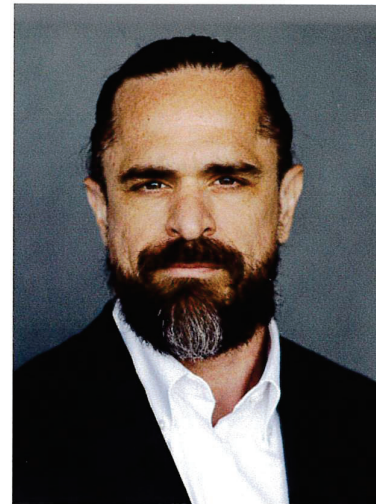




Navigating the Pitfalls of Multistate Trucking Litigation



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A call comes in from a former client about a potential new case. His brother-in-law from New Jersey just died while on the job in a truck wreck in Virginia. The truck driver was from Missouri and worked for a motor carrier headquartered in Madison County, Illinois. The load may have been brokered by a large broker out of Tennessee. The former client wants you to talk to his sister about her options in pursuing a wrongful death claim while others handle the worker's compensation, criminal and probate cases. Also, the deceased had two biological daughters he fathered as a sperm donor, adopted later in life, but the adoption was rescinded a few years before his death. Your head starts spinning about all the possible multistate legal hurdles and pitfalls.

By its nature, trucking litigation almost always crosses state lines in both fact and law. A tractor-trailer may be owned by a motor carrier headquartered in one state, leased through a parent company in another state, hauling freight brokered from a third entity, with a driver from a state far across the country who is involved in a collision hundreds of miles away from everything else. Moreover, the victims of truck wrecks are often injured or killed traveling for work or leisure away from their home state. As a result, in many high-stakes trucking cases with significant damages, the resulting lawsuit rarely fits neatly within one jurisdiction's borders.⁷¹

Plaintiff attorneys handling these cases must navigate a sometimes-perilous landscape of venue, jurisdiction, probate and choice-of-law considerations, each

of which can dramatically affect case value and outcome. Multistate trucking litigation requires strategic foresight and procedural vigilance in selecting the forum, identifying the proper parties and coordinating with local counsel under varying state laws. This article highlights key pitfalls and practical strategies for plaintiff lawyers litigating interstate trucking cases.

1. Choice of Venue and Personal Jurisdiction

Venue selection is one of the most consequential strategic decisions in a trucking case. The carrier may be incorporated in Delaware, maintain its principal place of business in Illinois, and operate throughout the Southeast. Trucking cases often present multiple options for venue based on the multiple parties involved. One might be tempted to simply file in the venue that seems most plaintiff friendly. However, understanding whether the court will have jurisdiction is also key.



Daimler AG v. Bauman and *Bristol-Myers Squibb Co. v. Superior Court* narrowed general jurisdiction, limiting where a corporate defendant can be sued. Because general jurisdiction now typically exists only in the defendant's place of incorporation or principal place of business, most trucking cases must rely on specific jurisdiction.⁷² That means the plaintiff must show the defendant purposefully directed activities toward the forum and that the cause of action arises out of those activities. Thus, factors for establishing jurisdiction include:

- Where the trip originated and was dispatched;
- Where the load was brokered;
- Where driver supervision or maintenance occurred; and
- Whether the carrier holds local business licenses or has a terminal in the state.

A well-pleaded complaint that ties the carrier's conduct to the forum state can deter early dismissal motions, but a motion for *forum non conveniens* will likely be filed whenever a lawsuit is filed outside of the state where the wreck occurs. If that occurs, remember deference to the Plaintiff's choice of forum is an automatic fact in the plaintiff's favor. Apart from that, many of the factors going into a *forum non conveniens* analysis are antiquated concepts that are not as concerning in a digital age. Witness availability matters less in a world with Zoom. The location of documentary evidence matters less in the world with digital scanning and Dropbox. While you may ultimately be successful and the payoff for fighting to keep venue may ultimately be worth the fight, getting too creative with venue can result in motions practice that delays the case for months or longer.

2. Probate Court Issues and Establishing an Estate

When a trucking crash results in death, the first procedural challenge may arise

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not in civil court but in probate court. Each state has distinct requirements for opening an estate and appointing a representative to bring a wrongful death or survival action. If the decedent resided in one state but died in another, counsel must determine whether to open an estate in the domicile state, the accident state or both. Some jurisdictions require ancillary probate to confer standing on a personal representative litigating out of state.

To avoid costly delays and potential standing challenges:

- Confirm who qualifies as the proper personal representative and statutory beneficiaries under applicable wrongful death statutes; and
- Identify whether survival actions must be filed separately or jointly.

