

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

DAVID LANEY and SANDY LANEY,)
Attorneys in Fact for Shannon Laney,)

PLAINTIFFS,)

vs.)

CASE No. 09-CV-389-TCK-FHM

SCHNEIDER NATIONAL CARRIERS,)
INC., GHEORGAE POPOVICI, and)
OLEKSANDR SHADYUK, LIBERTY)
MUTUAL FIRE INSURANCE COMPANY,)
INS INSURANCE, INC., and THE CITY)
OF TULSA, OKLAHOMA,)

DEFENDANTS.)

OPINION AND ORDER

At the hearing on Defendant Schneider National Carriers, Inc.'s Motion for Protective Order [Dkt. 117], the Court took under advisement the issues of Plaintiffs' discovery related to Defendant's preventability decision and allowed the parties to supplement their pleadings on the issues.

Plaintiffs seek to discover Defendant's policies and procedures regarding preventability findings and the preventability determination in this case. Defendant resists the discovery based on 49 U.S.C. § 504(f) which provides, in pertinent part, that: "no part of a report of an accident occurring in the operations of a motor carrier ... and required by the Secretary... may be admitted into evidence or used in a civil action for damages..." Defendant has not made any argument as to how Defendant's policies and procedures regarding preventability findings are protected from discovery.

Preventability determinations (indicators of preventable accidents) are among the factors listed in 49 C.F.R. § 385.7 that are considered by the Secretary in determining a safety rating for a motor carrier. Defendant also points out the regulations require motor carrier to maintain an accident register which must include specific information. 49 C.F.R. § 390.15. Defendant argues that since it is required to maintain the accident register and since preventability determinations are considered along with frequency of accidents to determine a safety rating, preventability determinations are protected from discovery under 49 U.S.C. § 504(f) along with reports of accidents.

Defendant has not established that the preventability findings at issue here qualify as a “report of an accident . . . required by the Secretary” which 49 U.S.C. § 504(f) protects from discovery. The case cited by Defendant, *Sajda v. Brewton*, 265 F.R.D. 334, 340-41 (N.D. Ind. 2009), did not address preventability determinations or findings. In *Sajda*, the protection of §504(f) was strictly construed and limited to the accident register. The court notes that although Defendant has cited to 49 C.F.R. § 390.15 concerning the requirement that an accident register be maintained, there is no requirement in that section that the register include preventability findings.

Defendant Schneider National Carriers, Inc.’s Motion for Protective Order [Dkt. 117] is denied as to deposition topic 8 and document request number 10.

SO ORDERED this 10th day of November, 2010.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE