

PLAINTIFF'S PERSPECTIVE IN TRUCKING LITIGATION

INTRODUCTION

I. TRUCKING INDUSTRY AND DEPARTMENT OF TRANSPORTATION

Today there are approximately 500,000 carriers operating as interstate carriers and numerous more operating solely as intrastate carriers. Most all of these carriers are governed by the Federal Motor Carrier Safety Regulations (FMCSR).

Of the 500,000 interstate carriers approximately 70% of them have less than seven (7) trucks. There are approximately 8 million drivers in this country that have commercial drivers license (CDL's). All of the CDL qualified drivers combined for approximately 2 billion miles traveled in 2002.

Approximately 2.5 fatalities occur for every 1 million mile driven by these carriers.

The Transportation Equity Act of the 21st Century (TEA-21) was enacted on June 9, 1998 authorizing the Department of Transportation to implement the Motor Carrier Safety Assistance Program (MCSAP) to increase commercial motor carrier inspections and increase compliance reviews.

TEA-21 also made changes to the enforcement programs. Any motor carrier determined to be unfit will be prohibited from operating in interstate commerce. This provision expanded the authority that was only available in the past to passenger and hazardous material carriers.

TEA-21 also prescribed higher penalties for violations of Federal Motor Carriers safety regulations. A penalty of up to \$10,000 may be assessed for each separate violation without the need to confirm a pattern of violations or establish that a violation is likely to lead to serious injury or death. Also, this Act established a National hotline for drivers to report potential safety violations. That number is 1-888-DOT-SAFT.

A. Trucking Terms

1. *Air Brakes* – A tractor-trailer’s service brakes.
2. *Anti-lock Braking System* – A type of braking system designed to maintain vehicle stability by preventing wheels from locking and losing traction.
3. *Backhaul* – The trip back to a trucker’s home base after delivering a load of goods.
4. *Bill of Lading* – Document required to be issued by common carrier to shipper as a receipt for the goods, evidence of title to the property being transported and as the contract of carriage setting forth the names of the contracting parties and the terms of carriage.
5. *Bobtailing* – Driving the tractor portion of the tractor-trailer as a separate unit.
6. *Broker* – A person, other than a motor carrier, who provides, sells, or arranges for transportation by a motor carrier for

compensation in interstate or foreign commerce. 49 USC § 10102(1).

7. Cab over Engine (COE) – A type of tractor in which the cab sits over the engine.
8. CDL – Commercial Driver’s License.
9. Certified of Public Convenience and Necessity – Public authority issued as a carrier by ICC or by state to engage in transportation as a common carrier over regular or irregular routes in specified territory.
10. Chassis – The trailer frame upon which the container sits when being pulled by a tractor.
11. Common Carrier – A person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes. 49 USC § 10102(15).
12. Container – A van body without a chassis used to carry goods with the capability of being transported by truck, rail and ocean ship
13. Contract Carrier – A person, other than a common carrier, providing motor vehicle transportation of property for compensation under continuing agreements with one or more persons 1) by assigning motor vehicles for a

continuing period of time for the exclusive use of each such person or 2) designed to meet the distinct needs of such person. 49 USC § 10102(16)(B).

14. Contract Carrier Permit – Public authority issued by ICC or a state to a carrier to engage in transportation as a contract carrier.
15. Conventional – A type of tractor in which the cab sits behind the engine.
16. Coupling – Connecting the tractor to the trailer by joining the fifth wheel with the kingpin.
17. Delivery Receipt – A document used to record evidence of proof of delivery to the proper consignee and the condition of the shipment when delivered.
18. Doubles – A rig consisting of a tractor and two trailers.
19. Driver's Daily Vehicle Condition Report – A document usually printed on the back of the daily log which must be completed by the driver each day recording the condition of the vehicle before and during the trip.
20. Driver's Vehicle Inspection Report – A document recording the condition at the end of each day's work.
21. Drop-Frame Trailer (Low Boy) – A trailer with smaller wheels and a lower deck used to haul very tall cargo.

