

# Jurisdiction and Venue Can Enhance Case Value

Kevin Coluccio  
Coluccio Law  
2025 1st Avenue, Suite 1130  
Seattle, WA 98121  
(206) 826-8201  
kc@coluccio-law.com



Good lawyers know the importance of choosing a forum that best serves your clients needs. As a lawyer, you can have all the talent in the world, but the value of your case is still limited by the jurisdiction where the lawsuit was filed. In this article, we explain how we took a truck crash in Washington State, discovered how jurisdiction could be found in Clark County, Nevada, and how we successfully kept the case in Clark County, Nevada. Our ability to try the case in Clark County, Nevada no doubt enhanced the recovery for our clients.

## HOW A TRUCK DRIVER'S FILE PUT A WASHINGTON CRASH IN NEVADA COURT

It was a warm, sunny Labor Day afternoon in Lewis County, Washington. A young couple—Jeremy and Kerri—were driving to a local park and campground. Garrett, the 15-year-old son of their best friends, rode with them, chatting about school and high school football from the front passenger seat of the Dodge Stratus.



As they neared a campground on Washington State Highway 2, Jeremy flipped on the left turn signal, slowed and came to a stop, waiting for oncoming traffic to clear. Just as he was about to turn in to the campground, a semi-truck plowed into the back of the Dodge Stratus

at nearly 60 mph. The impact propelled the car into the oncoming lane, where it was obliterated by an F350 Ford pick-up pulling a 5th wheel trailer.

Both Kerri and Garrett suffered fatal injuries. Jeremy sustained a serious traumatic brain injury and countless physical injuries. Kevin Coluccio and Matt Sharp represented Garrett's surviving parents, Steve and Rachel and his estate. Lincoln Sieler and Rick Friedman represented Jeremy and the Estate of Kerri.

Our clients were Washington residents. The crash occurred in Washington. The trucking company was a Washington resident with operations in Washington and Oregon. All the non-commercial drivers involved in the crash were citizens of Washington or Oregon. Mr. Harrison, the driver of the truck was 79 years old. He had a Nevada Commercial Driver's License. Mr. Harrison chose to operate his employer's truck under the authority of a Nevada CDL (Commercial Driver's License) even though he told Troopers at the scene that he was a Washington resident.

## HERE'S HOW—AND WHY—WE FILED WRONGFUL DEATH CLAIMS IN CLARK COUNTY, NEVADA.

We started our investigation with Mr. Harrison, the 79-year-old semi-truck driver who struck Jeremy's car. He had given a Centralia, Washington address to the police but the CDL authorizing him to operate a tractor trailer had been issued by the State of Nevada.

Washington and Nevada each have their own CDL manual, and each contains similar language on the safe operation of a commercial vehicle. But—crucially—both

Washington and Nevada adopted the Federal Motor Carrier Safety Regulations for intrastate transport. See WAC 446-65-010 & NAC 483.80. Federal regulations clearly require a commercial driver's license to be issued from the state in which the driver is a resident. A semi-truck driver like Harrison can only have one CDL—and it is required to be issued from the licensing agency of his resident state.

Knowing the background of the law, we determined it was essential to get the driver's qualification file from the motor carrier. Shortly after defense counsel entered appearances, we came to an agreement. They wanted medical records and information for Jeremy and the decedents Garrett and Kerri. We agreed to provide the information and releases with the understanding that, in exchange, they would provide us with the motor carrier's driver qualification file.



#### What to look for in a truck driver's qualification file:

- Application for employment;
- Confirmation of the driver's resident address;
- Application for the Commercial Driver's License;
- Copy of the Commercial Driver's License;
- Copy of the driver's medical certification;
- DOT records – moving violations report;
- Road test certification either by CDL licensing agency or company;
- Background investigation documents, including Safety Performance History;
- Documents demonstrating that the driver can safely operate a commercial vehicle; and,
- Documentation from prior employment.

After we received his file, we discovered that Harrison had originally been operating trucks for the company under a Washington CDL and then a few years prior to the crash, he began operating their trucks under a Nevada issued CDL. This information strongly corroborated an admission police claimed Harrison had made to them shortly after the crash when he told them on his way to the hospital that he had to get a Nevada CDL because he was unable to get his medical certification in Washington. We then ordered Mr. Harrison's files from both the Washington State and Nevada Department of Motor Vehicles. These files, along with the driver qualification file provided us with the basis for filing in Las Vegas, Nevada. Here is the pertinent evidence that we uncovered:

**“Federal regulations clearly require a commercial driver's license to be issued from the state in which the driver is a resident. A semi-truck driver like Harrison can only have one CDL—and it is required to be issued from the licensing agency of his resident state.”**

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- Harrison had certified to the Nevada DMV that he was a resident of Nevada;
- Harrison had surrendered his Washington CDL because he had moved to Nevada;
- The Washington State DMV records stated that Harrison had moved out of state to Nevada;
- The Nevada DMV records listed Harrison’s mailing and physical addresses in Laughlin, Nevada;
- Pursuant to the Federal Motor Carrier Safety Regulations, Harrison certified that he possessed only one CDL and that his CDL had been issued by the state of his residence—Nevada;
- The Washington-based motor carrier had accepted Harrison as its driver with the full knowledge that Harrison was operating with a Nevada CDL; and,
- The motor carrier had accepted Harrison’s Nevada CDL for two consecutive years of employment prior to the crash.

