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2012 U.S. Dist. LEXIS 188963**[A](#) Rutstein v. Cindy's Trucking of Ill. Inc., 2012 U.S. Dist. LEXIS 188963** (Copy citation)

United States District Court for the District of Wyoming
 August 8, 2012, Decided; August 8, 2012, Filed
 Civil No. 11-CV-320-F

Reporter: **2012 U.S. Dist. LEXIS 188963** | 2012 WL 8813611

KENNETH RUTSTEIN, Plaintiff, vs. CINDY'S TRUCKING OF ILLINOIS INC et al., Defendants.

Subsequent History: Motion granted by [Rutstein v. Cindy's Trucking of Ill., Inc., 2012 U.S. Dist. LEXIS 188964 \(D. Wyo., Aug. 8, 2012\)](#)**Core Terms**

truck, testimony, expert, testify, commercial, driver, tractor-trailer, negligence, knowledge, vehicle, motor carrier, industry, trailer, drive, experience, standards, accident, regulate, reliable, claim, party, part, industry standard, understand, condition, damage, standard of care, expert witness, pharmaceutical, professional

Counsel: **[1]** For Kenneth T Rutstein, on behalf of the heirs of; and personal representative of the Estate of Valerie Elaine Rutstein, Plaintiff: [Terry W Mackey](#), LEAD ATTORNEY, Cheyenne, WY; Richard H Honaker, HONAKER LAW OFFICES, Rock Springs, WY.

For B&J Trucking Service Incorporated, an Indiana corporation, Defendant: [Lloyd E Smith](#), [Meggan J. Hathaway](#), [MURANE & BOSTWICK](#), Cheyenne, WY.

Judges: Kelly H. Rankin, United States Magistrate Judge.**Opinion by:** Kelly H. Rankin**Opinion**

ORDER RULING ON DEFENDANT B & J TRUCKING SERVICE, INC.'S MOTION IN LIMINE AND DAUBERT MOTION TO EXCLUDE CERTAIN TESTIMONY AND OPINIONS OF PLAINTIFF'S EXPERT MATTHEW MEYERHOFF

This matter is before the Court on Defendant's Motion to exclude testimony of Plaintiffs' Expert Witness Matthew Meyerhoff and the Court having carefully considered the motion and response thereto, and being fully advised in the premises, FINDS:

1. The case originally comes before the Court on, Plaintiff, Kenneth T. Rutstein, the surviving spouse of Valerie Rutstein, claims for wrongful death and negligence arising out of a motor vehicle collision which occurred on March 24, 2010, in Sweetwater County, Wyoming. Specifically, at approximately 9:00 a.m. on that day, Valerie Rutstein was **[2]** driving her 2005 Ford Escape eastbound on Interstate 80 on her way to work as an LPN in Rawlins, Wyoming. Visibility was limited by fog, and the highway surface was icy. Plaintiff alleges the driver of a D.M. Express ("D.M.") Freightliner tractor-trailer combination, David Montes, was driving too fast for existing conditions and negligently failed to keep the truck under control, causing it to fishtail, rotate and roll across both lanes of 1-80, coming to rest on its top off the right side of the highway. Plaintiff alleges that the D.M. driver's negligence initiated the multiple vehicle collisions that followed. Traveling eastbound behind the D.M. truck was a KLLM Transport Services ("KLLM") Freightliner tractor-trailer being driven by Deserie Chaney. Plaintiff alleges Chaney abruptly braked in reaction to the D.M. truck crash, nearly lost control of the tractor-trailer, and stopped the tractor-trailer in the right-hand lane of I-80, blocking that lane of traffic. William Prawl was driving a

Budget rental truck eastbound pulling a trailer loaded with a Ford Focus. Plaintiff alleges that because Prawl was negligently driving his vehicle too fast for conditions and following the KLLM **[3]** truck too closely, the right rear side of the Budget rental truck collided with the rear of the KLLM tractor-trailer. The trailer with the Ford Focus broke free of the Budget rental truck and wedged under the left rear of the KLLM trailer, protruding all of the way across the right-hand lane of I-80 and extending slightly over the centerline into the left-hand lane.

