

COMMERCIAL AND TRUCKING CASES

I. OVERVIEW

A. WHAT IS A “COMMERCIAL MOTOR VEHICLE?” Commercial motor vehicles are designed, engineered and configured to transport many different types of cargo, including people, dry goods, perishable food, frozen food, liquids, bulk freight, prefabricated structures, and heavy equipment. The cargo carried by these vehicles can also include goods that are flammable, explosive and hazardous. The size and weight of the cargo varies widely and dictates the type of commercial vehicle needed. Federal, state, and local laws restrict the size and weight of these vehicles depending on the classification of the road being used by the commercial vehicle.

Section 383.5 of the Federal Motor Carrier Safety Regulations (FMCSR) defines a “commercial motor vehicle” as “a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle –

- (a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 or more pounds) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or
- (b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or
- (c) Is designed to transport 16 or more passengers, including the driver; or
- (d) Is of any size and is used in the transportation of hazardous materials as defined in this section.”

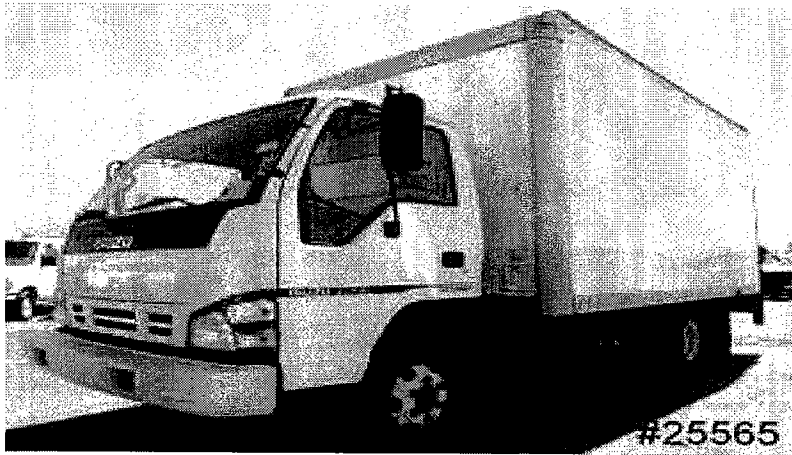


Figure 1. Van body, straight truck.

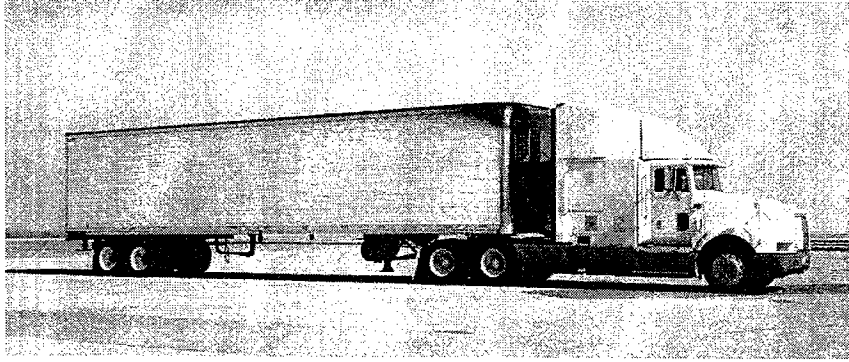


Figure 2. Conventional tractor with sleeper berth and semi trailer.

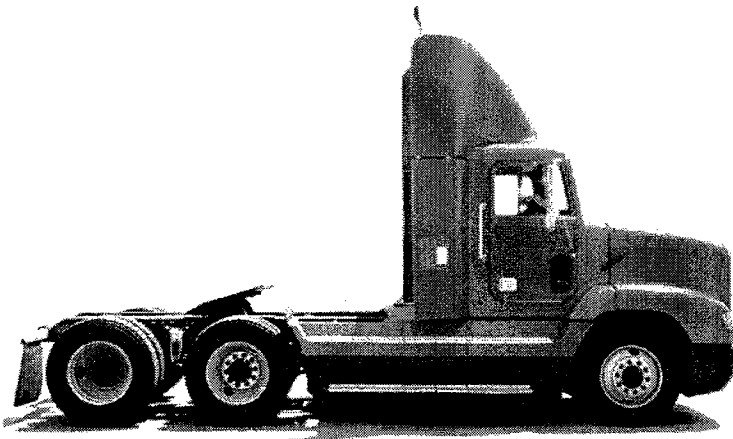


Figure 3. Conventional tandem axle tractor. Also called a bobtail because a trailer is not attached.

