



NORTH RISK PARTNERS®

# HOW TO PROTECT YOUR FLEET FROM NUCLEAR TRUCKING VERDICTS

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OCTOBER 2024

NORTH RISK WEBINARS | 2024

# PRESENTER

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## Andy Bertram

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North Risk Partners

# AGENDA

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- Nuclear verdicts
- Who you hire matters
- Embracing technology
- Skeletons in the closet
- Wrapping it up

# NUCLEAR VERDICTS

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- Any verdict in favor of the plaintiff with a damage award that surpasses \$10M.
- Loosely used to describe an outcome significantly larger than what anyone expected.
- Median nuclear verdict for product liability cases grew by 50% from 2013 to 2022.
- Trucking litigation:
  - 2006 - 2019 resulted in 26 cases over \$1M.
  - 2019 - 2024 have seen 300 cases cost over \$1M with an average award of \$27.5M.



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# WHO YOU HIRE MATTERS

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- Vicarious Liability - Legal concept that holds a person or entity responsible for the actions of another person, even if they were not directly involved
- Examples:
  - Members of a joint venture
  - Parents and children
  - Employers and employees

# WHO YOU HIRE MATTERS

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- Pre-Employment Screening Program
- DOT Background Checks
  - Criminal Background Checks (recommended by the FMCSA, but not required)
  - DOT physicals
  - MVR check
  - Employment verification with a three-year lookback period
- Drug & Alcohol
- Drug & Alcohol Clearinghouse records
- Reference checks

# WHO IS DRIVING YOUR VEHICLES?

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The driver of a semitrailer pulling a fuel tanker has been charged with driving drunk in a [Joliet Township](#) crash that left a woman and two children with severe injuries. Prosecutors alleged an analysis of Gonzalez's blood-alcohol concentration level was at 0.309%, well above the legal limit of 0.08%.

Christopher Gonzalez, 42, of Joliet was charged with four felony counts of aggravated driving under the influence in a June 7 crash that caused severe injuries to two women and two children.

This marks Gonzalez's fourth time in the Will County Jail since October 2018. Rockdale police arrested him in February on domestic battery charges, and he was kept in the Will County Jail on that case Feb. 18 to 20, jail logs shows.


# PRE-EMPLOYMENT SCREENING PROGRAM (PSP)

- This program from the FMCSA provides access to commercial drivers' safety records, including:
  - 3-year roadside inspection history
  - 5-year crash record
- Easy to access and request
- Companies that use PSP to screen new hires lower their crash rate by 8% and their OOS rates by 17% compared to those who don't.

