fatigue

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<sup>41</sup> Gastaldi, M., Rossi, R., & Gecchele, G. (2014). Effects of driver task-related fatigue on driving performance. *Procedia - Social and Behavioral Sciences*, 111,955–964. <https://doi.org/10.1016/j.sbspro.2014.01.130>

<sup>42</sup> Boksem, M. A., Meijman, T. F., & Lorist, M. M. (2005). Effects of mental fatigue on attention: An ERP study. *Cognitive Brain Research*, 25(1), 107–116. <https://doi.org/10.1016/j.cogbrainres.2005.04.011>.

<sup>43</sup> Dorrian, J., Lamond, N., Kozuchowski, K., & Dawson, D. (2008). The driver vigilance telemetric control system (DVTCS): Investigating sensitivity to experimentally induced sleep loss and fatigue. *Behavior Research Methods*, 40(4), 1016–1025. <https://doi.org/10.3758/BRM.40.4.1016>.

<sup>44</sup> Ting, P. H., Hwang, J. R., Doong, J. L., & Jeng, M. C. (2008). Driver fatigue and highway driving: A simulator study. *Physiology & Behavior*, 94(3), 448–453. <https://doi.org/10.1016/j.physbeh.2008.02.015>.

<sup>45</sup> Tefft, B. C. (2012). Prevalence of motor vehicle crashes involving drowsy drivers, United States, 1999–2008. *Crash Analysis & Prevention*, 45, 180–186. <https://doi.org/10.1016/j.aap.2011.05.028>.

due to the failure to maintain HOS standards by Mr. Tsar and KFTC were a contributing cause to this fatal crash.

### **Shipper Liability and Industry Standard of Care**

62. Because of their great potential exposure to liability and their responsibility to the motoring public who share the road with trucks which transport their freight, it is the industry standard of care for a shipper who contracts / negotiates with a motor carrier to properly “vet” the motor carrier to assure, to their greatest ability to do so, that the motor carrier and its drivers are compliant with all applicable state and federal motor carrier safety regulations and standards. These standards include the qualification of the drivers, the maintenance and condition of the equipment utilized by the motor carriers, the proper monitoring and supervision of the drivers, etc. The shipper is the entity who selects the motor carrier and assigns them loads and it is in their best interest to adequately investigate a motor carrier’s “Safety Management Controls” which are interpreted as *“the systems, policies programs, practices and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries and property damage.* 49 CFR 385.3)

63. Most shippers having an adequate “safety culture” and in the interest of their not being responsible for assigning unsafe trucks and unsafe truck drivers to haul their loads upon the public roadways will at a minimum conduct a basic “background investigation” on the “safety fitness” and the degree of “safety management controls” a motor carrier has in place as well as

conduct an investigation into the motor carrier's violation and crash history. Such an investigation can quickly and easily be accomplished through the internet by searching the FMCSA's SMS (safety measurement system) website which will provide violation, crash, licensing and insurance, operating authority status, safety rating status, etc. for a period including the previous 24 months. I have reviewed the declaration of Thomas M. Corsi, Ph.D., that has been provided in this matter. I agree with his opinions and the conclusions expressed therein regarding the culpability of Albertson's in contributing to the cause of this fatal crash.

### **Opinions**

64. Following my review of the provided materials and based upon my education, background, training and experience, I have formulated the following opinions which are expressed to a reasonable degree of professional certainty:

1. **Smith System** - Mr. Tsar's driving as he approached what became the crash site fell egregiously below the accepted industry standards of care as set forth in "*The Smith System's Five Keys to Defensive Driving*" – *Aim High in Steering, Get the Big Picture, Keep Your Eyes Moving, Leave Yourself an Out and, Make Sure Others See You, which incorporates the principle of "Space Cushion Driving"* discussed above. Had he been adequately trained in and had he complied with these keys to defensive driving he would have observed the slowing and stopping traffic ahead which were displaying brake lights as they were engaged in slowing and stopping. Had he been looking ahead a minimum of 15 seconds he would / should have observed the hazards ahead at a minimum of 1,400 feet prior to his arrival at their location. This fifteen

seconds of time and approximately 1,400 feet would have provided sufficient time and distance for him to have recognized the hazard ahead, reduced his speed significantly, and either come to a complete stop or changing lanes into an open and available lane to avoid engaging the rear end of the Jeep Wrangler with the front of his truck. It is clear that Mr. Tsar grossly violated these industry standards of care concerning maintaining an adequate “eye lead time” by his failure to be searching ahead of him for a minimum of 15 seconds.

2. **Seeing** – Had Mr. Tsar been adequately trained in and complied with this industry standard of care contained in the Commercial Driver Handbooks which is similar to the Smith System’s Key #1 – Aim High in Steering, (12-15 second “eye lead time”) he would have observed the hazards ahead in sufficient time and with sufficient distance prior to his arrival at that location where the vehicles ahead of him were required to significantly reduce their speed due to congested traffic conditions ahead. Had he complied with this industry standard of care (which he did not), he would have been able to take sufficient avoidance actions to avoid colliding with the Johnson vehicle which was clearly there to be seen and was obviously slowing or stopping due to the presence of slowing and stopped traffic ahead. The brake lights, turn signals and slowing and stopping activities of vehicles ahead of him were figuratively “screaming, burning red flags”. The activities of the vehicles ahead were “screaming out for his attention” and he should have been paying attention to them and keying off of their

actions. His failure to react under the circumstances, in my opinion, was an extreme deviation from the applicable standard of care.

3. **Controlling Speed** – If Mr. Tsar had received adequate training in and complied with this vital safe truck driving concept, he would have clearly avoided the subject crash. If he was in fact traveling approximately 62 MPH as he approached the subject collision site as is indicated by his vehicles GPS and dash cam data, he clearly was traveling too fast for the prevailing conditions and warnings as to reduced speed. His speed on this section of roadway under the prevailing conditions was a gross and reckless violation of the industry standard of care which requires drivers to adjust their speed for roadway, weather, and traffic conditions. Mr. Tsar had a responsibility under this standard to operate his vehicle at a speed which would have allowed him to have avoided collision with any significant hazard which may be in or near the roadway ahead of him. This standard of care for appropriate operating speeds of commercial motor vehicles applies to a driver's ability to observe and avoid collision with both illuminated and non-illuminated objects. Clearly, a speed of 62 MPH while approaching the discernible traffic obstructions ahead was reckless and an egregious deviation from the prevailing industry standard of care.

From information provided to me, it appears that the average speed of traffic moving into and through the construction zone was 12-15 miles per hour. There were numerous opportunities for Mr. Tsar to observe any number of advance warnings such as slowing traffic, brake lights etc. that he should have keyed off of in controlling his

speed. The activity was present on the roadway ahead of him, and had he been properly attentive and aware of his surroundings, he would have had numerous opportunities to become aware of the traffic hazard developing ahead. Had he properly controlled his speed, he would have been able to come to a controlled stop behind the Jeep without collision.

