

Transportation Defense Practice Group gears up for February seminar in Tampa



By Brian Cox

The transportation industry is always on the move. And so are the legal issues with which it contends.

No one knows that better than veteran Dallas defense attorney Tab Keener, who has had his finger on the pulse of the transportation industry for 37 years.

A shareholder at Downs & Stanford, P.C., Keener has tried many complex commercial and personal injury defense cases to verdict. His Texas Tech Law Review article on premises liability – “Can the Submission of a Premises Liability Case be Simplified?” – has been cited in multiple cases and law review articles.

Keener brings his vast experience and knowledge to the Primerus Transportation Defense Practice Group where he has served on the executive committee for eight years and is currently the chair.

The group is a valuable resource for staying abreast of trends



Downs & Stanford attorney Tab Keener (far left) has sat on the Primerus Transportation Defense Practice Group’s executive committee for 8 years and is currently the chair. The group’s annual seminar is Feb. 15-16 in Tampa where Keener is organizing a panel of biomechanical experts.

in the industry, he says, which is reflected in its attendance numbers and high participation rate.

The Transportation Defense Practice Group focuses on assisting the transportation and trucking industry in the defense of wrongful death, personal injury, property damage, and cargo claims. Member firms are prepared to assist with accident investigations and assessment on an immediate basis.

In addition to Keener, the Transportation Group’s executive committee is comprised of immediate past chair Ted Perryman, and members Jeff Finley, Jack Henning, and Heather Stover.

“We’re an active committee,” says Keener, a graduate of Southern Methodist University where he was a two-time letterwinner for the football team. “We’re proud of it.”

The group’s primary feature is its annual two-day seminar, which this year will be held February 15-16 in Tampa, Fla., and will offer content that centers largely around concerns in the trucking industry.

“There is a lot of focus on the trucking industry these days by the plaintiff’s bar,” explains Keener. “Part of it is being driven by all the advertising. From the personal injury attorney’s perspective, they know there will be insurance involved.”

It doesn’t help that people tend to not like trucks, he says, which can make them an easy target.

“But if we don’t have trucking, we don’t have commerce,” he notes. “We don’t have goods on our shelves. We don’t have products delivered to our homes.”

A perennial subject discussed at the seminar is nuclear verdicts, which Keener says is a particular concern in the trucking industry. A session will explore ways to avoid a nuclear verdict, what to be on the look out for, and how to address damages that reach into seven figures and beyond.

“We try to break that down a little bit and look at what happened and why it happened and how we can prevent that as

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lawyers in our defense practice,” says Keener. “We look at it from a standpoint of arguments to be made with respect to damages.”

He offers the example of talking upfront about the value of a dollar with the jury panel during voir dire and pointing out how it should be the same in the courtroom as it is out in the everyday world.

“You’d be surprised that that can sometimes get lost on a jury,” he says.

Keener says the plaintiffs’ bar is actively organizing seminars and strategy conferences to explore methods and approaches that might generate higher verdicts. The Transportation Defense Practice Group’s seminar is designed to counteract those efforts, he says.

Another session will look at best practices for preserving evidence such as logbooks, video, and vehicles in the wake of an accident. Avoiding spoliation of evidence is of primary importance, says Keener. Preserving all evidence must be acted on immediately and appropriately.

“We think that’ll be helpful information for both the trucking clients and the lawyers,” says Keener.

Keener himself is organizing a panel of biomechanical experts, an area he finds particularly interesting.

“We deal with biomechanical experts all the time,” he says. “What we do often times is bring in a biomechanical expert who is trained not only in accident reconstruction, but also on the interaction of outside forces on the human body. It’s a fertile area for a lot of fights between the plaintiffs and the defendants.”

Topics that Keener refers to as “nuts and bolts” are regularly on the agenda. At the February seminar, Richard Pianka of American Trucking Associations will speak on current regulatory issues. Pianka, the federation’s general counsel and executive vice president for Legal Affairs, will present specifically on AB 5 (which is a California bill that requires a motor carrier to prove that their workers are not employees) and the Federal Aviation Administration Authorization Act (F4A), which prevents states from undermining federal deregulation of interstate commerce through a patchwork of state laws.



Also, up for discussion at the seminar is the practice of personal injury lawyers to issue letters of protection to doctors who may have a bias relationship with the law firm, which Keener says is unsettling and can easily cross ethical boundaries. Letters of protection can result in the plaintiff and the medical provider sharing an underlying motive to increase medical expenses in order to inflate the value of their claim, explains Keener.

“Where the line starts getting blurred may be where the attorney suggests surgery that might not be needed,” says Keener.

Keener is pleased with the committee’s progress on organizing the February seminar in Tampa and expects to begin promoting registration this month.