# PSP Detailed Report

Federal Motor Carrier Safety Administration

Sample Report

| Driver Information                                                                                                                                                                                |            |                               |                                     |                             |           |                       |                                    |        |             |                    |              |            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------------------------|-------------------------------------|-----------------------------|-----------|-----------------------|------------------------------------|--------|-------------|--------------------|--------------|------------|
| Last Name                                                                                                                                                                                         | First Name | License #                     | State                               |                             |           |                       |                                    |        |             |                    |              |            |
| DOE                                                                                                                                                                                               | JOHN       | 111111111                     | VA                                  |                             |           |                       |                                    |        |             |                    |              |            |
| DOE                                                                                                                                                                                               | JOHN       | 222222222                     | NY                                  |                             |           |                       |                                    |        |             |                    |              |            |
| Crash Activity (5 year history from MCMIS snapshot date)                                                                                                                                          |            |                               |                                     |                             |           |                       |                                    |        |             |                    |              |            |
| Crash Summary (Crashes listed represent a driver's involvement in FMCSA-reportable crashes, without any determination as to responsibility.)                                                      |            |                               |                                     |                             |           |                       |                                    |        |             |                    |              |            |
| # of Crashes:                                                                                                                                                                                     | 4          | # of crashes with Fatalities: | 1                                   | # of Crashes with Injuries: | 3         | # of Towaways:        | 3                                  |        |             |                    |              |            |
| # Not preventable                                                                                                                                                                                 | 1          | # of Fatalities:              | 1                                   | # of Injuries:              | 4         | # of Hazmat Releases: | 0                                  |        |             |                    |              |            |
| Crash Details (Crashes listed represent a driver's involvement in FMCSA-reportable crashes, without any determination as to responsibility.)                                                      |            |                               |                                     |                             |           |                       |                                    |        |             |                    |              |            |
|                                                                                                                                                                                                   | Date       | DOT #                         | Carrier Name                        | Driver Name                 | Drive Lic | State                 | Driver DOB                         | Rpt St | Rpt Number  | Location           | # Fatalities | # Injuries |
| 1                                                                                                                                                                                                 | 10/24/2016 | 168714                        | XYZ TRUCKS, INC.                    | DOE, JOHN                   | 222222222 | NY                    | 08/08/1988                         | VA     | VA000000000 | I66 EB .5M E RT 29 | 0            | 1          |
| 2                                                                                                                                                                                                 | 04/03/2017 | 168714                        | XYZ TRUCKS, INC.                    | DOE, JOHN                   | 111111111 | VA                    | 08/08/1988                         | CA     | CA111111111 | I405 NB            | 1            | 2          |
|  <b>ROW 2 REVIEWED - NOT PREVENTABLE - FMCSA REVIEWED THIS CRASH AND DETERMINED THAT IT WAS NOT PREVENTABLE.</b> |            |                               |                                     |                             |           |                       |                                    |        |             |                    |              |            |
| 3                                                                                                                                                                                                 | 01/14/2018 | 345678                        | XYZ & ABC HAULING                   | DOE, JOHN                   | 111111111 | VA                    | 08/08/1988                         | NY     | NY333333333 | I87 NB             | 0            | 1          |
| 4                                                                                                                                                                                                 | 08/28/2019 | 333444                        | ABC 123 TRUCKING INC.               | DOE, JOHN                   | 111111111 | VA                    | 08/08/1988                         | NJ     | NJ444444444 | I95 SB             | 0            | 0          |
| Inspection Activity (3 year history from MCMIS snapshot date)                                                                                                                                     |            |                               |                                     |                             |           |                       |                                    |        |             |                    |              |            |
| Inspection Summary                                                                                                                                                                                |            |                               |                                     |                             |           |                       |                                    |        |             |                    |              |            |
| Driver Summary                                                                                                                                                                                    |            |                               | Vehicle Summary                     |                             |           |                       | Hazmat Summary                     |        |             |                    |              |            |
| Driver Inspections:                                                                                                                                                                               | 4          |                               | Vehicle Inspections:                | 4                           |           |                       | Hazmat Inspections:                | 0      |             |                    |              |            |
| Driver Out-of-service Inspections:                                                                                                                                                                | 2          |                               | Vehicle Out-of-service Inspections: | 1                           |           |                       | Hazmat Out-of-service Inspections: | 0      |             |                    |              |            |
| Driver Out-of-service Rate:                                                                                                                                                                       | 50%        |                               | Vehicle Out-of-service Rate:        | 25%                         |           |                       | Hazmat-Out-of-service Rate:        | 0%     |             |                    |              |            |

Report executed at: 5/4/2020 2:42:16 PM  
MCMIS snapshot date: 04/24/2020

For an explanation of FMCSA-reportable crashes see <https://www.psp.fmcsa.dot.gov/psp/FAQ.aspx>.