Track statute of limitations differences for wrongful death versus personal injury claims.

Early probate coordination prevents jurisdictional pitfalls and ensures that the right plaintiff brings the right claim in the right court. That is why it is essential to research who the local probate lawyer or lawyers are who work with the plaintiffs' bar to set up estates in major death cases in the forum state. That person will understand the interplay between civil procedural and probate law better than a probate lawyer who has no experience with wrongful death tort cases.

3. Choice of Law and Conflicts Analysis

Determining which state's substantive law governs the case can alter liability standards, available damages and recovery caps. Most courts will apply the forum state's conflict-of-laws rules, and those rules vary widely. Some states follow the "most significant relationship" test (Restatement (Second) of Conflict of Laws §§ 6, 145), which is a multi-factor test that focus on the location where the parties have the most significant relationships. Others still adhere to the *lex loci delicti* or "place of the wrong" rule. For example, Georgia follows *lex loci delicti*, so if a crash in Georgia involves a Tennessee carrier and an Alabama resident, then Georgia courts will apply Georgia law to control the ensuing tort.



The governing law could dictate whether punitive damages are available, whether negligent entrustment is recognized or whether joint and several liability applies. Moreover, be mindful of foreign migrant clients who are injured in states that follow the "most significant relationship" test. In states like Texas, for example, with large populations of foreign migrants from Latin American countries, trucking companies will argue the unfavorable damages law of the plaintiff's home country should be applied to limit damages. Therefore, before filing, it is worth conducting comparative law research to identify the most favorable jurisdiction for your client.

4. Varying Laws of Liability and Damages

Even once the applicable law is identified, differences in state tort regimes can dramatically affect outcomes. Key variations include:

- Comparative versus contributory negligence: A few states still follow contributory negligence bars that preclude a plaintiff's case if they are even 1 percent at fault. Others allow recovery even when plaintiffs are 50 percent at fault, while some have pure comparative schemes. For the states that have a contributory negligence bar, like Virginia,⁷³ the advantage is those states typically have joint and several liability, which often assists plaintiffs in finding a defendant who can pay the judgment, and there is an exception to the contributory negligence bar if a case of punitive damages can be made.
- Punitive damages: Caps and pleading requirements differ, with some states requiring clear and convincing proof of specific intent, while others apply more lenient standards.
- Wrongful death valuation: States such as Georgia measure "the full value of the life," while others, like New York and New Jersey,⁷⁴ limit recovery to pecuniary loss.
- Joint and several liability: Some jurisdictions have abolished it entirely; others permit full recovery from any liable defendant.
- Caps on non-economic damages: Many states have caps on noneconomic damages, which often account for the largest portion of a case's value. Cases in states with these caps require looking at building up special damages through life care plans and lost earnings analysis.
- Collateral Source and other evidentiary issues: Value can also be impacted by the forum state's rules on admissibility of collateral source payments, seatbelt use, etc.

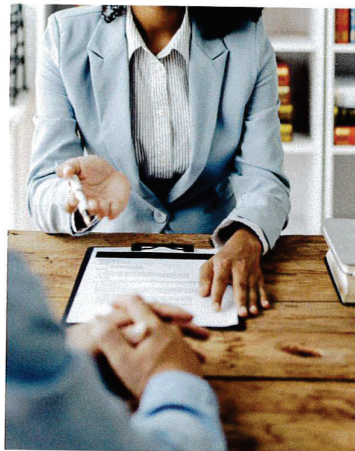
These distinctions are not merely academic—they can swing value by millions of dollars. Early choice-of-law research and damages analysis should be part of every multistate trucking case strategy.

5. Local Rules, Discovery Practices and Expert Disclosures

Engaging solid local counsel to understand the forum state's law on damages, case value and overall strategy is a must. Procedural pitfalls often arise not from substantive law but from local practice variations. Federal and state courts differ on expert disclosure deadlines, page limits and discovery scope. Some districts require early expert identification or court approval before more than a certain number of depositions. Local rules may dictate when preservation letters must be issued or how to compel production in discovery.

Practical tips include:

- Review standing orders and local rules for each judge and district. Make sure to understand the local customs for discovery disputes, whether local counsel must be present at depositions and hearings, and rules for whether attorney/client conversations during deposition breaks are privileged.
- Consult local counsel on customary scheduling and discovery practices, getting trial dates, judges and jury pools.



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Failure to follow local procedure can result in exclusion of key experts or sanctions for discovery violations—mistakes that can devastate a complex liability case.

