

One of These Days: Rediscover the Lost Art of Letter Writing on Your Next Trucking Case

By Matt Rizzi

The classic rock and roll icon Neil Young has a song titled “One of these Days,” in which in the opening lyrics Neil promises, “One of these days, I’m gonna sit down and write a long letter,” to all of his old friends. The song has a lazy Sunday afternoon feel suggesting that although Neil Young really wants to sit down and write a long letter to his friends, he knows deep down himself that he probably won’t actually put pen to paper, hence his constant lazy refrain, “One of these days...”

The next time you receive written discovery responses in your trucking case that are woefully unresponsive, vague, or obstructive, don’t shove the responses to the corner of your desk while muttering an empty declaration that “One of these days, your going to sit down and write a long letter to defense counsel.” Actually block out some time and drop opposing counsel a line regarding their responses to your discovery requests.

We’ve all been there before, you have a trucking case that you have enthusiastically prepared written discovery to both the driver and the carrier. The discovery is carefully crafted to yield a bounty of documents that will set the groundwork for establishing the corners cut by both the commercial motor vehicle carrier and the driver. You have requested documents the Federal Motor Carrier Administration requires the commercial motor carrier to keep. However, when you receive responses, you find yourself reading over mind numbing objections listing every possible legal basis for an objection, with no documents produced. The easy reaction is to say, “I’ll respond to this later, I don’t have time to address this right now.” You toss the discovery responses in your file where they are quickly forgotten. Defense counsel has achieved their goal: to inundate you and overwhelm you with voluminous objections to the point that you say “I’ll come back to that later.” The defense knows that you’ll likely forget, and later is often too late, the discovery period has closed and trial is approaching.

Instead, the next time you receive such responses, sit down and draft a letter to defense counsel that will become a powerful and precise weapon that will ensure that you receive the documents you’ve requested. Draft this letter keeping in mind the audience that will most likely eventually be reading it, the trial judge. In your letter, point out the exact number of interrogatories and requests for production of documents objected to, and which no responsive documents were produced. Then, re-write each interrogatory and request for production that you believe requires supplementation. Underneath each interrogatory and request, insert the exact objection provided by the defense that sets forth their numerous reasons for not answering or producing documents. Next, insert a quick response directly underneath the defense’s objection, in which you outline why the defense’s objection is inappropriate and your reason why the requested documentation, is relevant, discoverable, and necessary. Finally, provide a reasonable amount of time for the defense to supplement their responses, with a fair warning that if responses are not provided, you will be seeking court intervention.

For example, you have requested the carrier to produce all documentation regarding mandatory drug and alcohol testing of their driver for the date of the collision. You receive an objection accusing you of being overzealous, unduly burdensome, intruding on the privacy of the driver, and requesting irrelevant material, as the carrier is admitting liability for causing the collision. (Surely, to defeat this argument, you’ve included direct negligence claims against the carrier for negligent hiring, training, retention and

supervision of the driver). In your letter, you outline your original request for the federally required drug and alcohol testing documentation. You then cite verbatim the defense's ridiculous, rambling, objection. You then politely point out that Federal Motor Carrier Safety Regulation 382.303 requires mandatory post-accident testing of drivers for alcohol and controlled substances, and politely renew your request that the documents be produced. Repeat this process for each discovery request that requires answering and supplementation.

When the defense still refuses to provide these mandated documents, seek intervention from the trial court, using your discovery letter to defense counsel as Exhibit A. Ask for an in-person hearing on the record to address your discovery concerns. From a practical standpoint, trial judges seem to genuinely appreciate not having to look back and forth at your interrogatories and then look at the defense's separate responses. The paperwork becomes overwhelming, and it is easy for you to suddenly become the bad guy for asking for a mound of documentation when the defense is admitting liability.

Instead, provide the trial court with one detailed letter that outlines each specific discovery request, the defendant's objection, and your well-reasoned reply to each objection. The trial court will appreciate having a condensed "playbook" that addresses all discovery concerns in a single document. Defense counsel doesn't expect you to take the time to outline their objections in particularity, and will not be thrilled to be explaining to the trial court why they stated they were not required to produce federally mandated documentation of post-accident drug and alcohol testing documentation. Expose the defense's responses to these requests as unreasonable, while providing confident, clear reasoned replies as to why you are in fact entitled to the documents you originally requested. The trial court will be relieved to have one document to work from, and during the heat of battle, so will you.

This letter will be a gift that keeps on giving throughout your trucking case. For instance, when the defense does finally provide documentation, in no semblance or order, carefully compare against your original letter as to what has been addressed and what discovery still needs supplemented. Then drop defense counsel another line thanking them for the discovery provided, but referencing your original letter to let them know what documents are still missing. Surely, the defense will not be yearning to be back in front of the trial judge again explaining why your requests for clearly relevant documents set forth in your original letter have still not been produced.

Fair warning, the process of drafting this letter is painful and tedious. The defense is not counting on you to take the time to draft such a lengthy letter. But once done, you will have a letter that shows the defense that you are not going to wilt away in the face of laborious discovery objections. Once done, you will have a letter that illuminates to the trial court that your case is not a simple auto collision, your thoughtful reasoning behind your discovery requests, while exposing the gamesmanship of the defense. Once done, you will separate yourself from lawyers that say "one of these days," and on the next case, the defense will take you seriously when you say the letter is actually "in the mail."