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# Sample Report

| Inspection Details               |                                                                                                    |        |                       |                                                      |           |       |                                                       |                 |                                |             |            |           |
|----------------------------------|----------------------------------------------------------------------------------------------------|--------|-----------------------|------------------------------------------------------|-----------|-------|-------------------------------------------------------|-----------------|--------------------------------|-------------|------------|-----------|
| Carrier Info                     |                                                                                                    |        |                       | Driver Info                                          |           |       |                                                       | Inspection Info |                                |             |            |           |
|                                  | Date                                                                                               | DOT #  | Carrier Name          | Driver Name                                          | Drive Lic | State | Driver DOB                                            | Rpt St          | Rpt Number                     | Hazmat Insp | Insp Level | # of Viol |
| 1                                | 01/18/2018                                                                                         | 475002 | 123 ABC TRUCKING      | DOE, JOHN                                            | 111111111 | VA    | 08/08/1988                                            | LA              | 1111111111                     | N           | 1          | 3         |
| Vehicle Violation: 393.47(e)     |                                                                                                    |        |                       | CLAMP/ROTO TYPE BRAKE(S) OUT-OF-ADJUSTMENT           |           |       | NON-OOS                                               |                 |                                |             |            |           |
| Vehicle Violation: 393.95(f)     |                                                                                                    |        |                       | NO/INSUFFICIENT WARNING DEVICES                      |           |       | NON-OOS                                               |                 |                                |             |            |           |
| 2                                | 07/24/2018                                                                                         | 345678 | XYZ & ABC HAULING     | DOE, JOHN (co-driver)                                | 111111111 | VA    | 08/08/1988                                            | VA              | 2222222222                     | N           | 1          | 1         |
| Vehicle Violation: 393.42(a)     |                                                                                                    |        |                       | INOPERATIVE OR MISSING BRAKE                         |           |       | OOS - This violation does NOT apply to DOE, JOHN.     |                 |                                |             |            |           |
| 3                                | 08/22/2018                                                                                         | 345678 | XYZ & ABC HAULING     | DOE, JOHN                                            | 111111111 | VA    | 08/08/1988                                            | CA              | 3333333333                     | N           | 1          | 1         |
| Co-Driver Violation 393.45       |                                                                                                    |        |                       | Brake tubing and hose adequacy                       |           |       | NON-OOS - This violation does NOT apply to DOE, JOHN. |                 |                                |             |            |           |
| 4                                | 09/04/2019                                                                                         | 333444 | ABC 123 TRUCKING INC. | DOE, JOHN                                            | 111111111 | VA    | 08/08/1988                                            | WA              | 4444444444                     | N           | 1          | 3         |
| Driver Violation: 392.5(a)(2)    |                                                                                                    |        |                       | DRIVING UNDER THE INFLUENCE                          |           |       | OOS                                                   |                 |                                |             |            |           |
| State Citation#: TX568552        |                                                                                                    |        |                       | State Citation Result: Convicted of different charge |           |       |                                                       |                 |                                |             |            |           |
| Driver Violation: 395.3(a)(3)(i) |                                                                                                    |        |                       | DRIVING BEYOND 11 HOUR RULE                          |           |       | OOS                                                   |                 |                                |             |            |           |
| Violation Summary                |                                                                                                    |        |                       |                                                      |           |       |                                                       |                 |                                |             |            |           |
| Violation #                      | Description                                                                                        |        |                       |                                                      |           |       |                                                       | # of Violations | # of Out-of-service Violations |             |            |           |
| 393.47(e)                        | CLAMP/ROTO TYPE BRAKE(S) OUT-OF-ADJUSTMENT                                                         |        |                       |                                                      |           |       |                                                       | 1               | 0                              |             |            |           |
| 393.95(f)                        | NO/INSUFFICIENT WARNING DEVICES                                                                    |        |                       |                                                      |           |       |                                                       | 1               | 0                              |             |            |           |
| 393.42(a)                        | INADEQUATE BRAKE SYSTEM ON A CMV                                                                   |        |                       |                                                      |           |       |                                                       | 1               | 1                              |             |            |           |
| 395.3(a)(3)(i)                   | DRIVING BEYOND 11 HOUR RULE                                                                        |        |                       |                                                      |           |       |                                                       | 1               | 1                              |             |            |           |
| 392.5(a)(2)                      | DRIVING UNDER THE INFLUENCE<br><small>State citation result: Convicted of different charge</small> |        |                       |                                                      |           |       |                                                       | 1               | 0                              |             |            |           |

The summary counts and rates only include violations that were attributable to DOE, JOHN.

Report executed at: 5/4/2020 2:42:16 PM  
MCMIS snapshot date: 04/24/2020

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# WHO YOU HIRE MATTERS

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- What are your MVR requirements/standards?
  - Number of violations in a three-year period?
  - What qualifies as a major violation?
  - What are your self-reporting requirements?
- Driver experience?
- Minimum age?
- Years with a CDL?
- Training, road test, safety management

# Charge dismissed for school bus driver involved in St. Croix County crash



# EMBRACING TECHNOLOGY

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- Telematics provide many benefits including:
  - Fuel management
  - Enhanced safety - monitoring driver behavior and alerting drivers to potential hazards
  - Vehicle maintenance
  - Better driver behavior
  - Compliance - hours of service
  - GPS tracking
  - Productivity - tracking idle time, vehicle safety, and maintenance schedules
  - Asset tracking

## Truck Driver Admits He Was “Just Really Drunk.”

POLK, Wis. (WFRV) – The driver of a fully loaded semi-tractor trailer was arrested for OWI after the semi rolled onto its side off I-41 in southeastern Wisconsin on Wednesday. According to the [Washington County Sheriff's Office](#), the incident happened on I-41 in the Town of Polk around 3:15 p.m. on April 17 after an off-duty officer saw the semi allegedly weaving in and out of lanes.