6. Coordinating with Local Counsel and Pro Hac Vice Admission

Few plaintiff lawyers can personally appear in every jurisdiction where their trucking cases arise. Partnering with qualified local counsel is both a logistical necessity and a strategic asset. Each court sets its own *pro hac vice* requirements; some require sponsorship by a local attorney who must sign every pleading or appear at all hearings; others require annual fees or local bar registration.

Beyond compliance, local counsel provide invaluable insight into regional jury tendencies, judicial expectations and local mediator reputations. Choose co-counsel who are experienced, communicative and aligned with your litigation philosophy. Formalize relationships through written agreements covering division of responsibilities, client communication and fee allocation.

7. Dealing with Lien Laws and Subrogation Across States

Lien resolution in multistate trucking cases presents its own maze of conflicting rules. The governing law may depend on where treatment occurred, where the case was filed or where the lienholder is located.

For example:

- Hospital and medical provider liens differ in notice, filing and priority requirements.
- Workers' compensation subrogation rights vary dramatically—some states require consent to settlement, others allow full reimbursement, and still others mandate equitable reduction.
- ERISA and Medicare liens overlay federal law but interact differently with state lien statutes.

Failure to resolve liens properly can expose clients and attorneys to personal liability and delay settlement disbursement. Identify lienholders early, open communication channels and document all reductions or compromises in writing.

8. Post-Settlement Procedures

Even after settlement, multistate complications persist. Distribution of settlement funds may require court approval under differing minor settlement, wrongful death settlement or probate supervision rules. Out-of-state estates may need ancillary approval before disbursing funds to heirs. Lien resolution must be finalized under the correct jurisdiction's procedures, including notice to Medicaid or hospital lienholders. Federal Medicare compliance adds another layer of complexity.

In addition, carriers and insurers based in other states may require court-approved



releases or structured payment plans subject to their home-state law. Be cautious when settling with multiple defendants from different jurisdictions; verify that releases satisfy all parties' state-specific language requirements to avoid future enforcement disputes.

Finally, consider tax implications for heirs or plaintiffs residing in other states. Certain jurisdictions impose inheritance or estate taxes that affect net recovery. Coordinating with local probate and tax counsel ensures that settlements are distributed efficiently and lawfully. Post-settlement diligence may not be glamorous, but it protects clients and safeguards the attorney's fee from future disputes.



Conclusion

Success in multistate trucking litigation comes from combining national expertise in trucking law with local adaptability in procedure and practice. The plaintiff lawyer who anticipates jurisdictional challenges, coordinates effectively with local counsel and manages lien and probate complexities will not only avoid costly pitfalls but also maximize recovery for the client.

Bio

Briant G. Mildenhall is a Board-Certified trucking attorney at Fried Goldberg in Atlanta, Georgia. He has handled trucking cases in 23 different states and serves on the Board of Regents for the Academy of Truck Accident Attorneys.

Briant received his undergraduate degree from Brigham Young University in Foreign Literature and Russian and received his Juris Doctor from the University of Georgia.

Besides specializing in trucking law, Briant has also dedicated many hours to judicial reform in Eastern Europe. He speaks Russian and has taught trial advocacy skills to law students in Ukraine and Moldova.

Briant and his wife live in Roswell, Georgia, with their five children and two dogs, where they enjoy hiking, mountain biking, soccer, and fine pizza.

Bio

Nathan Gaffney is a partner at Fried Goldberg and has a national practice that is dedicated to catastrophic truck accident cases. Nathan works closely with Joe Fried on Fried Goldberg's biggest cases and is known for being a legal strategist and thinker. Nathan is an emerging voice and thought leader in legal AI innovation. He chairs the ATAA AI Committee and the TLG AI Committee, and sits on the executive board of the AAJ's Technology Section. Nathan brings a blend of strategic insight and hands-on expertise to catastrophic trial law, while passionately helping shape the future of the profession through a forward-thinking AI lens.

¹ Most states follow the most significant injury test from the Restatement (Second) of Conflict of Laws for determining the choice of law in a tort action. Restatement 2d of Conflict of Laws §§ 6, 145.

² But see Georgia and Pennsylvania statutes, 42 Pa. Cons. Stat. § 5301(a)(2) and O.C.G.A. § 14-2-1505(b), which provide corporate general jurisdiction when corporations register to do business in those states.

³ See *Thomas v. Snow*, 162 Va. 654, 660 (1934); *Griffin v. Shively*, 227 Va. 317, 321-22 (1984).

⁴ New Jersey Revised Statutes Section 2A:31-1 et seq.; New York Estates, Powers and Trusts Law 5-4.1 et seq.

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