

What Every Car Wreck Lawyer Needs To Know About A Truck Wreck Case

By Morgan G. Adams, Chattanooga, TN

When you get your first trucking case you need to treat it as seriously as your first medical malpractice case.¹ If you would not try your first medical malpractice case by yourself, do not try your first trucking case solo. In other words, if you plan to treat a trucking case like a car wreck case, put your malpractice insurance carrier on notice.

Remember, when handling a trucking case, you must move quickly to preserve important evidence. Evidence starts disappearing in as little as 14 days. Therefore, from the very first day, you must take steps to preserve the evidence.

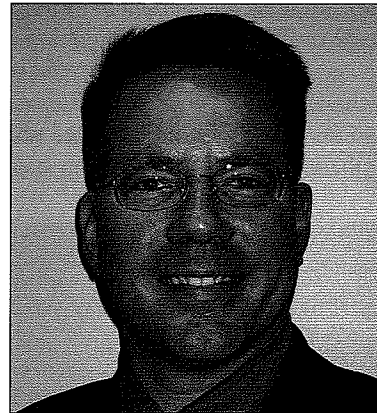
Why Learn About Handling Trucking Cases?

Every 16 minutes of every day, another person in the United States will be injured or killed in a truck-related accident. One out of every nine traffic fatalities involves a trucking accident. In 2002, large trucks accounted for four percent of all registered vehicles and eight percent of total vehicle miles traveled. In 2003, large trucks accounted for eight percent of all vehicles involved in fatal truck crashes and four percent of all vehicles involved in injury only and property damage only crashes. In 2003, there were 4,986 fatalities and 86,091 injuries in crashes involving large trucks.

Of the fatalities that resulted from truck accidents involving large trucks, 78 percent were occupants in another vehicle, eight percent were nonoccupants, and only 15 percent were occupants of a large truck. Consequently, the majority of people who suffer as a result of large truck accidents are innocent drivers and passengers.

Federal law requires commercial vehicles traveling in interstate commerce to carry \$750,000 in insurance for bodily injury and property damage.² Proof of

financial responsibility shall be filed with the Secretary of Transportation.³ If the carrier is transporting hazardous material in excess of 3,500 water gallons, \$5,000,000 in coverage is required. Transporters of oil and hazardous materials not covered elsewhere are required to have \$1,000,000 in coverage. Most state laws also impose minimum insurance requirements on trucks not covered under federal law. Companies generally have at least \$1,000,000 in coverage.



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Why Are Truck Wrecks Different From Car Wrecks?

Car wrecks have rules of the road that most lawyers and jurors know well. However, the same is not true for a trucking case. Trucks are regulated by the Federal Motor Carrier Safety Regulations (FMCSR), the "trucker's bible."⁴ Violation of these regulations, which drivers are required to know and trucking companies are required to teach,⁵ support various theories of liability against the company and the driver. These regulations are not part of the average lawyer's background, and the average juror has no knowledge of them.

All carriers engaged in interstate commerce within the United States, even those from Mexico or Canada, must comply with these federal regulations. The regulations require that documents be kept which, if preserved, can show incontrovertible proof of liability. Thus, every trucking case is a documents case. Failure to preserve and obtain the necessary doc-

uments and evidence are the most glaring errors in referred trucking cases.

Finally, the responsible party—the true wrongdoer in a collision involving a tractor-trailer—is generally not the driver, but the trucking company. The driver is simply the instrument of the trucking company's pattern and practice in violating the FMCSR.

Trucking Cases You Should Consider That Car Wreck Attorneys Turn Down

Car wreck cases and truck cases are distinctly different. The following truck cases, which a car wreck attorney might turn down, should still be considered:

- Single truck rollovers with a cab crush injuring the driver (products liability);
- Side and rear underride cases (products liability);
- Cars hitting the back of a tractor-trailer (violations of the FMCSR); and
- Cars hitting parked tractor-trailers (violations of the FMCSR).

Some of the Most Common Causes of Trucking Accidents

The causes of truck accidents are numerous. For convenience, the most common causes are listed below. This list is by no means exhaustive.

- Lack of training on the part of the truck driver

continued on page 7

Truck Wreck Case continued from page 6

- Overloaded trucks
- Oversized trucks
- Poorly maintained brakes on the trucks
- Driving in conditions of poor visibility due to smoke, fog, snow, or rain
- Truck driver inexperience
- Fatigued, sleepy, or tired driver driving too long and after too many hours without rest
- Driving over the speed limit or driving at speeds beyond the road and weather conditions
- Running off the road
- Failure to yield the right of way
- Aggressive driving behavior
- Truck driver under the influence of drugs and/or alcohol while driving
- Driving the truck in bad weather conditions
- Dangerous or reckless truck driver with a long record of wrecks and accidents
- Unsafe safety systems, reflectors, lights, and other warning devices
- Failure of truck to have an underride protection underguard installed.
- Backing up—backing up without knowing it is safe is grossly negligent. “There is little difference between backing a truck when you can’t see what is behind you and driving forward when blind-folded.”⁶

What Qualifies as a Commercial Motor Vehicle?