The driver, later identified as a 26-year-old Milwaukee man, was reportedly spotted weaving onto the shoulder and then back across lanes of traffic near Sherman Road.

Deputies say the semi was then seen crossing the fog line and the center line of southbound I-41 ‘multiple times’ before the driver began to pull onto the side of the interstate. When the driver tried to pull onto the shoulder, he reportedly went down a grassy decline where the semi rolled onto its right side.

When additional deputies arrived, the Milwaukee man needed to be extricated through the windshield of the semi. After deputies noticed signs of impairment, a preliminary breath test was given to the driver, he allegedly blew a .297 and was subsequently arrested for OWI – First Offense. It was noted that no injuries occurred as a result of the incident. No other details were provided.



# EMBRACING TECHNOLOGY - DASH CAMS

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- 1) Evidence of an accident
  - 2) Training and coaching
  - 3) Emergency response assistance
  - 4) Monitor your equipment 24/7
  - 5) Insurance savings
- Forward facing and driver facing?

## “I never realized how far you travel in eight seconds.” Trucker who rear-ended car in Lake Elmo, killing driver, apologizes in new video



A driver was killed Feb. 27, 2018, in a crash at Minnesota 36 and Lake Elmo Avenue in Lake Elmo. (Mary Divine / Pioneer Press)

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### Fall's Hottest Barefoot Shoe: It's Leaving Dieticians Baffled

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### RECOMMENDED FOR YOU

**1** Gophers football: UCLA breaks Big Ten policy on availability reports

Gophers stake comeback to head

# EVIDENCE OF AN ACCIDENT

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- Most common reason businesses purchase dash cams
- Can exonerate you in the event of an accident
- Helps prevent fraudulent claims
- Improves the accident investigation process and speeds up payment of insurance recoveries
- Strongest piece of evidence in the event of a claim

# TRAINING AND COACHING

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- Allows you to view your drivers' interactions on the road
- Take time to acknowledge the good behaviors and practices
- Allows constructive feedback on close calls, near misses, and other opportunities
- An implementation process that includes your drivers will help them understand your motives and promote a culture of safety.

# OTHER BENEFITS

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- Emergency response assistance - can track your location and aid in the response to a crash or emergency situation
- 24/7 monitoring allows you to rewind the tape and see who backed into your truck while you were away.
- Insurance savings - Insurance underwriters have discretionary credits to give. These are available to help off-set rising costs to reward companies for investing in fleet safety with telematics and cameras.

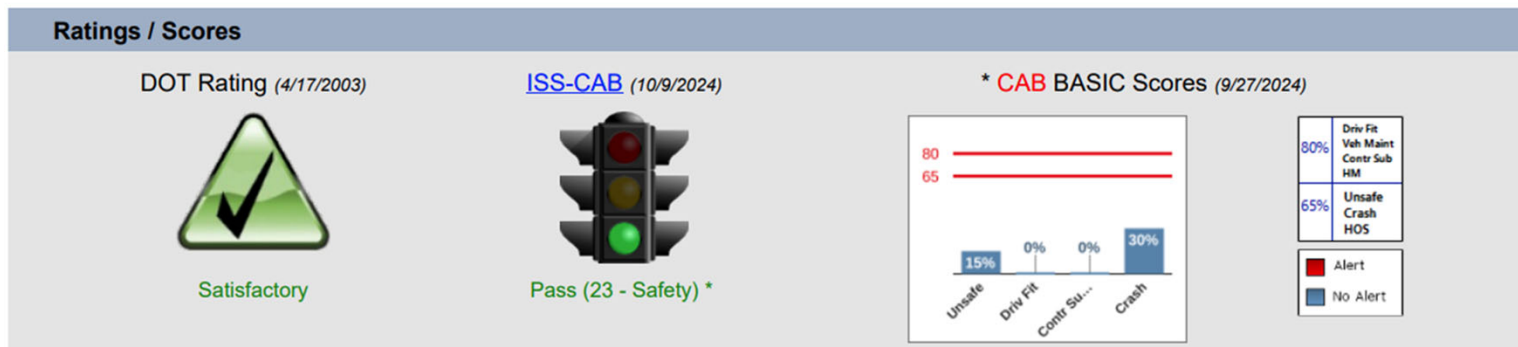
# SKELETONS IN THE CLOSET?

