

VIII. Handling a Trucking Case

A. Accident Investigation

The first step in properly handling a trucking case is to retain an accident reconstructionist to investigate the accident scene, photograph and document the physical evidence and discover as much information as possible from the investigating officers. Skid marks and other physical evidence begin to fade and disappear within days after the accident depending on the weather conditions. If you can retain a qualified reconstructionist and have him at the scene within 48 hours of an accident, you have a strong likelihood of being able to independently document skid mark lengths and measurements and other physical evidence. After this time period has expired, your reconstructionist will have to rely on the painted marks left at the scene by the investigating officers and the measurements obtained during their investigation as a basis for estimating speeds and movements of vehicles. You should make every attempt to have a reconstructionist examine the accident scene as soon as possible.

When a commercial vehicle is involved in a serious accident, the DOT, PSC or FHWA will usually conduct a post-accident inspection of the tractor and trailer. This inspection will document any problems with the unit, especially any problems with the braking system or tires. However, the purpose of the governmental post-accident inspection is to determine the extent of any mechanical problems with the vehicle and decide whether or not to place it out-of-service. The safety inspector is not trying to determine the cause of the accident. In order to further understand the cause of the accident, your reconstructionist, or a separate trucking expert depending on the reconstructionist's qualifications, will need to inspect the vehicles involved in the accident and document the results of his inspection.

B. Preservation of Evidence

You should send a spoliation letter to the trucking company and its insurer listing all documents and physical evidence to be preserved and maintained after the accident. The letter must state that the company keep all documents related to the unit and driver for the one-year period prior to the accident and outline the importance of these documents to your client's cause of action. It is crucial in cases alleging a manufacturing defect that the rear guard, tow bar, or other allegedly defective parts are kept and maintained. You should also request that the company remove the electronic control module ("ECM") from the tractor and preserve it for later examination. The ECM controls the systems on the tractor unit, and electronically records data concerning the operation of the tractor including speeds, brake system operations and engine controls. This information can be downloaded by the manufacturer and could be vital in determining the mechanical condition and performance of the unit at the time of the accident. Manufacturers began routinely using electronically controlled systems on tractors starting in the mid-1990's, and most units currently on the road have an ECM. In addition to sending a spoliation letter, you should contact the appropriate state agency to obtain copies of any filings and certificates concerning the trucking company.

C. The Complaint

Before filing your complaint against the trucking company, you should analyze the possibility of also bringing a products liability action against the manufacturer of the tractor, trailer or any component part within the unit. You should analyze the viability of a claim against the broker or shipper and the possibility of bringing an action against the insurance company for negligent hiring of the driver if a small trucking company is involved. If your jurisdiction has a direct action statute, you should name the insurer as a party defendant in addition to the trucking company. You should include in your complaint all applicable theories of liability including: (1) Negligent hiring, entrustment or retention, (2) Negligent inspection, maintenance or repairs, (3) Violations of the FMCSR, (4) Driver fatigue, and (5) Punitive damages.

D. Discovery

During the course of discovery, you should serve requests for the following documents: (1) Driver's qualification file; (2) Driver's logs for at least the eight day period preceding the accident; (3) Daily inspection reports for the three month period preceding the accident, (4) Annual inspection report covering the date of the accident, (5) Inspection, maintenance and repair records for the one year period preceding the accident and the six month period subsequent to the accident, (6) Printouts or data from on-board recording devices, (7) Downloadable data from the ECM, (8) Post-accident drug and alcohol tests, (9) Accident register for the time period preceding the accident, (10) Bills of lading, weight tickets, hotel receipts and similar documents for the eight day period preceding the accident, (11) Policy and procedure manuals, and (12) Training documents. You should take the deposition of the safety director, who is the person designated by the trucking company to be in charge of its safety program. The safety director should be questioned at length about the company's hiring criteria in general and as it applies to the driver involved in the accident, the company's safety records, its safety policies and procedures and its methods of monitoring its drivers.

E. Trucking Experts

You will inevitably need at least one trucking expert to assist you in prosecuting your case. The key is determining the issues presented by the facts of your case, and then retaining the most qualified expert on each issue. At bare minimum, you will need an accident reconstructionist to help you recreate the accident and the speeds and movements of the vehicles. You can also expect to retain a trucking expert for issues of conspicuity, mechanical failures, defective parts, driver fatigue, negligent hiring and retention, and compliance with federal regulations.