4. **Managing Space** – Mr. Tsar failed to be properly trained and supervised in this vital truck driving principle and that he poorly managed the space around his vehicle, especially the space ahead of his vehicle, the space that he would be driving into. It is this space management standard of care which required Mr. Tsar to have reduced his speed significantly by aggressive braking and either completely stopping or changing lanes well in advance of his arrival at the collision site. This standard required him to properly manage the space ahead of his vehicle. Based upon my review of the materials provided, Mr. Tsar also egregiously and recklessly violated the industry standard of care for maintaining a proper following distance between himself and all vehicles ahead in his travel lane. This “following distance” or “clear roadway ahead” is a vital area for a professional truck driver to manage by making sure that while traveling at highway speeds the 600+ feet of roadway ahead of them remains clear of traffic or other hazards.
5. **Following Distance** - Mr. Tsar should have been (but was not) adequately trained and supervised to maintain and manage an adequate following distance that would allow for the perception and reaction of the activities of vehicles traveling ahead of him

without any need for sudden and emergency braking to avoid a crash into stopped traffic ahead. As previously mentioned, this clear roadway ahead for a truck driver traveling at a highway speed is a minimum of 600 feet. Had Mr. Tsar been making sure that the roadway ahead of him for a minimum of 600ft was clear, this collision would not have occurred. Mr. Tsar's violations of this clear standard were extreme, egregious and directly contributed to this fatal crash.

6. **Seeing Hazards** – Mr. Tsar failed to identify the activity ahead of him as a hazard worthy of consideration and concern and sufficient a hazard to cause him to slow down, stop, or to change lanes prior to his arrival at that location. This industry standard of care required him to have immediately identified the activities occurring ahead of him (brake lights, turn signals, slowing / stopping vehicles) as a hazard which could result in an emergency situation. The industry standard of care required him to observe the hazards and to take appropriate actions to prevent the hazards from becoming an emergency. Again, a very commonly utilized textbook clearly states that professional drivers are sufficiently attentive to their surroundings that they “Do not have Surprises.” Mr. Tsar was clearly not exercising this industry standard of care. His conduct under the circumstances (in my opinion, based upon the material reviewed) exhibits an egregious violation of clear, well-understood industry standards.
7. **Distracted Driving** – Another reason Mr. Tsar may have failed to react appropriately to the hazards ahead is because he obviously was looking in a direction other than ahead of him. The absolute most important place for a truck driver to be looking is ahead.



Truck drivers are typically taught to make sure that they are looking forward at least every 2 seconds. This means that they should never look away from the forward direction, such as looking in their mirrors or out their side windows or at their gauges or any other object or activity within the cab of their truck for a period longer than 2 seconds. Had he practiced this industry standard of care, he would have continued to be looking ahead regularly at traffic ahead which was slowing and stopping. As the brake lights were able to be observed, the industry standard of care would require Mr. Tsar to enter a “hyper-caution mode” and be extra vigilant to the roadway ahead to determine the cause of the traffic’s actions. Based upon my review of the materials provided, it is my opinion Mr. Tsar did not do so, since he was “*Paying too much attention to too little!*” His conduct in this regard under the circumstances also constituted an extreme violation of prevailing industry standards.

#### **8. Fatigued Driving**

The NTSB report and the declaration of Dr. Thomas M. Corsi disclosed several log falsifications created by Mr. Tsar in attempts to conceal his true activity level prior to the crash. It is clear that Mr. Tsar took no opportunity to obtain adequate restorative sleep of any significant duration between the time he loaded in Yakima, WA until the crash. Truck drivers are generally required to be in an “off-duty” status for a minimum of 10 consecutive hours prior to being allowed to begin or resume the operation of their CMV. Mr. Tsar’s ELD records indicate that from June 12, 2018 until the time of the collision on June 16, 2018, Mr. Tsar did not have any period of recorded off-duty time

that he had more than 7 hours of consecutive off-duty time. The majority of his driving time is separated by small segments of off-duty time of less than 2 hours. Mr. Tsar's actions / inactions as he encountered the subject crash site are completely consistent with a fatigued driver. As drivers become fatigued, they are more susceptible to be distracted by other activities. They are less attentive and have a greater degree of unawareness of their surroundings. Mr. Tsar's violations of the applicable HOS standards were extreme and intentional. He lied when he claimed the ELD in the 2019 Volvo tractor was not functional and then he lied when he wrote up his paper logs. This knowing misconduct constituted an egregious deviation from established standards and directly led to fatigue that, in my opinion, contributed to the occurrence of this crash.

9. **Adequacy of KFTC's Fleet Safety Management Program**

a. Under the FMCSR's 390.3, every employer is required to be "*knowledgeable of and comply with all regulations contained in this subchapter that are applicable to that motor carrier's operation*" and "*every driver and employee involved in motor carrier operations shall be instructed regarding and shall comply with all applicable regulations in this subchapter*".

b. Upon applying for operating authority with the FMCSA, Mr. Daniel Visan attested that he "...has access to and is familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials and it will comply with these regulations. In so certifying, applicant is verifying that, at a minimum, it:

- i. Has in place a system and an individual responsible for ensuring overall compliance with Federal Motor Carrier Safety Regulations;
  - ii. Can produce a copy of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations;
  - iii. Has in place a driver safety training/orientation program;
  - iv. Has prepared and maintains an accident register (49 CFR 390.15);
  - v. Is familiar with the DOT regulations governing driver qualifications and has in place a system for overseeing driver qualification requirements (49 CFR 391);
  - vi. Has in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair and maintenance (49 CFR Parts 392, 395 and 396);
  - vii. Is familiar with and will have in place on the appropriate effective date, a system for complying with U.S. DOT regulations governing alcohol and controlled substances testing requirements (49 CFR Part 40)."
- c. From the information outlined above, neither KFTC nor Mr. Tsar were "compliant with" these vital FMCSR's which are promulgated for the purpose of enhancing the safety experience of operating large CMV's upon public roadways.
- d. Following my review of the provided materials, it is my opinion that the "Safety Management Controls" in place by KFTC at the time of this crash fell

egregiously below what was expected from the OP-1 application certification by Mr. Visan. The operation of KFTC's motor fleet safety management program was unquestionably an extreme deviation from reasonable standards of conduct and practices and contributed significantly to the cause of this collision. In my opinion, from reviewing the materials provided, Mr. Tsar was clearly severely fatigued/distracted, was traveling at too great a speed, failed to see what needed to be seen, failed to react appropriately to hazardous traffic conditions ahead, failed to properly manage the space around his vehicle, especially the space ahead of him, the space he was driving into. Had their vetting, training, monitoring and supervision practices been in any way adequate, Mr. Tsar would have most likely not been violating so many industry standards of care as have been identified above which caused his involvement in the subject fatal traffic collision. Given KFTC's avowed knowledge and understanding of the relevant standards, the misconduct outlined above constitutes a willful disregard for and a pattern of regulatory non-compliance with applicable regulations. This, in my opinion, evidences a conscious disregard of or indifference to the enhanced crash risk posed by KFTC operations and its drivers, specifically, Illya Tsar. Such failures, as recorded above, are in my opinion, outrageous in nature.