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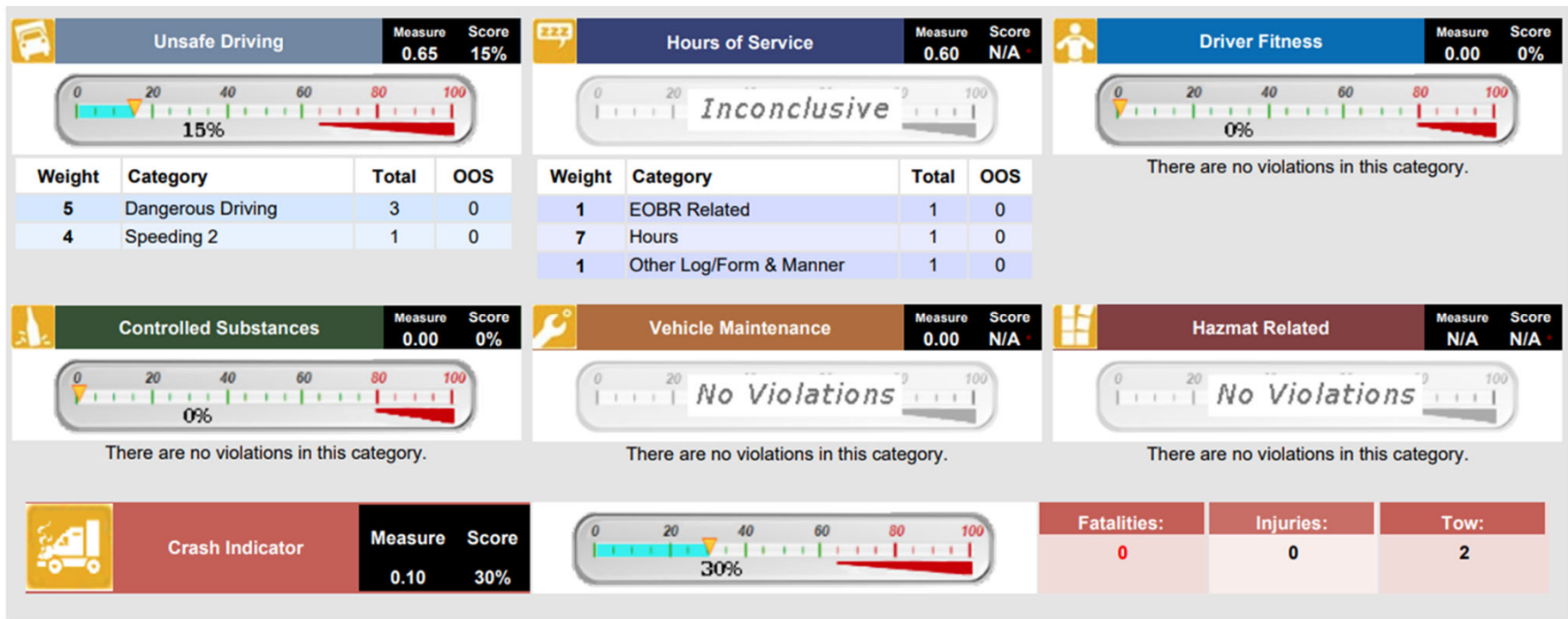
- Inspection Selection System (ISS) Score
  - FMCSA uses a formula based on Compliance, Safety, Accountability (CSA) score, Behavior Analysis and Safety Improvement Categories (BASICS), and SafeState rates
  - Number between 0 - 100
    - 0-50 = green light, truck doesn't need to be pulled over or inspected
    - 51-74 = yellow light, optional to pull the truck over
    - 75-100 = red light, buckle up, truck needs to be pulled in for an inspection
  - Used as a tool to help underwriters, law enforcement agents, and plaintiff attorneys in court.

# EXAMPLE 1

- OTR carrier
- Satisfactory DOT rating, ISS-CAB score of 23
- 23 power units, 0% OOS on 24 prior months of inspections
- Involved in an accident on 2/24/24 resulting in a fatality



# EXAMPLE 1



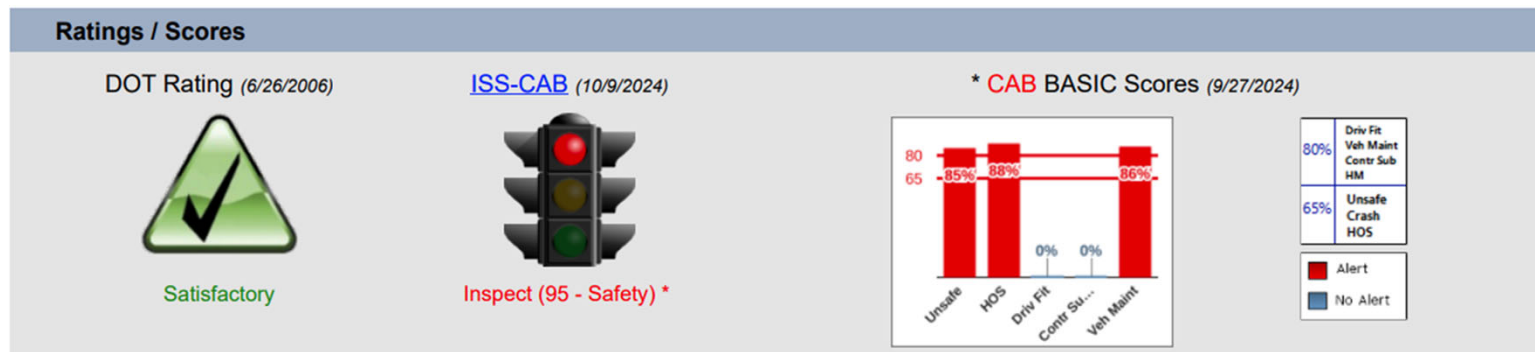
# EXAMPLE 1

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- You have a tire blow out and cause a fatal accident... What types of things does that leave an attorney to point to?
  - What is the likelihood of this claim going nuclear?
  - What does the MVR of the driver look like?
  - Were there cameras involved?
  - Who was at-fault?
  - Any DOT severe violations?
  - Any DOT enforcement cases?

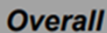



# EXAMPLE 2

- OTR carrier
- Satisfactory DOT rating, ISS-CAB score of 95
- 53 power units, 0% OOS on 24 prior months of inspections
- Involved in an accident on 7/18/24 resulting in two fatalities



## Out of Service Violations / Accidents

*Out of Service Violations*      *The following inspection and accident information from SAFER is based on results for 24 months prior to 10/14 /2024*

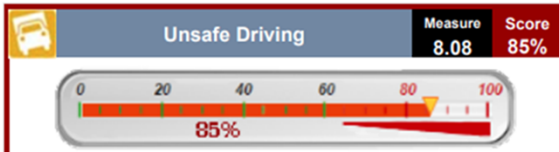
|  Overall |  Vehicle |  Driver |  Hazmat |
|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Total Inspections: 47<br>Total Out of Service: 11                                         | Total Inspections: 20<br>Total Out of Service: 7                                          | Total Inspections: 47<br>Total Out of Service: 1                                           | Total Inspections: 0<br>Total Out of Service: 0                                            |
| Out of Service %: <b>23.40%</b>                                                           | Out of Service %: <b>35.00%</b>                                                           | Out of Service %: 2.10%                                                                    | Out of Service %: 0.00%                                                                    |
| National Average %: 19.50%                                                                | National Average %: 22.30%                                                                | National Average %: 6.70%                                                                  | National Average %: 4.40%                                                                  |
| <b>Difference In %: 3.9%</b>                                                              | <b>Difference In %: 12.70%</b>                                                            | <b>Difference In %: -4.60%</b>                                                             | <b>Difference In %: -4.40%</b>                                                             |

### Accident Summary

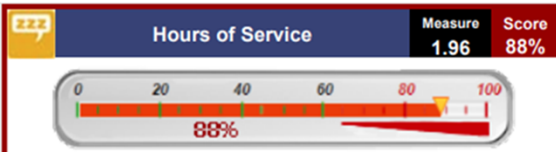
| Fatal | Injury | Tow | Total Reportable | Accident to Power Unit Ratio | National Average Accident to Power Unit Ratio |
|-------|--------|-----|------------------|------------------------------|-----------------------------------------------|
| 1     | 0      | 0   | 1                | 9.09%                        | 4.71%                                         |

