

These requests were served after it was learned that, incredibly, Bradley Barkley was trying to either read or send an e-mail on a laptop device at the precise moment this collision occurred. After discovery this fact, Plaintiffs have begun discovery to learn what attempts, if any, were undertaken by Werner (one of the largest trucking companies in the world) to prevent its drivers from e-mailing while driving or to prevent the on-board computers from being operational while the vehicle was in motion.

Additionally, Plaintiffs have been able to prove through the e-mails that Bradley Barkley falsified his logs on the day of and day before the collision resulting in the death by fire of Ms. Camacho. Barkley admitted that though he claims to have slept from 1:45 a.m to 7:15 a.m. on the day of the incident and from 12:00 p.m. to 6:15 p.m. on the day before the incident, the e-mails and various receipts show otherwise. Plaintiffs have learned that all logs prior to eleven days before the occurrence in question have been **destroyed** despite a TRO, a Request for Production and a Order granting a Motion to Compel being on file **prior** to the destruction of the logs.

2.00 DISCOVERY IN GENERAL

The Supreme Court of Texas has repeatedly stated that discovery is generally favored. See e.g., Chapa v. Garcia, 848 S.W.2d 667 (Tex. 1992) (discovery is designed to allow litigants to get fullest knowledge of facts and issues before trial); Garcia v. Peeples, 734 S.W.2d 242 (Tex. 1987) (modern discovery rules were designed to make trial less of a game of blindman's bluff and more of a fair contest with the basic issues and facts disclosed to the fullest practicable extent); Jampole v. Touchy, 673 S.W.2d 569 (Tex. 1984) (the ultimate purpose of discovery is to seek the truth, so that disputes may be decided by what the facts reveal, not by what facts are concealed).

The trial court has broad discretion as to the scope of discovery between litigants. Independent Insulating Glass/Southwest, Inc. v. Street, 722 S.W.2d 798 (Tex.App.--Fort Worth

1987, writ dismissed) (ultimate purpose of discovery is to seek truth so that lawsuits are decided by what truth the facts reveal and not what facts are concealed).

3.00 MOTION TO COMPEL

3.01 Defendant Werner Enterprises' Responses to Plaintiffs' Fourth Request for Production

Request for Production No. 1 seeks all operating manuals, training manuals and safety manuals relating to the OmniTRACS System on its trucks. These documents are relevant to Plaintiffs' claims in that Defendant Barkley was operating the Qualcomm system while driving and that Werner did not take sufficient action to prevent this or have systems in place to prevent this and these documents should be produced.

Request for Production No. 2 seeks all operating manuals, training manuals, and safety manuals relating to SensorTRACS System on Defendant Warner's trucks. These documents are relevant to Plaintiffs' claims in that Defendant Barkley was operating the Qualcomm system while driving and that Werner did not take sufficient action to prevent this or have systems in place to prevent this and these documents should be produced.

Request for Production No. 3 seeks all operating manuals, training manuals, and safety manuals relating to JTRACS System on Defendant Warner's trucks. These documents are relevant to Plaintiffs' claims in that Defendant Barkley was operating the Qualcomm system while driving and that Werner did not take sufficient action to prevent this or have systems in place to prevent this and these documents should be produced.

Request for Production No. 4 seeks all disciplinary reports, memos sent to all drivers, e-mails, QUALCOMM messages, and other documents either mentioning, discussing, or disciplining drivers relating to the use of the QUALCOMM system while driving. These documents

are relevant to Plaintiffs' claims in that Defendant Barkley was operating the Qualcomm system while driving and that Werner did not take sufficient action to prevent this or have systems in place to prevent this and these documents should be produced.

Request for Production No. 5 seeks all documentation, training manuals, safety manuals, and other documentation provided to drivers or used during the training of drivers relating to the use of the QUALCOMM messaging system or any other products provided to Werner by QUALCOMM. These documents are relevant to Plaintiffs' claims in that Defendant Barkley was operating the Qualcomm system while driving and that Werner did not take sufficient action to prevent this or have systems in place to prevent this and these documents should be produced.

Request for Production No. 6 seeks any correspondence, memorandum or other documents generated by either QUALCOMM, Werner or any consultants to Werner relating to the programming of any QUALCOMM products so that they could not be operated while the vehicle is in motion. These documents are relevant to Plaintiffs' claims in that Defendant Barkley was operating the Qualcomm system while driving and that Werner did not take sufficient action to prevent this or have systems in place to prevent this and these documents should be produced.