e. It is clear from the information outlined above, and it is my opinion, that the motor fleet safety management program of KFTC was grossly inadequate and was operated in a fashion that was an extreme deviation from the standards outlined

above. KFTC blatantly and knowingly failed to “qualify” Mr. Tsar pursuant to the FMCSR’s. KFTC blatantly and knowingly did not comply with 391.21, requiring an application for employment containing certain vital information concerning prior employment, prior experience operating a CMV, prior violations and accident history, etc. KFTC blatantly and knowingly failed to comply with 391.23 - “Investigation and Inquiries” by not obtaining or reviewing Mr. Tsar’s MVR, which contained several “red flags,” including suspensions and moving violations in the fairly recent past. They hired Mr. Tsar and entrusted him with one of their big rigs without conducting any adequate “background investigation.” KFTC blatantly and knowingly failed to assure that he met the minimum “Qualifications of Drivers” requirement as per 391.11. KFTC blatantly and knowingly failed to assure themselves that Tsar could meet the requirements contained in 391.13 - “Responsibilities for Drivers”. KFTC knowingly and egregiously failed to assure themselves that Mr. Tsar did not have any “disqualifying events” in his past which would disqualify him from operating a CMV per 391.15. They knowingly failed to contact prior employers within the prior 3 years to check if he had any “disqualifying” events occurring while in their employ and never looked into Tsar’s on operation of TIT. KFTC’s president and owner, Corneliu Visan, has admitted to all these shortcomings to the FMCSA and, most recently, in his deposition.<sup>46</sup> This, in my opinion, evidences his conscious disregard of or indifference to the enhanced

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<sup>46</sup> Exhibit 123 to Visan/KFTC 30(b)(6) deposition; Visan/KFTC 30(b)(6) deposition at pages 30-35.

crash risk posed by KFTC operations and its drivers, specifically, Illya Tsar. Such failures, as recorded above, are in my opinion, outrageous in nature and constitute extreme deviations from applicable standards. No reasonable and/or responsible motor carrier would have hired a driver with Mr. Tsar's recent past driving history.

f. KFTC knowingly failed to have in place adequate "Safety Management Controls" which would have resulted in Mr. Tsar being properly "qualified", adequately trained, monitored and supervised. An example of this failure was Mr. Tsar's blatant disregard for the requirement to use "Electronic Logging Device" which was incorporated into the 2019 Volvo tractor he was operating. He stated that it was "not working" when in reality the evidence is that it was in fact working and that he was never trained how to utilize the system to electronically log his activities as required by 395.20-38 since December 18, 2017.

g. Following the crash, the ISP and NTSB were able to compare Mr. Tsar's handwritten logs (commonly referred to in the trucking industry as "comic books" due to their typical lack of factual accuracy) to other available "supporting documents" and were able to discover several instances of blatant falsification of his logs compared to Mr. Tsar's true activities during the critical period preceding the crash. Had KFTC been doing their duty as a motor carrier and trained Mr. Tsar how to utilize the ELD system incorporated into the Volvo tractor he was driving, or, had they at a minimum at least performed a random cursory comparison of his handwritten logs to the "supporting documents," they would have clearly known

that Mr. Tsar was blatantly violating hours of service restrictions in section 395.3 and the log-keeping requirements of section 395.8. Having this knowledge, they should have known or suspected that Mr. Tsar's frenetic work schedule would most likely result in his being in a severely fatigued condition during the time preceding the subject crash. This, in my opinion, evidences a conscious disregard of or indifference to the enhanced crash risk posed by KFTC operations and its drivers, specifically, Illya Tsar. Such failures, as recorded above, are in my opinion, outrageous in nature, and exhibit an extreme deviation from standards.

h. In his deposition, Mr. Visan testified that his company knowingly failed to follow numerous regulations and safety management practices which were required of himself and his trucking company.<sup>47</sup>

i. As noted above, Defendant Visan has admitted that he was familiar with the FMCSRs prior to the time of the crash. Based thereon, allowing the violations outlined above, in my opinion, evidences a conscious disregard of or indifference to the enhanced crash risk posed by KFTC operations and its drivers, specifically, Illya Tsar. Such failures, as recorded above, are in my opinion, outrageous in nature and constitute an extreme deviation from standards.

j. Among other things, the evidence outlined above shows KFTC failed to obtain the driving records of its drivers prior to hiring them (49 C.F.R. Part 391.51(b)(2)).

In fact, the evidence shows that at the time of the June 16, 2018 fatal collision, Illya

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<sup>47</sup>Exhibit 123 to Visan/KFTC 30(b)(6) deposition; Visan/KFTC 30(b)(6) deposition at pages 30-35.

D. Tsar, KFTC's driver involved in the June 16, 2018, fatal collision, was within his first 30 days of employment, yet KFTC had not obtained his Motor Vehicle Records. The materials I reviewed also showed KFTC used Mr. Tsar to haul loads despite the fact he had not completed and furnished an employment application (49 C.F.R. Part 391.21(a)). The evidence outlined above also shows KFTC failed to timely investigate the background of the drivers it hired (49 C.F.R. Part 391.23(a)). KFTC, through Mr. Visan, has admitted to not having taken any steps to investigate the background of Mr. Tsar before he was hired. All of these omissions reflect KFTC was acting in a fashion that constitutes an egregious deviation from the applicable standards of care.

k. As of December 18, 2017, the FMCSA required motor carriers to install and maintain an ELD to track the driver's hours of service; an ELD "automatically records a driver's driving time and facilitates the accurate recording of the driver's hours of service. In addition to failing to require its drivers to use ELDs for recording hours-of-service, the evidence provided to me shows KFTC had a custom and/or practice of permitting its drivers to make a false report regarding duty status (49 CFR Part 395.8 (e)(1)). Again, this is an indication that prior to the subject accident, KFTC was operating at a level that was an egregious deviation from the applicable standard of care.

