

Behind the Wheels Podcast Transcription

Season 3 Episode 2

Did They Rest Their Case? Recapping The 2022 TMC Wheel-Off Mock Trial

Announcer

You're listening to Behind the Wheels with Doug Mason, Dave Walters, and Mike Yagley. This is a show where we talk about heavy truck and medium duty axle ends. Doug, Dave, and Mike bring close to 100 years of experience and expertise in the transportation business.

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Mike Yagley

Welcome to another episode of Behind the Wheels. I'm Mike Yagley.

Doug Mason

I'm Doug Mason.

Dave Walters

And I'm Dave Walters.

Mike Yagley

Well, we have a little bit of a special episode today. Today we're going to be focusing on a mock trial that happened at the TMC Annual Meeting in Orlando, Florida, this spring. It was a huge success. Our own, Dave Walters, was a primary mover behind that. So we were going to talk to him a little bit about what was, what happened behind the scenes, how did it come together, and just go into that in a little bit more detail. So I guess, Dave, thanks for sharing this with us. I sat in the audience for the mock trial, and it was eye opening. It was so instructive to me. There were so many things that I learned there.

Mike Yagley

I've actually been involved with this business for a long time and have talked to a lot of people about a lot of different, of course every business, in this industry has to deal with litigation at some point or another. And so I thought I knew what I was talking about, but I learned a lot.

Doug Mason

A lot of surprises in this one, Mike. As you went through it, I felt the same way as the different witnesses and that type of thing went forward. I've never really sat in a courtroom situation. So I think this is why it was so important to the members of TMC who came and saw this. It was real world. The real take away from this is Dave is going to tell us a real-world scenario that will be beneficial to many of our fleets out there.

Mike Yagley

So Dave, let's start off with, why don't you give your view on what happened? What was the mock trial and how did it come together?

Dave Walters

Okay. We did a mock trial about 14 years ago and in that particular thing, it was more on tire stuff. It was like this, but it was more on tires. So we kind of had a background. So we were at one of the leadership breakfast and they said, "Man, we would love to do another mock trial." And they said, "Could you come up with a quote unquote real-life case?" So kind of copying what I would say the old time Dragnet show. The names are changed to protect the innocent.

Mike Yagley

And you two had the Dragnet music too, didn't you?

Dave Walters

Yeah. And it's funny when, I basically pulled out a case that I did 20 years ago and I pulled that back out of the files and changed the names, changed some stuff, but it was still a real-life case and sent that to everybody. And they read this over and they're like, "wow, this is really cool." Okay. So this is a little different than our first mock trial, because we was basically on tires and they said, "can you find a cast of characters to kind of like what this trial actually went, find a hub expert", which one of my best friends and happens to be Roger Maye the engineering manager for ConMet and Kevin Rohlwing. I have worked with him on many of these cases and he was actually, wanted to be the plaintiff's expert.

Dave Walters

So they were looking for a fleet. Boy, nobody really wanted to volunteer for that, but I have been good friends with Maverick for a long, long time. And they said, "yep, we'll do it." And Peggy was always going to be in this because this was kind of her last meeting. So it all came together. It really did. And we actually did a lot of practices before time. And it was kind of like the real case because Kevin and his attorney basically had to send us out, like here's what he's going to claim. So it was kind of like the discovery process in a real court case. And so basically then the truck fleet, Peggy, myself, and Roger had to come up with defenses and the only trouble is, we came up with defenses that probably could have lasted three or four days. So they said, well, now you got about eight minutes because the way this trial's going to work. So try to get your punches back in about eight minutes. A lot of things had to be changed because of the time.

Doug Mason

Yeah. Certainly, was not like a real life court case that would've gone on for days and days and days. But I think what boiled down was very clear. And I guess one of the things that I wanted to ask is, there were a large number of companies involved in this particular case. Why so many companies involved in it?