A commercial motor vehicle⁷ means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle:

- Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight of 4,536 kg (10,001 pounds) or more, whichever is greater; or
- Is designed or used to transport more than eight passengers (including the driver) for compensation; or
- Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

- Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. § 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 C.F.R., subtitle B, chapter I, subchapter C.

the carrier vicariously liable for the driver’s negligence.⁹

Company Identified on Vehicle—“Logo Liability.” The driver is the statutory employee of the carrier whose logo is displayed on the truck. Check the jurisdiction because this is no longer the rule in all jurisdictions.¹⁰

Truckers may not sleep due to “just in time” delivery demanded by the shipper.

Every state has adopted the Federal Motor Carrier Safety Regulations for intrastate transportation.

Evidence to Preserve

As noted above, it is absolutely imperative that attorneys preserve all the relevant evidence in a trucking case as early as possible. An example of a spoliation letter is provided in this Newsletter. Note that we send the letter every six months to ensure the material is saved if a suit is not filed.⁸

Key Figures In a Trucking Case

Keep in mind that there are many players in a trucking case. The most obvious person is the driver. However, there are several addition figures that could play an important role in the case, including: (1) the dispatcher, (2) the safety director, (3) the risk manager, (4) the information technology specialist, and (5) the maintenance personnel.

Who Should You Sue?

There are also multiple possible defendants in a trucking case. Discovery should initially focus on the individuals and entities listed. Possible defendants include:

Lessee—A leased driver is the “statutory employee” of the motor carrier, making

Parent and Subsidiary Corporations—Consider the theories of principle and agent, joint venture, instrumentality, or alter ego.

Shipper—Load shifts if the trailer is sealed by the shipper¹¹ and reasonable duty of care under the common law in other circumstances.¹² Consider using a master-servant theory where the shipper so controls and influences the carrier that a master-servant relationship is established. Truckers may not sleep due to “just in time” delivery demanded by the shipper.

Logistics Company—For an hours of service violation, investigate who designed the route the trucker was driving. It may be that it was impossible to drive the route as designed without an hours of service violation, which might impose liability on the company designing the route.

Prior Employers—The Federal Motor Carrier Safety Regulations define who can drive and their qualifications. Prior employers are required to tell subsequent employers if there are any problems with a driver. Failure to do so may create liability.¹³

Trailer Owner (if different from tractor owner)—While there may not be liability (see above for possible theories that can apply to trailer owners), there may be extra insurance coverage through an MCS-90 Endorsement.¹⁴

continued on page 8

Truck Wreck Case continued from page 7

Conclusion

Trucking cases differ from traditional car wreck cases and they require a specialized set of skills and knowledge. As in many areas of the law, thorough discovery and the preservation of evidence is critical for a full and just recovery for your clients.

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Notes

1. This is intended to be an overview, and I strongly encourage you to join, in addition to the Motor Vehicle Section, the AAJ Interstate Trucking Litigation Group (ITLG) for more detailed information. See www.justice.org/litgroups/trucking/itlgmembershipapplication.pdf for a membership application. The ITLG list server is restricted to plaintiff attorneys only.
2. See 49 U.S.C. § 31139(b)(2).
3. Form MCS-90, 49 C.F.R. § 387.7(d).
4. See 49 C.F.R. Chapters 40 (Drug and Alcohol Testing), 100-180 (Hazardous Cargo), 303, 325, and 350-300.
5. 49 C.F.R. § 390.11.
6. *Murray v. Wyatt*, 95 S.E.2d 541 (N.C. 1956).
7. 49 C.F.R. § 390.5.
8. See also Regulatory Guidance for 49 C.F.R. § 395.8, questions 9-19, available at www.fmcsa.dot.gov/rules-regulations/administra-

[tion/fmcsr/interp395.8.htm](http://www.fmcsa.dot.gov/rules-regulations/administra-).

9. 49 C.F.R. §§ 376.12 & 376.31; see also *Judy v. Tri State Motor Transit Co.*, 844 F.2d 1496, 1501 (11th Cir. 1988).

10. See, e.g., *Empire Indem. Ins. Co. v. Carolina Ins. Co.*, 833 F.2d 1428 (5th Cir. 1988).

xi 49 C.F.R. § 392.9(b)(4).

12. See *Reed v. Ace Hauling and Rigging Co.*, 1997 WL 177840 (N.D. Ill. 1997); *Locicero v. Interspace Corp.*, 266 N.W.2d 423 (1978); *U.S. v. Savage Truck Line, Inc.*, 209 F.2d 442 (4th Cir. 1953).

13. See FMCSR § 391.23.

14. See *Adams v. Royal Indem. Co.*, 99 F.3d 964 (10th Cir. 1996); *Lynch v. Yob*, 768 N.E.2d 1158 (Ohio 2002); *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000) (tractor and trailer's insurance stack because they were separate "automobiles" even though attached to one another).

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