l. As outlined more fully above, during the period leading up to the fatal collision on June 16, 2018, it is clear KFTC had longstanding and major deficiencies in its



safety management programs, policies and driver performance. The FMCSA's "Recommendations" are vast and highlight KFTC's and Visan's utter failure to have any sufficient safety policies and procedures in place at the time of and prior to the June 16, 2018, fatal collision.

m. Defendant Visan testified KFTC did not have any training program that it provided to its drivers on ELDs and did nothing to monitor the hour of service compliance for KFTC's drivers in 2017 and 2018 even though that was his responsibility.<sup>48</sup> On page 64 of his deposition transcript, Mr. Visan is asked: Do you know whether Mr. Tsar knew how to operate an ELD before he joined KFTC? Answer: "I don't know for a fact." Q: Did you ever have any discussions with Mr. Tsar concerning his familiarity with how to operate ELD equipment in the equipment that you were leasing for his use? Answer: "No."<sup>49</sup> Accordingly, this is an admission that KFTC was operating at a level that was an egregious deviation from the applicable standard of care.

n. Mr. Tsar's driving record prior to joining KFTC contained numerous convictions and multiple license withdrawals between 2009-2017. A review of Mr. Tsar's driver's record in the Commercial Driver's License Information System (CDLIS) showed numerous convictions for 2009-2016 and several license withdrawals from 2009 to 2017. This was information that was easily available to

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<sup>48</sup> Visan/KFTC 30(b)(6) deposition at pages 58-59.

<sup>49</sup> Visan/KFTC 30(b)(6) deposition at pages 64-65.

KFTC before it hired Tsar. He had been subject to two license withdrawals from New York: one beginning on February 1, 2017, and the other on April 3, 2017; both were reinstated on August 2, 2017. These withdrawals were for having two and three serious violations within three years, respectively. A review of Mr. Tsar's driving record from the State of Oregon DMV (also available to KFTC before it decided to hire Tsar) confirms this observation. KFTC's failure to obtain and review Mr. Tsar's past motor vehicle record was unconscionable, and an extreme deviation from standards. This failure to vet directly resulted in KFTC placing an incompetent driver on the road. KFTC should never have hired Mr. Tsar.

o. On page 70 of his deposition transcript, Mr. Visan is asked "Did Mr. Tsar fill out an employment application for KFTC? Answer: "No." Page 163: Did you ever pull a DMV record on Mr. Tsar? Answer: "No." Had KFTC complied with the requirements laid out under the FMCSRs, they would have been aware of Mr. Tsar's driving record and, presumably, would not have hired him. KFTC demonstrated in many ways, and on numerous occasions, extreme deviations from the applicable standards of care.

#### **10. Albertson's Responsibility to Properly "Vet" KFTC**

a. I join in Dr. Corsi's opinion that Albertson's conduct was egregious and extreme in its deviation from its duty to the motoring public who would be sharing the roadways with the trucks that were hauling its loads, and that Albertson's evidenced a conscious disregard of the enhanced safety risk posed by a carrier with

a compromised safety record and a lack of an adequate safety program. Albertson's had the responsibility under the industry standard of care to properly "vet" KFTC as one of its contracted motor carriers. At the time that Albertsons entered into the "Master Motor Carrier Transportation Agreement" with KFTC in July 2017, KFTC was an "Unrated Carrier" by the FMCSA. Had Albertson's simply performed even a very cursory search of the FMCSA's SMS database, it would have discovered the fact that KFTC was not safety rated and, as an "unknown commodity," should have been more thoroughly "vetted" as is indicated in section 1 of the Transportation Agreement, which states that carriers not rated "... warrant and represents that it has in place safety management controls adequate to meet or exceed the safety fitness standards prescribed in 49 CFR Part 385."

b. On page 57 of his deposition transcript, Mr. Visan is asked: Prior to the signature of this agreement between KFTC and Albertson's, did Albertson's ever make any inquiry as to how it was that KFTC would meet the requirements of 49 CFR, Part 385? Answer: "No."

c. In assigning responsibility to Albertson's for the subject crash, it should be noted that Albertsons is a "sophisticated shipper" when it comes to its safety oversight responsibility for the motor carriers whom it contracts with. Albertson's operates a fleet of approximately 250 power units (reported to FMCSA through biennial MCS-150 filings). Albertson's is a large motor carrier with "For Hire" authority and, as such, has an added measure of knowledge and sophistication when

it comes to the FMCSR's and motor fleet safety management standards, policies, practices and procedures. Had Albertson's at any time prior to this horrific crash simply made an online inquiry into the safety fitness standings of KFTC, Albertson's would have discovered that, not only was KFTC an unrated carrier, but that KFTC's driver out-of-service rates were through the proverbial roof. A maximum of 5 minutes spent by somebody in Albertson's corporate traffic group would have disclosed the fact that KFTC was woefully deficient in its safety management controls pertaining to the supervision of their drivers.

d. As a large motor carrier and a sophisticated shipper, Albertson's should have worked with its contracted motor carrier KFTC towards meeting a common goal to bring a greater and deeper element of compliance and safety management controls into existence within the smaller motor carrier, or, at a minimum, terminated their contract. Albertson's failure to do so in a timely manner during and immediately following their hiring of the transportation services of KFTC were a very large factor in the occurrence of the terrible crash and demonstrate an extreme deviation from the standards of care. Had Albertson's performed its due diligence under the applicable industry standard of care and properly "vetted" KFTC it would have discovered that KFTC had little to no "Safety Management Controls" in place and Albertson's would not have contracted with KFTC.

e. Albertson's willingness to use KFTC for transportation purposes in light of the knowledge of the risk KFTC presented is a factor that led to the collision in this

case. Albertson's failure to utilize the available safety information and demonstrated indifference to KFTC's safety management profile at the time the Transportation Agreement was signed, and during the subsequent time period prior to the crash is strong evidence of a conscious disregard of or indifference to the enhanced crash risk posed by KFTC and its drivers. Such failures are in my professional opinion outrageous in nature.

f. The only reason Albertson's can claim it did not know about KFTC's lack of safety programs and policies (as detailed above in the summary of the Compliance Review's findings) is that Albertson's made no effort to inquire about them. Albertson's failed to do so even knowing that the carrier had not received a safety fitness rating from FMCSA throughout the time period from July 19, 2017, through June 16, 2018. Thus, despite contract requirements that show it knows the importance of such a rating and therefore requires KFTC to meet or exceed safety standards set in Part 385, the evidence shows Albertson's turned a blind eye to whether KFTC met those standards.

g. As a result of this blind eye, Albertson's assigned repeated loads to KFTC despite its violations of Part 385. This evidences a conscious disregard for the safety of the traveling public. Indeed, Albertson's continued to assign loads to KFTC even after the collision, long after KFTC had been assigned an "unsatisfactory" rating, and long after Albertson's had reviewed what it had described as KFTC's inadequate Corrective Action Plan. These post-collision

assignments powerfully refute Albertson's claim to have been concerned about the safety of its transportation partners prior to the fatal collision.