We also determined that Mr. Harrison had altered one of the medical certifications in his driver’s file by changing its date of expiration. It was clear in comparing the two



certifications: anyone could easily tell it had been poorly altered. While this specific evidence was not critical to the issue of jurisdiction and venue, it reflected very badly on both Harrison and the motor carrier.

Armed with the evidence that Nevada had provided the authority for Harrison to operate the NationalFrozen Foods tractor-trailer on September 7, 2015, thereby establishing personal jurisdiction, we decided to file the complaint in Clark County, Nevada. It likely comes as no surprise that we wanted the case to be in front of a Las Vegas jury, where plaintiff jury verdicts are higher than verdicts in rural Washington communities and where we had a chance of applying Nevada punitive damages law. Furthermore, the very fact that we filed in Nevada served to highlight the worst facts for the defendants: Harrison had lied about being a Nevada resident to get a CDL, had falsified his records, and the motor carrier knew or should have known these facts and hired him anyhow.

The complaint was met with surprise and shock by defense counsel. They demanded that we dismiss the complaint immediately, and re-file in Washington State. We refused. Two years of litigation followed over whether Nevada had jurisdiction over Harrison and National Frozen Foods.

The defense lawyers claimed that Harrison was a resident of Washington, and National Frozen Food had no connection to Nevada. The defendants, independently, filed motions to dismiss for *“Want of Jurisdiction or in the Alternative for Dismissal*

*Under the Doctrine of Forum Non Conveniens.*” The Defendants’ motions claimed, as you would expect, that the crash happened in Washington, that Harrison was a Washington resident, that the motor carrier was incorporated with Washington State and had no legal connection to the State of Nevada, and that the claimants were all Washington residents. They also argued that it was extremely inconvenient for witnesses to come to Las Vegas. Although Harrison had certified he was a Nevada resident in order to obtain his CDL from that state, he now claimed in a sworn declaration that he was and always had been a Washington resident.



In response, we countered with the Federal Motor Carrier Safety Regulations and Nevada Revised Statutes: specifically, that a commercial driver can only hold a CDL from their state of residence and an employer can only hire a driver if they have a valid CDL. We argued that Harrison had represented under oath that he was a Nevada resident in order to obtain his commercial driving privilege and had purposely availed himself of the benefits of Nevada law for gain and profit and thereby submitted himself to the specific jurisdiction of the Nevada courts. We also argued that as a corporation, National Frozen Foods can only act through its agents and that in choosing an agent who was only authorized to operate its truck under the authority of Nevada law, National Frozen Foods too was operating its truck under the authority of Nevada law and, as a result, it too had submitted itself to the specific jurisdiction of Nevada law. We also argued that the State of Nevada had a clear interest in the actions of a driver who had caused two people to die and permanently injured another while operating under its authority. Finally, we argued that Harrison had certified himself a Nevada resident, and the motor carrier had knowingly and willingly accepted this certification. The defense counsel’s position about the jurisdictional inconvenience for witnesses was easily defeated when we obtained declarations from key witnesses indicating that they would be willing to attend a trial in Las Vegas.

The court agreed with our position. In denying the motion to dismiss, the trial judge held that we had established a prima facie case for personal jurisdiction over Harrison and National Frozen Foods. The Nevada Supreme Court upheld this decision and denied two writs of mandamus, finding the trial judge had not abused her discretion. The case proceeded in Clark County District Court. Once the defense could see that we were ready to go to trial in Las Vegas, they requested that we agree to mediation and the case was resolved.

One of the keys to the case was jurisdiction. We would have still been successful filing this case in Washington, but the threat of a jury trial in Las Vegas undoubtedly changed the stakes for the defendants—and likely multiplied the value of our clients’ claims.

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It's an important lesson about doing as much pre-litigation research in trucking cases, as well as all cases. Research and consider how to use the forum to maximize the value of a claim. Good things come from the effort to investigate and understand the full facts before filing your case.

*Kevin Coluccio has more than 30 years experience handling truck crash cases. In addition, he has handled and continues to handle automobile crash cases and a variety of claims against wrongdoers causing personal injuries or wrongful death. He is a native of the Pacific Northwest and active in his community. He graduated from Seattle University School of Law in 1986 and from Gerry Spence's Trial Lawyers College in 2009. He is a member of both the Washington State and Oregon Bar Associations. In addition to his solo practice, Kevin and Matt Sharp, a former president of the Nevada Trial Lawyers Association are collaborating on Western States Truck Crash Lawyers, providing representation to the victims of truck crashes in Washington, Nevada and Oregon.*