22. Dry Freight Van – A plain enclosed trailer on wheels.
23. Dump Trailers – A trailer used to haul sand, gravel or other substances with a bed which rises in order to offload its cargo.
24. Exempt Carrier – A person engaged in transportation exempt from economic regulation by the Interstate Commerce Commission.
25. Fifth Wheel – A coupling assembly attached to the tractor.
26. Freight Bill - An invoice containing much of the information on the bill of lading, plus all charges, the trailer number, the origin and destination of terminals and special instructions to the driver for handling or delivering the load.
27. Headache Rack – A cab guard that protects the back of the cab of the load shifts forward.
28. Insulated Van – A dry freight van with insulated walls and ceiling.
29. Jake Brake – An engine retarder which controls the speed of a tractor on a downgrade.
30. Kingpin – A coupling assembly attached to the trailer.
31. Log Book - A book containing daily log sheets which must be completed each day by the driver recording his or her hours of service, miles traveled, his or her on or off duty

status and other information about the trip for each 24 hour period which he or she is on the road.

32. Lumper – A casual laborer who assists drivers in loading and unloading trucks and trailers.
33. Manifest – A document which lists the cargo that is being carried where cargo from more than one shipper is being transported on the trailer.
34. Off Road Tractor – A tractor designed to do its work off the highway in rough terrain such as at construction sites and built to withstand more abuse than an on road tractor.
35. On Board Computer – A computer in the tractor which monitors vehicle and driver performance and stores the information. The data collected is usually downloaded into a trucking company's main computer and used to generate reports of the performance of the driver, vehicle and trip.
36. On Road Tractor – A tractor that is designed to pull a trailer on the highway.
37. Platform Trailer (Flatbed) – A trailer used to haul heavy goods.
38. Power Unit – The tractor consisting of the engine, frame, axles, suspension, transmission and cab.

39. Private Carrier – A person other than a common or contract carrier transporting property by motor vehicle in which the person is either the owner, lessee or bailee of property being transported for sale, lease, rent or bailment or to further a commercial enterprise. 49 USC § 10102(17).
40. Property Broker License – Public Authority to a person by the ICC or a state to engage in operation as a broker.
41. Reefer – A refrigerated van used to haul perishable items requiring transport under precise temperature and conditions. The refrigeration unit is built into the trailer and requires separate maintenance.
42. Rig – The tractor-trailer unit.
43. Semitrailer – A trailer which rests part of its weight on the tractor.
44. Slack Adjuster – A device which adjusts the brakes to make up for brake lining wear.
45. Sleeping Berth – The sleeping area in the tractor.
46. Spring Brake – A parking and emergency brake found on all trailer wheels and at least one set of tractor drive wheels.
47. Straight Truck – A self contained vehicle consisting of the power unit and the truck bed used for carrying cargo.
48. Tanker – A trailer used to haul liquids or dry bulk.

49. Tare Weight – The weight of an empty trailer.
50. Tractor or Truck Tractor – A motor vehicle used to pull other vehicles such as trailers. It does not carry cargo.
51. Trailer – The unit towed by the tractor (usually an enclosed container on wheels.)
52. Trip Report – A document which records all of the important facts about a trip, including date and place of beginning and end, driver's name, truck equipment numbers, odometer reading, states traveled through, monetary advances to the driver, fuel purchases and other trip expenses. This information may be generated automatically on a truck's on board computer.
53. Triples – A rig consisting of tractor and three trailers.
54. Uncoupling – Disconnecting the tractor from the trailer by releasing the kingpin from the fifth wheel.
55. Waybill – A document used to deliver shipments. Where more than one truckload is being delivered to a shipper there may be one bill of lading to cover the order but separate waybills to document the number of cartons, the weight and the trailer or trip number each truckload.

II. PRE-SUIT INVESTIGATION

Unless you are faced with a statute problem, I would highly recommend doing a thorough investigation into the wreck. Hopefully, if you get the case within six (6) months of the date of the wreck, you will be able to save the driver's logs and the on board computer data and dispatch records.

I would immediately write the company instructing them to preserve the logs, on board computer data, and dispatch records. Otherwise, the DOT regulations only require retention of these records for a six (6) month time period.

Even if you get the case early on, you are already behind in your investigation. By the time that you meet with the client there has probably been at least two investigations and maybe three. (law enforcement/DOT, Trucking Company, and insurance company).

A. Go to the Scene

After conducting your initial interview (and this is something that the lawyers should do and not a staff person) you should go to the scene. With either an investigator or an accident reconstruction person or both.