h. Overall, Albertson's engagement and continued use of KFTC as its transportation provider represents an extreme deviation from reasonable standards of conduct for a responsible shipper and conscious disregard of the enhanced risk posed by a carrier with a compromised safety performance record and a lack of safety management programs and policies to ensure its overall compliance with the FMCSRs. The fact Albertson's is also a motor carrier and as such holding even greater knowledge of what safety requires makes these deviations even more egregious and outrageous. The acts, errors, and/or omissions of Albertson's, outlined above, in my opinion, show the repeated, persistent, and extreme deviation from reasonable standards of conduct and were acts performed by Albertson's through its managing officers, directors, and/or employees, that were performed with an understanding of and a complete disregard for the likely consequences of retaining and allowing an incompetent dangerous carrier to transport Albertson's goods upon the highways of our nation, to wit: a serious trucking crash on an interstate highway that caused and/or contributed to the loss of life. Albertson's failed to ever review (even after the crash) this critical aspect of KFTC's operations. As such, its action/inaction exhibits an extreme deviation from reasonable standards of conduct by a sophisticated shipper/carrier and, as such, shows a

conscious disregard for the enhanced risk to which the motoring public was exposed by Albertson's action/inaction outlined above.

#### **11. Dangers Associated with Lane Closures and Resulting Traffic Queues**

a. I find it disappointing that in his deposition Mr. Brinkman attempts to downplay the significance of lane closures resulting in traffic queues, particularly during nighttime hours. It is commonplace for multiple vehicle crashes to occur at the tail-end of construction zone, lane reduction caused, traffic queues. I have personally worked on analyzing numerous truck-involved multi-fatality crashes occurring at the tail end of a construction lane reduction related traffic queue. One of those crashes I worked on involved a traffic queue caused by a lane reduction on SR-99 just south of Bakersfield, CA where traffic was slowing and stopping when a big rig failed to slow or stop prior to crashing into the rear of a vehicle transporting 9 persons. The vehicle was "sandwiched" between the two big rigs resulting in fatal injuries to all 9 occupants of the smaller vehicle. Another crash I worked on involving a lane reduction traffic queue occurred on I-5 near Woodland, CA involving the fatal injury to the 2 occupants of the rear seats and serious injuries to the 2 front seat occupants of the vehicle when it was rear-ended by a big rig. I offer these two as a small example of the multiple crashes I have worked on involving traffic queues caused by lane reductions. It bears to reason that the longer the traffic queues, the greater the chance of the traffic queue to back up beyond the advanced traffic control warning system. In such instances, such as what had occurred during

the subject traffic queue, approaching traffic does not have the benefit of any advanced warning signs and the drivers are left only with the ability to observe and respond to slowing, stopping, stopping traffic ahead.

b. I was employed as a Nevada State Trooper and was assigned to work the Reno area. It was common for my work shift assignments to include the investigation of crashes occurring on I-80 and US-395 involving collisions into the rear vehicles at the end of traffic queues which were caused by lane reductions. On occasion, I would be dispatched to the same crash scene for multiple work shift days in a row until NDOT would effect appropriate changes to their traffic control and lane closure procedures. These types of crashes are typically catastrophic when a big rig was the striking or struck vehicle.

c. In 2007 the FMCSA commissioned “The Large Truck Crash Causation Study” (LTCCS) which analyzed 120,000 large truck involved crashes occurring between April 2001 and December 2003. Of those 120,000 truck-involved crashes, 963 truck-involved crashes were selected as a “nationally representative sample”. Those 963 crashes involved 249 fatalities and 1,654 injuries. The second highest most common causative factor in these crashes was identified as “*Traffic flow interruption (congestion, previous crash)*”. This is consistent with my personal experience and reflects the factors involving big rigs having a much greater mass (often 15:1) than most vehicles resulting in catastrophic damage the vehicles and their occupants which they strike, their inability to stop as quickly as private



passenger motor vehicles and the fact that often truck drivers who are operating during late night and early morning hours are often significantly impaired due to fatigue.

d. It is my experience that ample advanced adequate traffic control warning systems are critical to warn fatigued / distracted truck drivers for they are the ones who would benefit the greatest from such advanced warning systems due to the disparities previously mentioned. One of the most dangerous conditions truckers encounter are situations where traffic queues backed up beyond the first advanced warning of lane reduction and / or traffic congestion. In such a case, the only warning and notice a fatigued truck driver will have is the slowing / stopping / stopped vehicles blocking his or her path, which is often far too late.

### **Summary**

Based upon the foregoing, it is my opinion that this horrific crash was caused by Mr. Tsar's knowing failure to follow several established industry standards of care governing the operation of his CMV. There is evidence that he was severely fatigued, inattentive and operating his assigned CMV in an unsafe manner before the accident. KFTC has admitted to knowingly violating numerous industry standards of care in their failure to properly vet, train and supervise Mr. Tsar concerning adequate following distances, seeing, managing space, controlling speed, seeing hazards, managing fatigue, and use of the available ELD system. Albertson's also contributed in causing this crash by contracting with an unsafe and unrated carrier without doing anything of any significance to make itself aware of the carrier's violation history showing an alarming Driver

OOS rate. Furthermore, Albertson's failed to assure that KFTC had adequate "safety management controls" in place, especially in light of the fact that KFTC was an unrated carrier.

From the perspective of motor carrier operations, in my opinion, there is no reasonable question but that Tsar, the KFTC driver of the 2019 Volvo tractor-trailer combination, KFTC and Albertson's all bear direct responsibility for the fatal crash that occurred on June 16, 2018. Had KFTC exercised any reasonable care, it would *not* have selected Mr. Tsar to drive the 2019 Volvo tractor-trailer combination, nor would it have retained his services for trips under its contract with Albertson's. KFTC's numerous omissions, outlined above, coupled with its flagrant, egregious, outrageous, and conscious failure to comply with well-known required standards is simply mind boggling. KFTC's failure to adopt and implement any adequate safety management controls allowed an unsafe/incompetent driver onto the road, in control of a massive tractor trailer. It is my further opinion, based upon the facts as described herein, that KFTC's conscious failure to use reasonable care in hiring, training and supervising Mr. Tsar constituted an extreme deviation from reasonable standards of conduct applicable to motor carriers and evinces a complete disregard or indifference on the part of KFTC for well-established safety principles and practices in the industry (outlined above) that are designed to preserve the life and/or safety of the general motoring public.


The facts outlined above unquestionably also show extreme deviations from the reasonable standards of conduct for a responsible shipper, particularly one as sophisticated as Albertson's.

