

## A Big Verdict Highlights Hazardous Trucking Practices

In light of the recent [\\$90 million verdict against Werner Enterprises](#), it's time we ask: Are trucking companies doing enough to train their drivers and keep the roads safe?

After a low in 2009, the number of fatal accidents involving trucks is on the rise: 4,400 large trucks and busses were involved in deadly crashes in 2016, a 6 percent increase from the year before[1]. The victims of one of those fatal collisions were Jennifer Blake and her children, who filed the lawsuit against Werner in Harris County, Texas.

During black ice conditions, Blake and her children were passengers in a pickup which skidded on the ice and ended up in the oncoming lane of the interstate. Shiraz Ali, a Werner student truck driver who was operating an 18-wheeler alone, crashed into Blake's car, killing her seven-year-old son, leaving her 12-year-old daughter a quadriplegic and causing Blake and another of her sons to suffer brain damage.

The Texas Commercial Driver's License manual requires that truck drivers "slow to a crawl" and exit the highway when there are icy conditions. But Ali was rushing to deliver a just-in-time load that had to be in California the next day, and he kept driving, traveling at speeds upwards of 60 miles per hour. The jury returned an \$89.9 million verdict against Werner, determining that if the company had properly trained and supervised Ali, he wouldn't have been on the road and this tragedy would have been avoided[2].

Unfortunately, Werner isn't the only trucking company that allows student drivers to take the wheel with insufficient training. The question is, how are they getting away with it?

Although safety advocates argue that federal laws are too lax, trucking companies are required to adhere to certain training and safety standards. The Federal Motor Carrier Safety Regulations require that motor carriers assure that all drivers have the knowledge and skill to safely operate the carriers' equipment[3]. The [Federal Highway Administration](#) has interpreted this regulation to mean that simply passing a driving test is not enough. In an opinion letter, the agency stated:

Title 49 CFR 391.11(b)(3) (Qualification of Drivers) requires that a driver must be able, by reason of experience, training, or both, to safely operate the commercial vehicle he or she drives. This requirement is not met by simply ascertaining that a prospective driver holds a CDL.[4]

Despite clear guidelines that truck operators need to have sufficient training beyond a basic CDL, carriers are increasingly relying on student drivers because of the lack of experienced drivers available. Studies from the American Trucking Association show that the U.S. is seeing a shrinking number of qualified truck drivers. In 2017, the industry lacked an estimated 50,000 drivers, and this shortage could increase to more than 174,000 by 2026[5].

The shortage is due largely to an aging population of experienced drivers who are retiring, in addition to an astounding 95 percent turnover rate[6]. Truck drivers face poor working conditions: long hours, decreased earnings, uncomfortable sleeping conditions, stress, fatigue and susceptibility to illness — all factors that make life on the road unpleasant. Studies have also shown that truck drivers suffer from

higher rates of divorce and troubled home lives. As a result, many drivers are leaving the industry, and fewer are attracted to it.

Meanwhile, the demand for over-the-road shipping is growing, particularly with the popularity of internet retail giants like [Amazon](#) and [Walmart](#) and the increased demand for just-in-time delivery. Rather than warehouse inventory, companies are willing to pay higher shipping rates to have smaller shipments arrive at guaranteed delivery times. This has caused an explosion in the number of shipments required. Major carriers like Werner and [Swift Transportation](#) must have giant fleets, some comprised of more than 25,000 tractor units, to meet their customers' demands.

Obviously, these trucks need drivers, and hiring more drivers costs money. As in every industry, the cheapest source of labor is the entry-level employee pool. Carriers typically pay student drivers less than \$10.00 an hour, significantly less than what a long-time driver would make. In an industry with such a high turnover rate, it makes sense, at least for carriers' bottom lines, to target student drivers who fetch lower pay.

To attract new drivers to man their growing fleets, many carriers have formed massive training programs to recruit and attract drivers, some of which receive federal funding to subsidize the cost.[7] Major carriers have programs that train up to 15,000 drivers a year. To incentivize applicants to stay on as drivers after completion, many carriers offer to reimburse students for the cost of training — which can be as much as \$4,000 — if they sign a two-year employment contract. Some carriers also offer sign-on bonuses and ever-increasing per-mile compensation to new drivers.