Once you arrive at the scene, you should make both photographs and video of the scene, including but not limited to; the roadway from both directions, the shoulder and any debris; traffic signals, signs or markings; skid marks, gouge marks or other physical evidence; and any other landmarks. Hopefully, the law enforcement agency investigating the wreck took photographs to preserve the evidence at the day of the wreck. (The Alabama State Troopers generally take photographs and can be

obtained at the Trooper headquarters in Montgomery for a charge of \$10 per photograph)

B. Identify and Contact all Potential Witnesses

After documenting and photographing the evidence, you or your investigator should begin to contact and statementize all potential witnesses. The quicker you are able to contact and interview the witnesses of the wreck, the more details you will be able to obtain. Even if the witness tells you or your investigator he “does not know anything”, go through the critical issues and get a response even if it is negative. Also, ask the witnesses to give their opinions or best guess as to any critical issues. (i.e. speed, distance, etc.)

C. Locate and Inspect the Vehicle(s)

As soon as possible, you should locate and have the vehicle inspected. Once you have located the vehicle, it should be properly secured and maintained in a storage facility.

The vehicle could become a vital piece of evidence in reconstructing the speed of the truck or other facts surrounding the accident. Likewise, if you have not been able to inspect the 18-wheeler involved in the wreck at the wreck scene, then you should determine the location of the tractor-trailer and attempt to inspect it for all possible damage, mechanical failures, under ride equipment, improper lighting, and other evidence you may be able to document. While inspecting the 18-

wheeler you should look for identification marks that show ownership of the tractor and trailer.

D. Driving Records

Upon learning the identity of the truck driver, you should obtain a complete driving history for the driver from the state in which his CDL has been issued.

Also, if you determine that he or she had a CDL issued from another state, you should request the driving history from that state.

Most states will issue those records by writing a letter and paying a nominal fee. Georgia will require a subpoena.

E. Obtain the Accident Report

As soon as possible, you should obtain a copy of the Uniform Traffic Accident Report to determine the initial information in that report. Also, you will be able to determine if a motor carrier inspection was performed on the date of the wreck. If so, you should obtain that report. This can be done by contacting the Motor Carrier Safety Division of the Department of Public Safety in Montgomery.

Further, if there were a fatality involved, most likely the Alabama State Troopers would have performed a Traffic Homicide report. This is a very detailed report. To obtain this report you will have to issue a subpoena to the Department of Public Safety. If there is a criminal case pending, you will most likely not be able to obtain the report until such time

as the criminal investigation has been resolved. (i.e. the Defendant has been indicted or the local district attorney decided to no bill the criminal case.)

III. POTENTIAL DEFENDANTS

After conducting your pre-suit investigation, you should carefully review all of the evidence that you have been able to obtain and attempt to identify all Defendants that could be responsible for your client's injuries/death. It is not uncommon that all of the potential Defendants are not known until the suit has been filed and some discovery has been completed. Therefore, you should file your Complaint as early as possible and allow yourself plenty of time to identify the potential Defendants.

Further, when filing the Complaint you should list Fictitious Defendants if your case is filed in State Court. If you have to file your case in Federal Court you will be limited to those named Defendants. Therefore, it is essential that you go through an investigation prior to the statute date to determine all potential Defendants.

The following is a potential list of Defendants in a truck case:

- a) the truck driver;
- b) the trucking company;
- c) the owner of the tractor;
- d) the owner of the trailer;
- e) freight broker;

- f) freight shipper;
- g) vehicle maintenance or servicing company;
- h) manufacturer of the tractor or trailer; or
- i) the manufacturer of your clients vehicle.

IV. THEORIES OF LIABILITY

Obviously, the facts of each wreck will dictate the potential theories of liability and the law should be researched thoroughly to include all potential theories of recovery in your Complaint.

The following is a general list of commonly used theories of liability involved in truck cases:

- a) negligence;
- b) wantonness;
- c) negligent entrustment;
- d) negligent/wanton hiring, retention, training and supervision'
- e) negligent maintenance of the vehicle and equipment; or
- f) AEMLD.

At this time, I would like to discuss negligent entrustment, negligent/wanton hiring, retention, training and supervision theories in more detail. I believe these theories against the company can bolster your case.

A. Definitions of Negligent Hiring, Entrustment and Retention

1. Negligent Hiring involves the claim that the trucking company should not have hired a driver because the

company should have known that the driver was incompetent at the time of his application for employment.