Request for Production No. 7 seeks all videotapes used to train drivers relating to the topics of using the QUALCOMM system or any QUALCOMM products, avoiding driver distractions, keeping a proper lookout, timely braking or slowing the tractor-trailer and the maintenance of an inspection of the truck's braking system. These videotapes are relevant to Plaintiffs' claims in that Defendant Barkley was operating the Qualcomm system while driving, that Werner did not take sufficient action to prevent this or have systems in place to prevent this as well as relevant to the accident facts and these videotapes should be produced.

Request for Production No. 8 seeks all internal investigations, audits or similar

inquiries into whether Werner drivers were using QUALCOMM products while driving tractor-trailers. These documents are relevant to Plaintiffs' claims in that Defendant Barkley was operating the Qualcomm system while driving and that Werner did not take sufficient action to prevent this or have systems in place to prevent this and these documents should be produced.

Request for Production No. 9 seeks all QUALCOMM messages and GPS data for each tractor operating out of the Gene Autry / Ardmore terminal from January 2001 until July 2001. These documents are relevant to Plaintiffs' claims in that Defendant Barkley was operating the Qualcomm system while driving and that Werner did not take sufficient action to prevent this or have systems in place to prevent this and these documents should be produced.

Request for Production No. 10 seeks documents pertaining Defendant Werner's net worth. This net worth request is relevant to Plaintiff's punitive damages pleadings.

Request for Production No. 11 seeks the original and/or amended petitions to prior lawsuits involving similar injury accidents. Because the Defendant is self insured, this information will be readily available.

4.00 MOTION FOR SANCTIONS AND MOTION FOR CONTEMPT

Pursuant to this Court's Order dated February 15, 2002 compelling Defendant to produce various documents in this lawsuit, Defendants were required to produce all documents relevant to the pleaded claims and defenses. (See Court's Order attached as Exhibit "B" respectively.) After receiving Defendants' responses to production and reviewing the documents produced by Defendant, Plaintiffs' counsel again made repeated attempts to secure the production of the documents identified in the Court's Order.

Defendant produced nearly some of the documents requested. Plaintiffs hereby advise the Court that counsel for both parties have conferred several times in a good faith attempt to resolve

the issues raised in this Motion, however, Defendant is unwilling to reach a resolution as to the issues raised in this Motion and has apparently destroyed some of the documents since the date of this Court's Order..

Furthermore, Defendant is in violation of the Court's Temporary Restraining Order, dated December 21, 2001. (See Temporary Restraining Order attached as Exhibit "C".) The Defendants have destroyed the logs protected under this Restraining Order.

5.00 MOTION FOR SANCTIONS

Pursuant to T.R.C.P., Plaintiffs would respectfully request that they be awarded reasonable expenses incurred in making this Motion to Compel, including attorneys' fees. Based on the arguments presented above, Defendants' failure to produce the identified documents and destroy documents, which are clearly relevant to the claims and defenses in this lawsuit, is not substantially justified, and therefore, an award of reasonable expenses, including attorneys' fees, is proper.

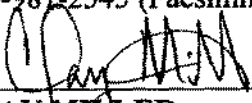
6.00 PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Honorable Court grant their Motion to Compel and order Defendants to produce all responsive documents within seven (7) business days; award reasonable expenses and attorneys' fees; and for all such further and other relief to which they may show themselves justly entitled.

Respectfully submitted,

LAW OFFICES OF MILLER AND CURTIS, L.L.P.
Ten Thousand North Central Expressway, Suite 1450
Dallas, Texas 75231
214-987-0005
214-987-2545 (Facsimile)

By:




CLAY MILLER
STATE Bar No. 00791266
WILLIAM B. CURTIS
STATE Bar No. 00783918
LOUIS S. HAKIM
STATE Bar No. 2401276

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

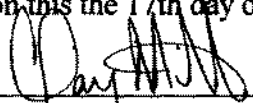
I, Clay Miller, attorney for plaintiffs, certify that I have personally conferred with Andy Fifield, attorney for Defendants, and an agreement on the merits of this Motion could not be reached.



CLAY MILLER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above pleading was forwarded to all counsel of record via facsimile and regular mail on this the 17th day of July, 2002.



CLAY MILLER