From the evidence here presented, it is my opinion that this misconduct by KFTC and Albertson's, was undertaken by each through their managing officers, directors, and/or employees, with an understanding of (actual and/or constructive) and disregard for the likely consequences of

allowing an incompetent driver and/or carrier to transport goods: a catastrophic trucking crash on a heavily traveled highway, resulting in the loss of life and total destruction of the load being transported. The fact that Albertson's would continue to do business with KFTC and release loads to this carrier even after the crash (until they were named in this lawsuit) serves only to highlight the need to hold Albertson's as responsible as KFTC. Each must be held accountable to the standards they are both bound to satisfy. It is only then, in my opinion, that the flagrant and egregious deviations from standard conduct by these parties, as addressed herein, never again will be allowed to devastate other innocent motorists, their passengers and their families.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Executed this 24 day of June, 2021, at Quincy, California.

  
V. Paul Herbert, C.P.S.A.

# **EXHIBIT A**



# WESTERN MOTOR CARRIER SAFETY INSTITUTE, INC.

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***Safety!***

*The Law Demands It  
The Public Deserves It  
Profits Depend on It*

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## **Presentation of Qualifications V. Paul Herbert, C.P.S.A. Commercial Motor Vehicle Safety & Compliance Expert**

### **Areas of Specialization**

- Commercial Vehicle (Truck & Bus) Accident Analysis
- Commercial Vehicle Driver Selection, Training & Evaluation Standards
- Air Brake Systems Operation & Maintenance Standards
- Commercial Vehicle Coupling Device (Fifth Wheel & Pintle Hitch) Standards
- Hazardous Materials Transportation Safety Regulations & Standards
- Loading & Load Securement Requirements & Standards
- State & Federal Motor Carrier Safety Regulations (49 CFR & 13 CCR)
- Commercial Vehicle Driver Hours of Service Restrictions & Driver Fatigue
- Tachograph Chart and On-Board Computer Report Analysis
- Commercial Vehicle Equipment & Maintenance Standards
- Forklift Operator Training, Evaluation & Certification Standards
- Truck Terminal & Loading Dock Safety Procedures and Design Standards
- Commercial Vehicle Conspicuity & Visibility Standards
- Commercial Vehicle Inspection & Operation Standards

### **Employment Experience**

**1-90 to Present, President / Director, Western Motor Carrier Safety Institute, Inc. Quincy, California.**

Provide Commercial Motor Vehicle (truck & bus) Safety & Compliance Consultation, Truck, Bus and Forklift Operator Training & Evaluation, Claims Administration, Litigation Consulting, Accident Analysis, Hazardous Materials Training, etc. to trucking companies, institutions, trade associations and law offices. Currently maintain a Class "A" Commercial Driver's License, own, maintain and routinely operate commercial motor vehicles. Provide and operate "representative vehicles" for re-enactments. Inspect, photograph and take digital video of accident-involved commercial vehicles and forklifts. Conduct seminars and fulfill speaking assignments on various aspects of Commercial Vehicle Safety and Compliance Issues. Testifying Expert Witness concerning Commercial Motor Vehicle & Forklift Safety, Maintenance, Compliance and Operator Training & Qualification Standards.

**1-89 to 12-89, General Manager, American Refrigerated Transport, Inc., Bakersfield, California.** Oversaw complete operation of small interstate refrigerated trucking company. Responsibilities included: selection, orientation, training, monitoring and control of all employees. Oversaw the day to day operation and maintenance of 8 tractor-refrigerated trailer vehicle combinations which operated in 48 states. Developed Safety & Maintenance Policies and Procedures in compliance with the Federal Motor Carrier Safety Regulations, California Vehicle Code and the California Code of Regulations Title 13. Drove tractor-trailer on a regular basis hauling a variety of refrigerated loads. Operated forklift regularly loading and unloading trucks. Rode with and evaluated drivers regularly.

**8-86 to 1-89, Director of Safety and Personnel, Kings County Truck Lines, Tulare, California.** Administered Safety & Compliance Programs and Personnel for Company. Responsible for 300+ employees operating 250+ tractor-trailer combinations out of 9 terminals throughout California and Oregon. Responsibilities included: selection, orientation, training, monitoring and control of all employees, development of safety, maintenance and personnel policies and procedures, safety motivation, claims administration, labor relations, accident investigation & reconstruction. Assured compliance with multiple State and Federal Rules & Regulations. Also responsible for same at affiliated company, M.S.M. Trucking and consulted with commonly owned companies Cal-Western Transport, Regency Transport & Fluid Transport, Inc. Drove company-owned tractor-trailer combinations on a regular basis. Assisted in administering safety and oversight responsibilities for our maintenance shops consisting of approximately 40 full-time truck mechanics. Administered company forklift operator training and certification program.

**4-85 to 8-86, Assistant Director of Safety & Maintenance Activities, Hazardous Materials Specialist, California Trucking Association, West Sacramento, California.** Administered to the safety and compliance needs of the 2500+ member trucking companies belonging to the association. Conducted training seminars on the State & Federal Motor Carrier Safety Regulations, State & Federal Hazardous Materials / Wastes Transportation Regulations, Employee Safety, Defensive Driver Training, Accident Investigation, etc. Coordinated Safety & Maintenance Management Councils & Tank Truck & Hazardous Waste Transporter Conferences. Planned and executed annual commercial vehicle safety and maintenance educational 3-day educational seminars called "Safety Congress" & "Maintenance Institute". Conducted accident investigation / reconstruction services for CTA members and testified in many court proceedings in their behalf. While employed by the CTA held a part-time job with Fredericksen Tank Lines, Inc. in W. Sacramento as a tank truck driver hauling a variety of bulk fuels operating a variety of tank vehicle combinations. Administered CTA's Forklift Operator Training Program.

**1-84 to 4-85, Tank Truck, Lowboy, Dry Freight & Lumber Truck Driver, Warehouseman, Eastman Transport, Inc., Ft. Bragg, California, Viking FreightSystems, Inc., Reno, NV, & Casazza Trucking, Sparks, Nevada.** Responsibilities included the safe loading, operation and unloading of heavy commercial vehicle combinations, some exceeding 120,000 pounds in weight and 103 feet in length (triples), transporting a variety of lumber, steel & petroleum products as well as heavy construction equipment throughout Northern California & Nevada while pulling tank, flatbed and lowboy trailers. Was utilized as a "Driver Trainer" on numerous occasions by both companies. Performed light maintenance on assigned equipment & routinely worked in shop with mechanics. Worked on loading dock, loading and unloading dry van trailers by hand, hand-truck and forklift.