2. *Negligent Entrustment* is a slight variation on this theme and encompasses the allegation that the trucking company should have not entrusted a truck to the driver because of his inexperience or his inability to safely operate a commercial vehicle.
3. *Negligent Retention* occurs when a trucking company learns during the course of the driver's employment that the driver is incompetent but continues to retain the driver and allow him to operate a commercial vehicle.

For the purposes of this paper, all three claims will be referred to simply as negligent hiring and retention.

B. DOT Regulations Governing Background Checks on Drivers

Before a trucking company hires a driver, it has a duty to the public to ascertain the competency of the driver and to make sure that he is qualified to operate a commercial vehicle. The purpose of this duty is to promote highway safety and prevent motor vehicle accidents.

Federal regulations require an interstate motor carrier to obtain certain background information on a driver before hiring him. (49 CFR § 391 et.seq.) Most jurisdiction, including Alabama have adopted the

federal regulations as guidelines for intrastate carriers and require intrastate carriers to meet these federal minimum standards.

Under the federal regulatory scheme, a driver applying for employment with a trucking company must complete a comprehensive application listing any moving violations or accidents for the three (3) year period prior to the date of the application and identifying each motor carrier for whom the driver has worked for in the past ten (10) years.

Within thirty (30) days of hiring a driver, the trucking company must make inquiries with the driver's prior employers for the three (3) year period prior to the date of his employment and must obtain a moving violation report (MVR) from any state issuing a license to the driver for the preceding three (3) year period. A company must verify that the driver is physically able to operate a commercial vehicle by obtaining a medical examiners certificate to this effect. The company must either give the driver a road test to determine his ability to operate a commercial vehicle or confirm that he has a commercial drivers license "CDL" issued from a jurisdiction that required the driver to pass a road test as part of the licensing procedure. The company is also required to make sure that the driver is knowledgeable of the proper manner of securing cargo.

C. Annual Review of Driving Record

During the course of the driver's employment, the trucking company must perform an annual review of the driver at least every twelve

(12) months to determine if the driver is still qualified to operate a commercial vehicle. In conjunction with this review, the driver must provide a certified list of all moving violations and accidents for the preceding twelve (12) month period.

The company is required to run an MVR on the driver to verify this information. The company must then consider the driver's accident record and driving history in considering if the driver is still qualified to operate a commercial vehicle. The trucking company must give great weight to violations that indicate that the driver has exhibited a disregard for the safety of the public, such as speeding, reckless driving, or operating a vehicle under the influence of alcohol or drugs.

D. Drivers Qualification File

The trucking company is required to maintain a drivers qualification file on each driver. The drivers qualification file must contain the following:

1. Drivers application for employment;
2. Written records of inquiries to prior employers and any responses received from them;
3. A pre-employment MVR on the driver;
4. Result of any road test or copy of the driver's CDL;
5. The driver's annual review;
6. The MVR on the driver related to the annual review;

7. The driver's certified list of moving violations and accidents provided in conjunction with the annual review; and,
8. A medical examiner's certificate of physical qualification.

The documents in the driver's qualification file must be kept by the company as long as the driver is employed by the company and for an additional three (3) year period, except documents related to annual review may be discarded following the subsequent annual review and a medical examiner certificate may be discarded every two (2) years following the replacement with a new certificate.

E. Minimum Standards for Driver Qualifications

The federal regulations provide a minimum standard for determining the qualifications of a driver. According to these regulations, a driver is qualified to operate a commercial vehicle if he:

1. Is at least 21 years of age;
2. Can read and understand the English language sufficient to complete the necessary reports, converse with the public and understand traffic signs;
3. Can by reason of experience and/or training operate safely a commercial vehicle;
4. Has physically qualified to operate a commercial vehicle;
5. Has a valid CDL;

6. Has completed the drivers application for employment and has provided the company with the required list of prior moving violations and accidents;
7. Is not disqualified under any federal regulation; and
8. Has successfully completed a road test or has a CDL from a jurisdiction that requires the driver to pass a road test as part of its licensing procedure. The only disqualifying offenses contained in the federal regulations are certain crimes committed while driving a commercial vehicle and violations of out of service orders. A driver is disqualified for at least a year if he drives a commercial vehicle under the influence of alcohol or drugs, transports controlled substances in a company vehicle, leaves the scene of an accident while operating a commercial vehicle, or commits a felony involving the use of a commercial vehicle. A driver is also disqualified for at least ninety (90) days if he violates an out of service order