Dave Walters

That's really the norm, Doug. I've done all of Alcoa's legal investigations for 33 years, to be honest with you. And what they do is, whenever there is a wheel off, the trucking company's always involved, the truck manufacturer will be named. In this case they basically threw out the truck manufacturer very quickly because we kind of knew that they got thrown out of the original trial quickly. The truck manufacturer is always involved, you're going to have the hub or axle end, somebody like that involved, the wheel guy, the tire guy, the tire service. So everybody gets like a subpoena and say, hey, you're involved. And then you have this period where you can go and look at the products and basically when you do that, that's when I kind of get and say, okay, here's the way I see it. And you can get taken out at that time or you know you're going to be in the next thing and that's when we go into depositions. So it's very, very real life.

Mike Yagley

So you mentioned that this was a wheel off. The case was it was about a wheel off that happened. And we've had several shows where we've talked about wheel offs, but just so in case our listeners are new to the show. A wheel off is exactly what it sounds like. A wheel comes off of the vehicle for whatever reason and we've all seen videos of wheels going down the road, possibly hitting somebody, hitting a vehicle, doing a heck of a lot of damage. So that's what we had here, is this wheel off event and it was really interesting to me, the standard of knowledge of the, we'll call it, the plaintiff, the guy who, whoever was suing the companies. The plaintiff, he came in with an expert that I wouldn't call an expert at all and that's what really shocked me. Why don't you talk a little bit about that, Dave?

Dave Walters

Yeah. Now it's funny because my great friend, Kevin Rohlwing from tire industry association, he became Dr. Ned Hackley. In a normal trial, these guys, the plaintiff attorneys will hire some expert that they believe is knowledgeable about the axle in business. And they can make any type of false claims they want, that's why discovery in one of these cases can go on forever because whatever his claims are, they have to send to the opposing attorneys and basically, we go through that and then we send back our responses. And that can go on for, I mean, I hate to say it, years, what they call discovery. Now in discovery, they can subpoena your emails, they can subpoena your service manuals, they can subpoena all these things. Those guys, if they're really knowledgeable, they got to figure out the angle that they're going to attack us companies.

Dave Walters

And like I said, can happen for years. We couldn't do this whole thing for a year, but that's why when we let Dr. Ned Hackley present all these just claims, this is how it's, he's just throwing bombs up and hopefully something will stick and somebody's going to be stick because somebody was hurting this case and who's responsible for hurting this person. And unfortunately, in most cases, it's the last one who bolted that product onto the truck and that's normal. So the only way to kind of get around that if you're the tire service or the fleet is to make sure you document everything.

Mike Yagley

Okay. So one of the things that, like I said, that's really struck me was, and if I remember right, the Dr. Ned Hackley, did he have a, even an engineering degree or he was, or his-

Doug Mason

He is a farmer.

Mike Yagley

His PhD was in sociology or something like that.

Dave Walters

Yeah. In other words, basically he was an engineer type, but he got his doctorate in social or, you know what I mean. Which is common. I had to go against one time, my PhD from the University of Kentucky and he never knew anything about a hub of drama or anything, but he was making claims of stuff that you wouldn't believe. In the real world unfortunately, these lawyers, they believe if they find somebody that is a college doctor, PhD type, that, hey, that's got to be an expert because they're teaching kids and stuff. So in most cases, the experts that these lawyers find are suspect at desk. So when we get into a case and they hire somebody quote from the industry, that's when you kind of perk up and say, okay, I'm going to put on my A game because this person's actually from the industry.

Doug Mason

Something that really struck me too, Dave is, the lack of knowledge of the industry, of that particular expert witness. Anybody who's in the manufacturing field is familiar with either TS or ISO or whatever quality system that is necessary for that particular segment of business. And all of the required documentation seems to be very clear, and it has to come down to an error somewhere or missing information that would actually lead to a potential conviction or issue for that particular company. If you do things right, and you record everything properly and maintain those records, then you really don't have anything to fear. You have them proof, would that be a correct statement?

Dave Walters

Yes. Over my years of doing this, when you go into one of these trials or into a suit, when you see mostly quote academia folks on the other side, you feel very good because they really don't have any knowledge of the industry. It's when you get somebody. And again, I've been in wheel ends for 33 years. When I see a name familiar on the other side, I already know, okay, this guy knows enough that he won't have the false claims like what Dr. Ned Hackley, but unfortunately that's kind of what they get. They get these guys that make false claims. You're defending yourself. The manufacturers really have a great script because we're so disciplined. We have the truck manufacturers, even more disciplined, assembling the traps, it's really defending yourself against false acquisitions, this is what you're doing.