Plaintiff alleges the driver of Defendant Hinz' Peterbilt tractor-trailer, Michael Miller, also traveling eastbound, negligently stopped in the left-hand lane of I-80, completely blocking that lane when that lane was clear ahead of him and he could have reasonably proceeded eastward past the crash scene. Plaintiff also alleges that the driver of a Uinta County School District No. 4 bus, Lynette Arnell, negligently stopped the school bus in the left-hand lane of I-80, well behind the Hinz tractor-trailer, completely blocking that lane in the immediate area where a later collision would occur between Defendant Cindy's Trucking ("Cindy's") tractor-trailer and Rutstein. The Cindy's driver, Rodger Kern, was required to abruptly steer to his right to avoid colliding with the school bus, causing the Cindy's tractor-trailer to jack-knife **[4]** across both lanes of I-80. Plaintiff alleges Kern was driving too fast for conditions and was otherwise negligent, causing his tractor-trailer to crash into a Kenworth tractor-trailer owned by Savannah Transport, Inc. that was parked in the right-hand emergency lane. The Cindy's trailer slid across both lanes of travel, striking the rear of the school bus as Arnell began to move the bus into the median.

Plaintiff alleges that, despite slowing her vehicle down to a reasonable speed, Valerie Rutstein was unable to see the Cindy's trailer across both lanes of eastbound I-80 due to the foggy conditions, and her vehicle struck the Cindy's trailer in the left-hand lane. After Rutstein's vehicle struck the Cindy's trailer, the driver of Defendant B&J Trucking Service's ("B&J") Freightliner tractor-trailer, Robert Darby, allegedly driving too fast for conditions, crashed into the Rutstein vehicle with such force that he drove the Rutstein vehicle through the Cindy's trailer splitting it in half. Plaintiff alleges that the negligence of Prawl, and the negligence of Kern, Darby, Arnell, Montes, Chaney, and Miller, imputed to their employers respectively, were proximate causes of the death of **[5]** Rutstein. Plaintiff claims damages for funeral and burial expenses, economic and pecuniary losses in the amount of \$624,811.00, and for loss of probable future care, companionship and comfort.

Defendant Cindy's Trucking of Illinois, Inc., generally denies Plaintiff's allegations against it and affirmatively alleges the following defenses: (1) failure to state a claim upon which relief can be granted; (2) the injuries and damages claimed were caused by the acts and/or omissions of parties other than Cindy's Trucking and/or its employees, whether or not joined as a party herein, and that the actions of Cindy's Trucking and/or its employees were not the proximate cause of any injuries or damages suffered by Plaintiff; (3) comparative fault by the deceased; and (4) "Act of God". Defendant B&J Trucking Service Incorporated generally denies Plaintiffs' allegations against it and affirmatively alleges the following defenses: (1) failure to state a claim upon which relief may be granted; (2) the damages alleged by Plaintiff resulted from the acts or omissions of other actors, over whom B&J had no control or right of control, and for whom B&J is not responsible; (3) Plaintiff's alleged damages **[6]** resulted from the supervening or intervening acts or omissions of other parties or non-parties, over whom B&J had no control or right of control, and for whom B&J is not responsible; (4) the injuries and damages of the wrongful death claimants, if any, may have been caused, in whole or in part, by the negligence of Plaintiff's decedent such that any recovery must be diminished by Plaintiff's decedent's fault pursuant to [Wyo. Stat. § 1-1-109](#); (5) if liability is assessed against B&J, the negligence of all parties and non-parties, including that of the Plaintiff's decedent, must be assessed and apportioned pursuant to [Wyo. Stat. § 1-1-109](#); and (6) Plaintiff may have failed to comply with the requirements for appointing a personal representative or other conditions precedent for filing a wrongful death action in Wyoming.

Defendant Hinz Trucking, Inc., generally denies Plaintiff's allegations against it and affirmatively alleges the following defenses: (1) failure to state a claim upon which relief can be granted; (2) Plaintiff's claim is barred in that the actions of third parties, named or unnamed, were the sole proximate cause of this accident; and (3) comparative fault of decedent, **[7]** Valerie Rutstein.

2. In the instant motion, Defendant B & J Trucking Service requests that the Court exclude expert testimony and opinions of Plaintiff's expert Matthew Meyerhoff with respect to: 1) accident reconstruction; 2) industry standards and Defendants' compliance with the Federal Motor Carrier

Regulations and discovery; 3) Defendant's state of mind; 4) and the standard of care of professional truck drivers.