F. Claims for Negligent Hiring and Retention

If the driver fails to meet the minimum standards required by the Federal Regulations, then the trucking company can clearly be held liable for injuries or death resulting from the drivers operation of a commercial vehicle under the theory of negligent hiring or retention. The real issue in

most cases concerns the trucking companies liability for hiring a driver who has been involved in several prior accidents or has prior moving violations, but has not committed a disqualifying offense under the federal standards. Because the federal guidelines are silent, with the exceptions of the previously mentioned disqualifying offenses, as to the number or type of moving violations or accidents which would render a driver incompetent or unfit to drive a commercial vehicle, the trucking company must decide based on policies and procedures if a driver is capable of operating a commercial vehicle based on the drivers history, experience and training. (Most companies in their policy and procedure manuals set forth disqualifying offenses or at least categorize offenses as serious or nonserious)

The company is liable for negligent hiring or retention if the hiring of the driver creates an unreasonable risk of harm to others given the drivers prior record or if the company hires a driver in violation of its own policy and procedures and this negligence and/or wantonness proximately causes Plaintiff's injuries. If the trucking company fails to investigate the drivers qualifications as required by the regulations, the company is deemed to have knowledge not only of the violations and the accidents disclosed to it, but also of any facts of the drivers history which would have been revealed had the company performed the appropriate background checks.

This doctrine of imputed knowledge prohibits the company from being rewarded for its failure to discover a drivers record when it has a duty to obtain this information.

G. The Effect of the Trucking Companies Admission of Agency

Negligent hiring and retention claims are simply negligent causes of action based on the trucking companies direct negligence in hiring or retaining an incompetent driver rather than the vicarious liability for the drivers actions. As such the companies liability is not dependent upon a finding that the driver was acting within the scope of his employment from the tortious act occurred. However, most jurisdictions will not allow a Plaintiff to bring claims for negligent hiring and retention when the trucking company admits a agency relationship with the driver. The basis for this rule is the companies admission of agency establishes the liability link for the negligence of the driver to the carrier rendering proof of negligent hiring and retention unnecessary and irrelevant. An exception to this general rule exists when the Plaintiff asserts separate claims for punitive damages based upon the issues of negligent hiring and retention. In this situation evidence of negligent hiring and retention will be presented to the jury as a basis for an award of punitive damages.

H. Non-Vehicular Criminal Background Checks

While a trucking company clearly has a duty to investigate the driving experience and qualifications of a driver, most jurisdictions have

held that the company does not have a duty to investigate the driver's non-vehicular criminal background. Because drivers are hired to transport freight and not to interact with the public as the companies representative, a trucking company does not have to perform an independent investigation into the drivers criminal past to determine if he is a violent individual who may attack or sexually assault a person. It would also be cost prohibited for a trucking company to conduct a criminal search on each driver since the company would have to review court records for each jurisdiction with which the driver had any significant contacts to complete the search.

Accordingly, a trucking company cannot be held responsible under a negligent hiring or retention theory for an intentional assault inflicted by a driver.

V. DISCOVERY

Because of numerous rules, regulations, and available technology in the trucking industry, formulating a proper discovery plan is essential. Your discovery should not only focus on establishing basic liability, but should also consider factors that would substantiate a claim for punitive damages.

A. Discovery Not Directed to Defendant

The following information should be obtained in discovery:

- a.) All medical records on your client;
- b.) All medical records on the Defendant driver;

- c.) A Department of Transportation safety audit and rating of trucking company (carrier profile);
- d.) A request for production to the Defendant;

Trucking companies are required by federal regulations to keep specific categories of information at its home office. Regardless of this fact, the trucking companies will invariably object to producing much of this information and/or denies that it exists.