**81 to 83, State Trooper, Nevada Highway Patrol, Reno, Nevada.** Responsibilities included all those commonly associated with the position. Because of background & experience as a truck driver and truck mechanic, was often called upon for assistance in accidents or enforcement action involving heavy commercial vehicle combinations. In this position received a tremendous amount of valuable training and experience which has assisted in the development of a keen understanding of the laws and regulations which govern commercial vehicle operations and accident investigation / reconstruction techniques as well as vehicle dynamics of commercial motor vehicles while engaged in traffic collision incidents.

**78 to 80, Lumber Truck Driver, Eastman Transport, Inc., Ft. Bragg, California, Log Truck Driver, Philbrick, Inc., Ft. Bragg, California, Flatbed Driver / Yard Man, C&H Transportation, Salt Lake City, Utah, Log Truck Driver, C&M Trucking, Quincy, California, Wood Chip Truck Driver, Thompson Trucking, Loyalton, California.** Responsibilities at these various jobs involved the safe loading, operation and unloading of a multitude of different heavy commercial vehicle combinations, forklifts and heavy equipment equipped with different engines, transmissions, and body types. Vehicles operated included tractor semi-trailer, tractor double-trailer & truck & full-trailer combinations having log stake, flatbed, lowboy, drop-deck, and dump bodies. My duties generally required me to operate this equipment under the most demanding and severe roadway and weather conditions. Because of the severe service involved with these job responsibilities, i.e., operating grossly laden vehicles over narrow, winding, steep and often slippery roadways, I gained extensive valuable experience operating a variety of different vehicle combinations hauling an equally varied type of loads over severe roadway conditions.

**77 to 78, Full-time Missionary (volunteer), Church of Jesus Christ of Latter-day Saints,** various locations throughout Missouri & Illinois.

**76 to 77, Dump Truck Driver / Heavy Construction Equipment Operator, Clark Construction, Portola, CA, Log Truck and Water Truck Driver, Clover Logging & C&M Trucking, Quincy, California.** Responsibilities included the safe loading, securement, transportation and unloading of loads of various aggregates in a variety of dump body vehicle combinations, the transportation and distribution of loads of water on miscellaneous logging roads and landings, the transportation of logs from various locations throughout the Plumas National Forest to various lumber mills within Plumas, Sierra and Butte Counties.

## **Specialized Training**

**ATA Annual Safety Conference,** American Trucking Association, Memphis TN 2017 (24 hrs)

**Safety, Security & Human Resources National Conference & Exhibition –** American Trucking Associations, Little Rock, Arkansas, 2015 (24 hrs)

**Certified Driver Trainer Program –** North American Transportation Management Institute, Sacramento, California, 2015 (16 hours)

**Forklift Instructor Training (Recertification)-** Ives and Associates / Sacramento Safety Center, Sacramento, California, 2019 (8 hours)

**Advanced Commercial Vehicle Crash Investigation** – Institute of Police Technology and Management, Jacksonville, Florida, 2014 (40 hours)

**Managing Motor Fleet Safety Programs** - North American Transportation Management Institute, Ontario, California 2013 (16 hours)

**CVSA NA Roadside Inspection Familiarization Seminar** – North American Transportation Management Institute, Albuquerque, NM, 2011 (8 hours)

**ARC-CSI Crash Conference** – Las Vegas, NV, 2010 (28 hours)

**HR Bootcamp** – North American Transportation Management Institute, Las Vegas, NV, 2006 (8 hrs)

**Commercial Vehicle Safety Summit**, California Highway Patrol, Sacramento, CA 2006 (16 hrs)

**Air Brake School**, Bendix Commercial Vehicle Systems, Sparks, NV 2006 (32 hrs)

**Managing Motor Fleet Safety Programs**, North American Transportation Management Institute, Fresno, CA 2005 (24 hrs)

**Applied Physics for the Accident Reconstructionist**, Institute of Police Technology & Management, Jacksonville, Florida 2005 (40 hrs)

**Special Problems in Accident Reconstruction (Trailer Under-ride)**, Institute of Police Technology & Management, Jacksonville, Florida 2005 (40 hrs)

**Motor Fleet Safety**, North American Transportation Management Institute, Reno, NV 2005 (16 hrs)

**ATA Annual Safety Conference**, American Trucking Associations, Jacksonville, FL 2004 (24 hrs)

**Commercial Tire Service**, Tire Industry Association, Sacramento, CA, 2003 (8 hrs) ATA Western Regional Safety Conference, Seattle, WA 2003 (16 hrs)

**Accident Investigation**, North American Transportation Management Institute, Sacramento, CA (24 hrs)

**Multi-modal Hazardous Material Transportation**, San Diego, CA, 2003 (16 hrs)

**Traffic Collision Reconstruction**, Texas A&M University, Carlsbad Police Department, Carlsbad, California, 1998 (80 hrs)

**Safety & Maintenance Management Seminars**, California Trucking Association, International Trucking Show, Las Vegas, Nevada, 1997 (24 hrs)

**Tire and Vehicle Dynamics ("Blow-out School")**, Michelin of North America, Reno, Nevada, 1997 (28 hrs)

**Bus Accident Investigation**, Institute of Police Technology and Management, University of North Florida, Jacksonville, Florida, 1996 (40 hrs)

**Advanced Commercial Vehicle Accident Investigation and Reconstruction**, T.E.E.X., Texas A&M University, College Station, Texas, 1996 (48 hrs)



**W.A.T.A.I. - S.O.A.R. - T.A.A.R.S. Combined Commercial Vehicle Anti-lock Braking Systems**, Western Washington University, Bellingham, Washington, 1996 (24 hrs)

**Forklift Instructor Training**, Ives and Assoc. / Sacramento Safety Center, Sacramento, California, 1996 (40 hrs)

**Investigation of Commercial Vehicle Accidents and Advanced Commercial Vehicle Accident Investigation**, National Committee for Motor Fleet Supervisor Training and Certification, Norman, Oklahoma, 1994 (20 hrs)

**Intermodal Hazardous Materials Transportation**, U.S. D.O.T., Transportation Safety Institute, Long Beach, California, 1994 (20 hrs)

**Defensive Driving Course 8, Instructor Training**, National Safety Council, Sacramento, California, 1994 (16 hrs)

**Hazardous Materials Transportation Instructor Training**, American Trucking Associations, Salt Lake City, Utah, 1993 (40 hrs)

**Air Brake Operation & Maintenance**, Bendix Heavy Vehicle Systems, Reno, Nevada, 1993 (24 hrs)

**Train the Trainer**, American Trucking Associations, San Jose, California, 1992 (8 hrs)

**Inspection & Investigation of Commercial Vehicle Accidents**, The Institute of Police Technology & Management, Phoenix, Arizona, 1992 (40 hrs)