3. Plaintiff generally opposes Defendant's motion and requests that said motion be denied. Specifically, Plaintiff argues that Mr. Meyerhoff has the requisite training, experience, and background in the trucking industry to allow him to testify as an expert in commercial truck driving field. Further, Plaintiff argues Mr. Meyerhoff's testimony is admissible under [Rule 702 of the Federal Rules of Evidence](#) and [Daubert v. Merrell Dow Pharmaceuticals, Inc.](#), 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993) in that Mr. Meyerhoff reached his conclusions by utilizing the same methodology and practices he uses daily in his consultation business.

4. The Court begins by noting with respect to the instant motion Matthew Meyerhoff's opinions are subject to the same standards of reliability that govern the expert **[8]** opinions of strictly scientific experts retained for the purposes of litigation. See, [Kumho Tire Co., Ltd. v. Carmichael](#), 526 U.S. 137, 151, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999) (holding that *Daubert* applies even when an expert's opinion relies on skill or experience-based observation). The Court notes that under [Rule 702](#) and [Daubert v. Merrell Dow Pharmaceuticals, Inc.](#), 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), the Court is to ensure that any and all expert testimony or evidence admitted is not only relevant, but reliable. [Rule 702 of the Federal Rules of Evidence](#) states:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

[Rule 702](#) imposes upon courts the obligation to act as gatekeepers, by ensuring all expert testimony whether scientific, technical, or any other specialized **[9]** knowledge, is both reliable and relevant. [Kumho Tire Co., Ltd. v. Carmichael](#), 526 U.S. 137, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999); [Daubert v. Merrell Dow Pharmaceuticals](#), 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993). Courts engage in a two part analysis in determining the admissibility of expert opinion. First, the court must determine whether the expert is qualified by knowledge, skill, experience, training, or education to render an opinion. Second, the court must determine whether the expert's opinions are sufficiently reliable. [Ralston v. Smith & Nephew Richards, Inc.](#), 275 F.3d 965, 969 (10th Cir. 2001): [FED. R. EVID. 702](#); [Daubert v. Merrell Dow Pharmaceuticals](#), 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993); [Kumho Tire Co., Ltd. v. Carmichael](#), 526 U.S. 137, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999).

5. The Court has reviewed Mr. Meyerhoff's qualifications and finds Mr. Meyerhoff is qualified to testify about the standards and practices in the commercial trucking industry. Mr. Meyerhoff is a consultant to commercial trucking companies and has been involved in the commercial driving world for years and as such is aware of and understands the Federal Motor Carrier Regulations and its correlation to standards and practices in the commercial trucking industry.

6. In addition, [Rule 702](#) requires that the **[10]** evidence or testimony presented assist "the trier of fact to understand the evidence or to determine a fact in issue." [FED. R. EVID. 702](#). [Rule 702's](#) "helpfulness" standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility. [Daubert v. Merrell Dow Pharmaceuticals](#), 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993). Mr. Meyerhoff's experience and knowledge of the commercial trucking industry may be beneficial to the trier of fact, since Mr. Meyerhoff reviewed all available and applicable information then utilized the information to formulate his opinions. Here, Plaintiff has designated Mr. Meyerhoff to opine as to the collision, the vehicles involved, driver's actions or inactions, compliance with the Federal Motor Carriers Regulations, and applicable commercial trucking industry standards. Mr. Meyerhoff's education and experience, including his years of service in the commercial trucking industry, may be beneficial as a typical juror may not possess the knowledge or background necessary to understand commercial trucking industry practices or standards. The principles employed by Mr. Meyerhoff in formulating his opinions are grounded on his experience in the commercial **[11]** trucking industry and specifically his work as motor carrier consultant, and as such are sufficiently reliable. Therefore, the Court will not strike Mr. Meyerhoff as an expert witness in this case.