Attached to the seminar paper is a sample of discovery, which I use in trucking cases. Please do not take this as an all-inclusive request, but it does a pretty good job. (See Attachment "1")

B. Depositions

After obtaining the responses to all written discovery, you should begin to set up depositions in the case. By this time, you probably should have at least retained a consulting expert so that he may review the documents that you have obtained. The expert should be knowledgeable in the DOT Regulations. Most experts have the capability of reviewing the records that you obtain in determining the following:

1. That there is a log book violation;
2. That the driver violated the DOT Regulations by driving excessive hours;

3. Or whether the driver should have been driving at all because of his past history.

At a minimum, you would want to depose the following persons:

- 1. The Truck Driver**

Truck drivers often move from company to company and are not employed by the same company involved in the wreck at the time of deposition. Because of this fact, the driver should be examined regarding the safety procedures, maintenance procedures, hiring, training and inspection procedures. If there are any DOT violations, the driver will often blame such failures on the trucking company. You should thoroughly examine the drivers qualification file with the driver going over each document which is required to be kept in the drivers qualification file.

Also, you should extensively question the driver as to any efforts he made to avoid the wreck. The safest course of action for a driver is usually to plow into other vehicles, rather than attempting to avoid the wreck and risk the rollover of his rig.

- 2. The Corporate Representative of the Trucking Company**

The corporate representative should be fully examined on the hiring, training and supervision of the truck driver involved. Also, this person should be questioned on internal safety policies

and procedures, company safety rating, and all safety audits or investigation. Hopefully, you can establish a company wide disregard for federal regulations and safety.

3. The Safety Director

The safety director should be fully questioned on hiring, training, supervision of truck drivers involved in your wreck and the company as a whole. Additionally, the safety director should be thoroughly examined on the knowledge of the DOT regulations, internal safety policies and procedures, company safety regulations, and safety audits.

It has been my experience, that in most of the small companies, that the safety director is generally not familiar with the DOT regulations. For other witnesses obviously, during your pre-suit investigation you would have talked to the law enforcement officers investigating your wreck and the witnesses. I have always found it helpful when talking to these witnesses to find out if they have plans on moving from their employer or moving from the area. If so, it will be helpful to videotape their deposition prior to the witness leaving their employer or making the move.

VI. DOT - QUICK INDEX

Part 382 – Controlled Substances and Alcohol Use and Testing.

Section 201 - alcohol concentration

Section 209 - post-accident use

Section 211 – refusal to submit to test

Section 213 – controlled substances

Section 301 – pre-employment screen

Section 303 – post accident testing

Section 305 – random testing

Section 307 – reasonable suspicion testing

Section 401 – retention of records

Section 601 – employers duty to promulgate alcohol/drug policies

Part 383 – CDL Standards and Requirements

Section 21 – number of licenses

Section 31 – notification of drivers violation

Section 33 – notification of driver license suspension

Section 35 – notification of previous employment

Section 51 – disqualified driver

Section 71-77 – testing and licensing procedure

Section 110-113 – knowledge and skill for driver

Section 133 – testing method

Part 387 – Financial Responsibility

Section 7 – minimum levels of insurance

Part 391 – Qualifications of Driver

Section 11 – qualification of driver

Section 15 – disqualification of driver

Section 23 – investigation and inquiry

Section 25 – annual review

Section 27 – records of violation

Section 31 – road test

Section 43 – medical card

Section 51 – drivers qualification file

Part 392 – Driving a Commercial Vehicle

Section 3 – ill or fatigue driver

Section 4 – controlled substances

Section 5 – alcohol

Section 6 – schedules to confirm with speed limit

Section 14 – hazardous condition

Section 22 – stopped vehicles

Section 71 – radar detectors

Section 93 – part and accessories for safe operation – lights,
brakes, and coupling devices

Part 395 – Hours of Service

Section 3 – maximum driving time

Section 8 – drivers record of status

Section 15 – onboard automatic recording devices

Part 396 – Inspection Repair and Maintenance

Part 397 – Hazardous Material Driving

Part 40 – Procedures for Transportation: Workplace Drug and Alcohol Testing Programs

VII. EXPERTS

You will have to carefully consider the facts involved in your case to properly select appropriate experts. In each case, the lawyer should evaluate the need for hiring the following types of experts:

A. Accident Reconstruction Expert

As mentioned in the pre-suit investigation an accident reconstruction can assist in determination of liability and can also assist in determining any aggravating circumstances such as speed or failure to take corrective action. It is advisable that you hire this type of expert early on to assist you in your case.