### Accident Details (36 months of accidents)

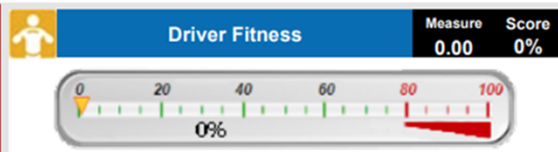
| Date | Location | State | Fatalities | Injury | Towaway | Crash Determination |
|------|----------|-------|------------|--------|---------|---------------------|
|      |          | FL    | 3          | 5      | Yes     |                     |



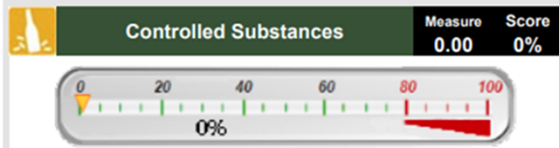
| Weight | Category                | Total | OOS |
|--------|-------------------------|-------|-----|
| 5      | Dangerous Driving       | 1     | 0   |
| 3      | Misc Violations         | 3     | 0   |
| 1      | Other Driver Violations | 1     | 0   |
| 4      | Speeding 2              | 3     | 0   |
| 7      | Speeding 3              | 2     | 0   |
| 10     | Speeding 4              | 1     | 0   |



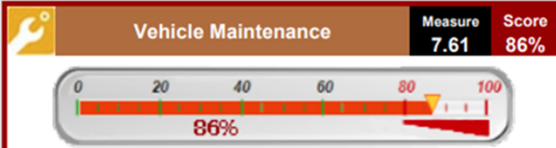
| Weight | Category                     | Total | OOS |
|--------|------------------------------|-------|-----|
| 1      | EOBR Related                 | 9     | 0   |
| 7      | False Log                    | 3     | 1   |
| 7      | Hours                        | 3     | 0   |
| 5      | Incomplete/Wrong Log         | 2     | 2   |
| 1      | Other Log/Form & Manner      | 6     | 0   |
| 1      | Hours, Nominal               | 2     | 0   |
| 3      | Fail to transfer ELD records | 1     | 0   |



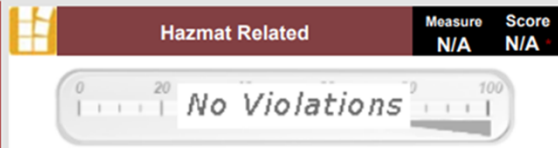
There are no violations in this category.



There are no violations in this category.



| Weight | Category                             | Total | OOS |
|--------|--------------------------------------|-------|-----|
| 4      | Brakes Out of Adjustment             | 1     | 0   |
| 4      | Brakes, All Others                   | 13    | 2   |
| 2      | Cab, Body, Frame                     | 1     | 0   |
| 2      | Clearance Identification Lamps/Other | 4     | 1   |
| 2      | Emergency Equipment                  | 2     | 0   |
| 4      | Inspection Reports                   | 3     | 0   |
| 6      | Lighting                             | 5     | 4   |
| 3      | Reflective Sheeting                  | 2     | 0   |
| 1      | Securement Device                    | 1     | 0   |
| 3      | Tiedown                              | 1     | 1   |
| 8      | Tires                                | 3     | 1   |
| 2      | Wheels, Studs, Clamps, Etc.          | 2     | 2   |
| 1      | Windshield/ Glass/ Markings          | 3     | 0   |



There are no violations in this category.

# EXAMPLE 2

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- You have a tire blow out and cause a fatal accident... What types of things does that leave an attorney to point to?
  - What is the likelihood of this claim going nuclear?
  - What does the MVR of the driver look like?
  - Were there cameras involved?
  - Who was at-fault?
  - Any DOT severe violations?
  - Any DOT enforcement cases?

# ELIMINATING SKELETONS - DATAQ

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- DataQ - FMCSA system that allows you to request and track a review of data issued by the FMCSA that may be incorrect
- Allows you to appeal and challenge incorrect rulings or violations
- Improves the accuracy of your ISS-CAB scores
- Helps you avoid unnecessary attention by the DOT, underwriters, and potentially attorneys



# QUESTIONS?