These training programs typically involve a week of classroom instruction in topics such as logging hours of service, trip planning, basic truck operations and truck inspection. Most training programs also require that student drivers be paired with an experienced driver for 200 to 300 hours of behind-the-wheel driving. The experienced driver, who is trained and “certified” by the carrier as a mentor, remains in the front passenger seat to supervise and train the student. Depending on progress, a student should receive six to 10 weeks of practice and mentorship before being released to handle a truck on public roads. Sounds like a fair amount of training, right?

Unfortunately, all that good sense and prudence vanishes when carriers are facing tight deadlines. This is when “team driving” — when two drivers are placed in a single tractor-trailer — rears its ugly and dangerous head.

By law, solo drivers are limited to 11 hours of driving a day during a 14-hour window before they must have 10 off-duty hours to rest. These required breaks are a vital and time-tested way to ensure the safety of drivers and the driving public. However, they restrict the distance that a tractor and its load can travel over a given period. From carriers' perspectives, this is a big problem when customers are expecting a last-minute delivery at a specific time.

Enter team driving. When the first driver exhausts their hours of service for the day, the second driver takes over the wheel while the first driver retires to the sleeper berth to rest and reset their hours. This way, the tractor-trailer only needs to stop to refuel. Team driving is used widely in the industry,

especially for just-in-time shipping. It means big bucks for carriers, not only because they can charge customers more for faster shipping, but because it increases efficiency and cuts costs.

Another way to cut costs even further? Combine training programs and team driving. Some, if not most, major carriers have policies that allow mentors to authorize students for team driving after as few as 50 hours behind the wheel. In fact, some carriers even incentivize mentors to quickly approve students for team driving by paying them not only for the miles they drive, but also for the miles their students drive.

Students are still driving with mentors, but, in many instances, the mentors are in the sleeping berth getting the required rest to allow them to drive the next leg of the trip. They are not in the passenger seat next to the student driver where they can observe, supervise and provide guidance. Mentors in the sleeping berth cannot anticipate and recognize dangerous driving conditions and step in to help when necessary.

Moreover, truck drivers, both new and experienced, overwhelmingly dislike team driving. Drivers are often under significant pressure to reach their destination as quickly as possible. Long hours, close quarters and personality conflicts make it the most difficult driving position to fill — and it's a position that's increasingly being given to novice drivers.

This dangerous practice raises the question: If students are prohibited from driving a truck alone before completing 200 to 300 hours of training, shouldn't they also be prohibited from driving while their mentor is off the clock and possibly asleep?

There is no explanation for this practice other than carriers' quest for higher profits. There's no doubt this scenario is beneficial for them. They get an inexpensive driver in the student, who cannot refuse this team driving assignment as part of their training. Meanwhile, the carrier commands higher freight rates from its just-in-time customers.

And what happens to the student? They're left alone for the majority of their "training" program, operating an 80,000-pound 18-wheeler on public roads with virtually no experience. They can't learn anything from a mentor who is asleep. Carriers should want to invest in aspiring drivers and train them for lifelong careers, but sadly, that's not always what happens.

Trucking lawyers, industry experts, truck drivers, legislators and the traveling public must be made aware of the dangerous use of untrained and unsupervised student drivers on American highways. Until we shine a bright light on this practice, it will not be studied, regulated or prohibited, and we can anticipate more lawsuits like Werner.

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[1] Large Truck and Bus Crash Facts 2016, Federal Motor Carrier Safety Administration.

[2] Blake v. Werner Enterprises, 2015-36666 in the 127th District Court, Harris County, Texas.

[3] Federal Motor Carrier Safety Regulations 49 CFR §383.110.

[4] "On Guard", U.S. Dept. of Transportation, Federal Highway Administration Publication No. FHWA-MC-97-004, January 1997.

[5] Truck Driver Shortage Analysis, Bob Costello, American Trucking Association 2017.

[6] "Fleets Seek Drivers as Turnover Rate Hits 95%", Transport Topics.

[7] The Moving Ahead for Progress in the 21st Century Act (MAP-21).