7. The Court will next address Defendants' arguments that Mr. Meyerhoff's testimony should be excluded on the basis that it invades the province of the Court to advise the jury of applicable law and then allowing the jury to apply that law to the facts. The Court agrees with Defendants general assertion that an expert witness may not "state legal conclusions drawn by applying the law to the facts." *Okland Oil Co. v. Conoco Inc.*, 144 F.3d 1308, 1328 (10th Cir. 1998). However, the Court finds that while Mr. Meyerhoff's testimony is based, in part, on legal standards obtained by utilizing the Federal Motor Carrier Regulations, for the most part Mr. Meyerhoff's testimony does not invade the province of the Court or jury as the testimony does not state a legal conclusion. Rather, Mr. Meyerhoff is utilizing industry standards and practices, of which the Federal Motor Carrier Regulations plays an integral part, and comparing those industry standards to Defendants actual conduct. Nevertheless, the **[12]** Court finds some of Mr. Meyerhoff's proposed testimony drifts close to the line and will therefore limit his testimony. Specifically, Mr. Meyerhoff may testify as to his knowledge and understanding of the Federal Motor Carrier Regulations as well as to his knowledge and understanding of the practices and standards in the commercial trucking industry. Further, Mr. Meyerhoff may testify regarding Defendants' actions in the case at bar. However, Mr. Meyerhoff may not testify as to whether or not any actions by Defendants would constitute a violation of law, as that is an issue for the jury.

8. The above mentioned limitation and analysis should address Defendants' concerns regarding any testimony as to state of mind or any failure to comply with procedure. Again, Mr Meyerhoff may testify as to Defendant's conduct and how such conduct relates to industry standards and practices. However, Mr. Meyerhoff may not testify as to what a party was thinking or specifically state that an action or inaction was in violation of the rules of civil procedure. Any such inferences and determinations shall be left to the finder of fact.

9. In addressing Defendants' argument to exclude any testimony concerning **[13]** the standard of care for a professional truck driver the Court notes that the Wyoming State Supreme Court has addressed the issue by stating that "all drivers, regardless of class, are held to the same standard of care under the circumstances." *State, Dept. of Transp. v. Robbins*, 2011 WY 23, 246 P.3d 864 (Wyo. 2011) citing (*Cervelli v. Graves*, 661 P.2d 1032, 1039 (Wyo.1983)). Therefore, Mr. Meyerhoff is prohibited from addressing the standard of care for a professional truck driver. However, the ultimate finder of fact may take into account an individual's experience and knowledge as "the jury must be allowed to consider all of the circumstances surrounding an occurrence, including the characteristics of the actors in reaching their decision." *Cervelli*, 661 P.2d at 1037.

9. Finally, with regards to any testimony by Mr. Meyerhoff concerning the reconstruction of the accident, Local Rule 26.1(g)(1) limits parties to the designation of one expert witness to testify in a particular field. Plaintiff has already designated Mr. Olof Jacobson, a professional accident reconstructionist, to testify in the case at hand. While the bulk of Mr. Meyerhoff's testimony concerns areas other than accident reconstruction **[14]** the Court is concerned that any such testimony by Mr. Meyerhoff would be redundant, waste judicial resources, and violate Local Rule 26.1(g)(1). Therefore, the Court will not allow Mr. Meyerhoff to testify concerning accident reconstruction.

NOW, THEREFORE, IT IS ORDERED that Defendant's Motion to exclude testimony of Plaintiffs' Expert Witness Matthew Meyerhoff be, and the same hereby is, GRANTED in part, and DENIED in part.

IT IS FURTHER ORDERED that Plaintiff's expert Matthew Meyerhoff be allowed to testify concerning the Federal Motor Carrier Regulations, commercial trucking industry standards and practices, and Defendants' actions.

IT IS FURTHER ORDERED that Mr. Meyerhoff's testimony may not address whether or not any actions by Defendants would constitute a violation of law, nor may his testimony address Defendants' state of mind or any failure to comply with procedure.

IT IS FURTHER ORDERED Mr. Meyerhoff is prohibited from addressing the standard of care for a professional truck driver.

IT IS FURTHER ORDERED that Plaintiff's Expert Matthew Meyerhoff not be allowed to testify concerning accident reconstruction.

Dated this 8th day of August, 2012.

/s/ Kelly H. Rankin

Kelly H. Rankin, **[15]** United States Magistrate Judge

Terms: **2012 U.S. Dist. LEXIS 188963**

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