B. Industry Experts

Any expert knowledgeable in the Federal Motor Carrier Safety Regulations can be valuable in a case involving an 18-wheeler. These experts can greatly assist in determining a safety violation or logbook violation. Additionally, these experts can assist in testimony regarding improper vehicle maintenance, inspection, and equipment.

Also, these experts are very helpful in assisting you in preparing you for deposition of the company safety driver or the company corporate representative.

C. Other Experts

If your case involves a serious and permanent injury, the use of an economist to prove loss of future earning and the use of a life care planner to prove future medical costs can greatly increase the value of your client's case.

VIII. INSURANCE COVERAGE

Early in the litigation it is important to determine the existence of the amount of insurance coverage available in your case. Making this determination will effect based on your case whether or not this is a case to attempt to settle early in the litigation or one that should be thoroughly worked up. Insurance coverage can be discovered through the appropriate discovery procedures. Further, there is a website that you can review to determine the amount of insurance coverage that the Defendant trucking company has obtained. (See www.safersys.org)

A. Minimum Policy Limits

Part 387 of the Federal Motor Carrier Safety Regulations sets out the minimum levels of financial responsibility for trucking companies. The minimum limits set out for a commercial carrier weighing greater than 10,000 lbs. is \$750,000. If the motor carrier is hauling hazardous substances, the minimum limit is \$5,000,000 in coverage.

B. MCS-90 Endorsement

One of the unique considerations of insurance coverage involving commercial carriers is the existence of the MCS-90 endorsement. This is a federally mandated endorsement for all commercial carriers over 10,000 lbs. This endorsement was enacted by Congress to prevent parties involved in the shipping of freight from denying responsibility and pointing the finger at each other and in effect preventing and/or delaying recovery to an injured party.

Part of the language of this endorsement states:

It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement their on, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, and solvency, while bankruptcy of the insured.

The endorsement further states that all terms, conditions, and limitations in the policy shall remain in full force and effect as bonding between the insured and the company. This language serves to prevent the liability insurance company from denying payment to an injured victim in an 18-wheeler accident because the policy provisions such as late notice, etc.

In the event that there is a violation of one of the policy conditions by the trucking company or driver, the insurance company is still required to pay any final judgment against the company. The insurance company

may seek the reimbursement from its insured if the policy terms are deemed to of been violated.

IX. SOURCES OF INFORMATION

A. Files on Motor Carriers

To obtain a general file of information on a motor carrier, contact Motor Carrier Analysis Division Office of Motor Carriers, Federal Highway Administration, Washington D.C. 30590. The telephone number is (202) 366-1860.

B. Safety Ratings

Office of Motor Carrier Information Management and Analysis, H1A-1 Federal Highway Administration, 400 7th Street, Southwest, Washington D.C. 20590.

Trucking Safety Guide of Motor Carrier Safety Reports, contact J.J. Keller and Associate, 145 West Wisconsin Drive, Neeneah, Wisconsin 54956.

C. Statistics

Obtain motor carriers statistics a copy of the carriers safety rating. Contact the motor carrier information division, Office of Motor Carriers, Federal Highway Administration, Washington D.C. 20590, (202) 366-4023.

General Trucking Industry Information, contact American Trucking Association, 2220 Mill Road, Alexandria, Virginia 22314-4677, 1-800-ATA-LINE.

Websites: www.dot.state.al.us, and www.saftersys.org.

Most trucking companies have a webpage and I would encourage you to look at those motor carrier profiles.

Motor Carrier Profiles:

- A. Computer Technologies, Inc., OMC Data Dissemination Program, P.O. Box 3218, Merrifield, Virginia 22116-3248, cost is \$27.50.
- B. Department of Public Safety, Motor Carrier Safety Unit, c/o Vee Mosley, 1708 Congressman Dickinson Drive, Montgomery, Alabama 36109, cost is \$10.00.

D. Publications

- 1. Federal Motor Carrier Safety Regulations Pocketbook obtained from J.J. Keller.
- 2. Commercial Vehicle Preventable Accident Manual, a guide to countermeasures obtained from J.J. Keller.
- 3. Federal Motor Carrier Safety Regulations Management Addition, 2002 Edition, obtained from Label Master, 5724 North Pulaski Road, Chicago, Illinois 60646, 1-800-621-5808.
- 4. Alabama Commercial Drivers License Manual, Department of Public Safety, P.O. Box 1471, Montgomery, Alabama 36102, 242-4235.