**Post-Accident & Random Drug Testing**, California Trucking Association, West Sacramento, California, 1992 (8 hrs)

**Hazardous Materials, HM-181**, American Trucking Associations, San Francisco, California, 1991 (8 hrs)

**Air Brake Operation 7 Maintenance**, Bendix Heavy Vehicle Systems, Anaheim, California, 1991 (8 hrs)

**Commercial Drivers License Training**, Highway User's Federation for Safety & Mobility, Washington, D.C., 1991 (16 hrs)

**Commercial Vehicle Inspection & Accident Investigation**, Texas A&M University, College Station, Texas, 1990 (40 hrs)

**Traffic Accident Reconstruction**, Institute of Police Technology & Management, Jacksonville, Florida, 1990 (80 hrs)

**Certified Practicing Safety Administrator Study Group**, California Trucking Association, West Sacramento, California, 1988 (40 hrs)

**Hazardous Materials Awareness**, Government Services Institute, Fresno, California, 1986 (8 hrs)

**Hazardous Materials Transportation**, California Highway Patrol Academy, Sacramento, California, 1985 (16 hrs)

**Safety Coordinator Course**, California Trucking Association, West Sacramento, California, 1985 (40 hrs)

**Safety Management Council**, Monthly meetings sponsored by the California Trucking Association, 2 hour lecture on various Safety Management & Training Topics (1985 to present)

**Safety Management Council Conference**, American Trucking Association, San Francisco, California, 1986 (16 hrs)

**Safety Congress / Maintenance Institute**, California Trucking Association, Anaheim, California, 1985, 1986, 1987, 1988, 1989, 1990, 1991 (140 hrs)

**Transportation of Radioactive Materials**, U.S. Department of Energy, Nevada Test Site, Mercury, Nevada, 1983 (32 hrs)

**Federal Motor Carrier Safety Regulations**, U.S. Dept. of Transportation, Stead, Nevada, 1982 (8 hrs)

**Transportation of Hazardous Materials**, U.S. Dept. of Transportation, Stead, Nevada, 1982 (16 hrs)

**Winter Driving & Skid Control Techniques**, California Highway Patrol, Truckee, California, 1983 (8hrs)

**Advanced Technical Traffic Accident Investigation**, Nevada Highway Patrol, Stead, NV, 1983 (40 hrs)

**Traffic Accident Investigation**, Nevada Highway Patrol, Stead, Nevada, 1981 (100 hrs)

## **Formal Education**

**Brigham Young University**, Provo, Utah, 1976 (one semester) Declared Major —Building Construction Technology

**Portola Jr. Sr. High School**, (College Prep Course of Study - Graduate) Portola, California, 1975

## **Speaking Engagements & Courses Instructed**

**Masters In Trial** – Abota Foundation, Los Angeles, CA, 2015

**Trucking Litigation and D.O.T Regulations Seminar** - Lorman Education Services, Denver, Colorado, 2008

**Winter Truck Driving Safety** - California Trucking Association, Sacramento, California, 1993, 1997, 2011 & 2012

**Hazardous Materials Transportation Safety Instructor Training Course** - Salt Lake City, Utah for Simpson Paper Company, 1995

**Motor Fleet Trainer** - National Committee for Motor Fleet Supervisor Training and Certification, Phoenix, Arizona, 1994

**Drug and Alcohol Testing Requirements**, Fleet Focus Group of Anheuser Busch Distributors, Riverside, California, 1994

**Motor Fleet Safety for Supervisors**, National Committee for Motor Fleet Supervisor Training, 1994 - Concord, California, Denver, Colorado, Dallas, Texas, Baltimore, Maryland, Norman, Oklahoma - Lead Instructor for these 24 hour courses, 1995 - Seattle, Washington, Reno, Nevada

**Advanced Motor Fleet Safety**, National Committee for Motor Fleet Training & Certification, 1995 - Seattle, Washington

**Miscellaneous One & Two-day Courses on Hazardous Materials & Wastes Transportation Safety**, Western States, 1993 & 1994

**Inspection of Commercial Vehicles**, Norcal Waste Systems, Inc., San Francisco, California, 1993 (24 hrs)

**Traffic Accident Investigation**, California Trucking Association, Various Safety Management Council Meetings, 1986 - 1991

**Hours of Service & Log-keeping**, California Trucking Association, Norwalk, California, 1990

**Safety Coordinator Course**, California Trucking Association, West Sacramento, California, 1990

## **Professional Affiliations**

- **American Society of Safety Engineers**
- **California Trucking Association's Safety & Maintenance Management Council**
- **Commercial Vehicle Safety Alliance (CVSA)**
- **North American Transportation Management Institute (NATMI)**
- **National Safety Council – Sacramento chapter**

## **Special Positions Held**

**Treasurer**, Northern Safety & Maintenance Management Council, California Trucking Association, 2005-2006

**Chairman**, Northern Safety & Maintenance Management Council, California Trucking Association, 2003, 2010 & 2011

**Member**, ATA Accident Review Committee, 2000 - 2010

**First Vice-Chairman**, Sacramento - San Joaquin Safety & Maintenance Management Council, California Trucking Association, West Sacramento, California, 1997 & 1998

**Chairman**, Sacramento - San Joaquin Safety & Maintenance Management Council, California Trucking Association, 1992 & 1999

**Chairman**, Central Valley Safety & Maintenance Management Council, California Trucking Association, 1987

**Chairman**, Statewide Professional Truck Driving Championship Committee, California Trucking Association, 1988

**Chairman**, Central Valley Professional Truck Driving Championship Committee, California Trucking Association, 1987

**Member**, Industry Technical Advisory Committee for the Commercial Driver's License Program, California Department of Motor Vehicles, 1987

**Member**, West Hills Community College Truck Driver Training Course Industry Advisory Committee, 1988

**Instructor**, Commercial Driver's License Course, Sierra College, Rocklin, California, 1991

## **Special Certificates Received**

**Commercial Tire Service Technician**, Tire Industry Association, Sacramento, California, 2003

**Defensive Driving Course 8 Instructor**, National Safety Council, Sacramento, California, 1994

**Master Certified Instructor**, Commercial Driver's License Training, Highway User's Federation for Safety

**Certified Safety Coordinator**, California Trucking Association, 1986

**Certified Practicing Safety Administrator**, California Trucking Association, 1988

**Air Brake Specialist**, Bendix Heavy Vehicle Systems, Reno, Nevada, 1993, 2002, 2006

**Certified Forklift Instructor**, Safety Center, Ives & Associates, Sacramento, California, 1996, 1999, 2002, 2005, 2008, 2012, 2015, 2019

**V. Paul Herbert, C.P.S.A.**  
**President**