Mike Yagley

So that brings up watching the way the mock trial went down. It kicked off with Kevin playing this Dr. Ned Hackley and making all sorts of just bogus claims that anybody in the industry knows, especially, any experts in the industry knows are not true. He laid out this whole thing based on his experience as a young kid, learning from his grandfather and that was his great expertise. Then you had the, you mentioned the suppliers came in, I think, and they came in and they had all their quality documentation pulled together and they could say, yeah, we know exactly every step of the way in the manufacturing of this part, we can show that this part was manufactured properly.

Mike Yagley

That there were no problems, and we checked this and we checked that and we got to pull out all their quality documentation. And so it came down to, at the end of the day, like you said earlier, it came down to that fleet and that maintenance or organization, the last people to touch it. They were just sort of hanging out there on their own without the documentation to protect themselves. So why don't you finish off the story there for us, Dave, and sort of tell our listeners what that resulted in.

Dave Walters

Well, and it's really funny because the attorney that was the judge, Steve, he basically said, we're going to elect a jury from the audience. We want them to make a claim and come up with their own decision. We could point all these things, but it was really a real live jury. And you don't go in front of experts when the jury trial. All they know is somebody was injured. A lot of material was broken apart and the attorneys selected just 1.2 million in this case, which this case was a lot more than that when everything was handed out. But they came up with a settlement and said, okay, who gets this? Now they were talking about, the jury is instructed by the judge to say, okay, you can award them 1.2, you can award them zero.

Dave Walters

You can award them any number between zero and one. In this case, Steve, didn't explain all this because of time. So normally the jury gets a very dictated. Here's where your things are. You can put 80% on the trucking company, 10% on the tire road service that didn't take this off. You could give some to the wheel company, some to the hub company. I mean, you can do all this type of stuff. So, we could have gone on for hours on a real trial, but a lot of things had to be limited because of the time.

Mike Yagley

And at the end of the day, I think that it was actually the fleet that got stuck with the maintenance, whoever did the maintenance got stuck paying the 1.2 million dollars.

Doug Mason

Real quick question. Did the outcome of the jury in the TMC case match what happened in your original case?

Dave Walters

Again, here was the big change Doug, and this was some of the change. In the real trial tire service did it last, so whoever did it last got hit with the whole settlement. What Peggy did in hers basically said they skin the tire instead of taking it off. So again, we changed one fast.

Doug Mason

Got it.

Dave Walters

But the fact is basically whoever touched it last was the person that was going to get hit. So it's the same of whoever put it on last. And most of the court cases that we get involved in, it is whoever did it last, who put that wheel and that tire on last?

Mike Yagley

That's what I was going to ask is, what do you see in the field? So it is typically whoever last touches it. So that means those maintenance folks that are listening to this podcast. This is a real big takeaway here. This is, let's talk a little bit about some of the guidance that came out of that for those maintenance folks, because they gave a little bit of guidance at the end of the discussion on things you can do to make that you can at least limit your exposure to being the guy who has to carry all that burden for any sort of litigation. You want to talk about that a little bit, Dave?

Dave Walters

Yeah. And basically, what the whole point of this mock trial was to get across documentation. When you put on that tire wheel combination, if you document, like on a work order, there's actually tools out there now that can print out a sticker, you can put on the work order saying here's what each nut was torque to, here's everything. So the more documentation, and you can have saying, I did this correctly, I torque them right, I did all this. I think that's what we were trying to get at. And then even the tire companies, every major tire company was there and it's like, you got to document your stuff. Everything has to be documented. In this case Peggy was talking about the tire service said, "look, we skinned it. We didn't take it off." You know what I mean.

Dave Walters

The practice is used because we're out in the road and we don't want to do that. And so again, it's documenting that because whoever really put that on last, it's going to be liable. And the other thing now with your pre-trips, basically the driver should be walking around before and after each trip and saying, wow, something doesn't look right there. So when me and Roger basically had to get a wheel and a hub, mine easy because I took one of the wheels to shame and brought, got it, set down. Roger actually had to make that hub with the problems and the things that actually was in the real trial. And again, having pieces and parts there, sometimes the jury looks at that and says, wow, that's awful. Something's really bad. It's got soft metal, or they did this wrong. Well, again, as you go down through the trial, the manufacturers have everything in order. And it's really looking at the trucking fleet, the road service, who put those on, what's their practices, did you torque them, did you do all this stuff? And that's really where it comes down to in the real world.

Mike Yagley

Yeah. I want to take a moment here and talk a little bit. Tire guys never get tired talking about inflation and wheel guys never get tired talking about torque and that was one of the big takeaways at the end. When you're talking about wheel offs, one of the line items that came up in the mock trial was that there was no 50-mile re-torquing. That was a huge issue, and you talked a little bit at the end of it, you had a brief talk to the audience that was there about opportunities to manage that TMC guidance on how to do that properly. You want to talk about that?

Dave Walters

Okay. RP237 was written by myself. I was the chairman of that committee years ago, because one time we had an attorney named Ed Drake and he was extremely intelligent. And he basically said, if we can come up with something that is more practical than this 50 to a hundred mile recheck, because it's almost impossible for a fleet to do that, that will be a great thing. So basically, the first thing we had to do was get data. Luckily, I was really good friends with one person with Air Products and I did another one with Curtis Cummings who was with a big freight company. So basically, and I had another one. So I had three different companies get their data and they basically started to do the five to 10 mile set in and come back and re-torque, and what we found is once you did that little seating of the five to 10 miles seating, we didn't lose any torque after that.

Dave Walters

So basically, check this every time the trucks would come in, they would check 30 different fasteners on the wheel, ends on the whole truck and trailer and say, okay, nothing's moved. Everything's good. And that was really important. So RP237 was written with actual, real live fleets given me the data and it's a great thing for fleets, because they said, we can go out and do even figure eights in the parking lot and get these wheels seated in, come back in and document that, hey, we did the torque check and brought them back up the spec.

Dave Walters

And really, if you bring them in and you fill out the paperwork again, documentation, nobody wants paperwork, but that's a must in our thing and do your checks and say, okay, my system's in control. I'm measuring torque. Everything looks good. It's basically what we do in manufacturing is making sure that our process is in control. So, I mean, RP237 is the same thing for those guys. If, say, for example, if the fleet could pull out all his records saying, here I do this to every truck, I do this re-torque check, here's blah, blah, blah. That plaintiff lawyer's going to go, wow, that guy's got his stuff together. It's going to be hard. You know what I mean? So again, I think we kept preaching that torque is critical and documentation is probably even more critical.

Mike Yagley

Like I said, that was a real learning experience. I know for myself, I took away. I never realized that when the plaintiff's expert witness came, they didn't need to be experts, that they could just say whatever, based on their opinions, that was a real eye opener for me. And there was so much there that was just great. What's the plans? Did they record that?

Dave Walters

Yes. They actually recorded that. TMC, you're not allowed to record anything, but again, they kind of knew this was going to be special, so they recorded this, actually put it on the TMC website. So members of TMC can come back and view that and look at that. They kind of knew that this was going to be a big hit and the ratings was out of this world. The attendance was great. And they're like, wow, this really was a big show. So thank goodness they did tape it, put it on the website. And really turned out to be great.

Doug Mason

I guess that's a little promo for any of the fleets out there that may be listening to this. If you're not a member of TMC, there are so many benefits to your fleet from an industry wide perspective. And just what we're talking about today would be just a little glimpse of that. So just a little for TMC and the benefit, it will be for any fleet who does not happen to be involved at this time.

Mike Yagley

Well, I think that does it for our discussion of the mock trial at TMC and the spring of 2022, really a great event. TMC really outdid themselves on that one. Hopefully our listeners will get a chance if they weren't there to go out there and go to the TMC website, take a look at that video and you'll learn a lot about the way the litigation process works and hopefully it will help inform you on maybe some changes you can make to your processes, if you're running a shop on how to manage that. For our listeners, and remember, you can always subscribe to our podcast on Apple Podcast, Spotify, Google Podcasts and please, if you like what you hear, share it on social media. To submit if you have any questions or comments, if you want to take a look at the episode transcript so you can visit our website, AlcoaWheel.com/podcast. I really want to thank you all for listening, we'll see you next time.

Announcer

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