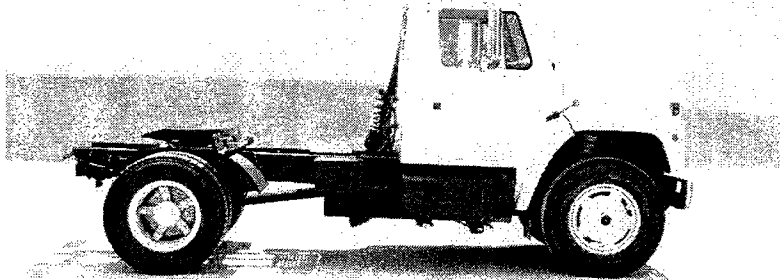


Figure 4. This single axle tractor is called "conventional" because the engine is in front of the driver's compartment. Tractor is also considered a "day cab" because there is no sleeper berth.

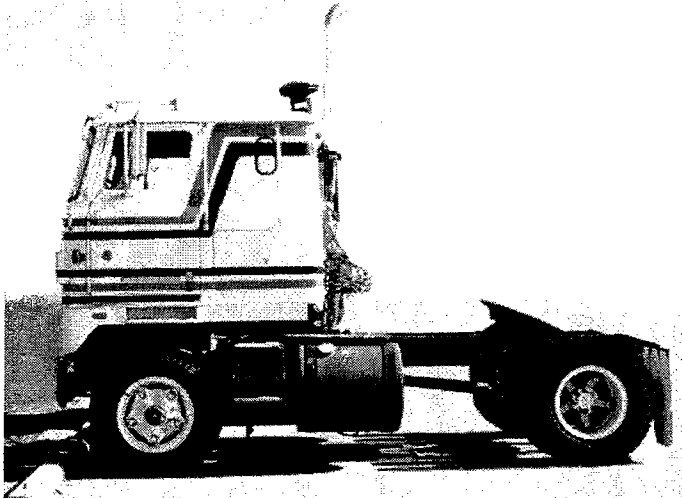


Figure 5. Cab-over tractors are designed with the cab located over top of the engine. These tractors have the advantage of being shorter than conventional tractors and can therefore pull longer trailers while still meeting the maximum length laws for combination vehicles.



Figure 6. Semi trailers are the cargo carrying units of combination vehicles. Note the retro reflective tape down the side of the trailer to prevent under-ride collisions. A semi trailer is considered a "vehicle."



Figure 7. Buses are large passenger carrying vehicles, equipped with seats or benches, usually operating along a fixed route or as part of a scheduled service.

Manufacturers of trucks, tractors and semi trailers, and buses determine and set the weight ratings for each vehicle they manufacture. It is important to recognize that the gross vehicle weight rating (GVWR) and the gross combination weight rating (GCWR) are not only the manufacturer's design specifications and load limits, but that they also become the legal load limits for that particular vehicle. If a truck or trailer is loaded heavier than what the manufacturer deems safe, then the motor carrier, the driver and the shipper have all violated the law.ⁱ The weight and size characteristics of commercial vehicles are dynamic variables when considered in relation to a commercial motor vehicle collision. These variables influence the choice of appropriate methods and technology to employ in the investigation.ⁱⁱ

Each state has its own rules regarding maximum vehicle size and weight. These rules can vary greatly, or subtly, from state to state. Each state's department of motor vehicles can be contacted to determine the limits for any particular highway. The weight limits for commercial motor vehicles traveling on North Carolina roads and highways can be found in N.C.G.S. § 20-118. On most state roads and interstates, the maximum gross vehicle weight for a typical tractor-trailer with five (5) axels is 80,000 pounds. By comparison, this is approximately 30 times the weight of most passenger cars.ⁱⁱⁱ Some states, like Montana, allow larger and heavier vehicles on their highways, and some states, like North Carolina, have lower maximum vehicle weight limits for smaller roads.^{iv}

The maximum length of most straight trucks is generally limited to 42 feet in most states. In North Carolina, that length is limited by N.C.G.S. § 20-116 to 40 feet in overall length inclusive of front and rear bumpers. Tractors and semi-trailer combination vehicles are built in a variety of lengths up to a maximum semi trailer length of 53 feet and an overall combined vehicle length of 60 feet.^v

If a driver is pulling a set of double trailers, then the length limit is 28 feet 6 inches in most states. These restrictions are fairly uniform throughout the United States.^{vi} In North Carolina, a tractor pulling two trailing units may be operated only on interstate highways, and the semi-trailers can not be more than 28 feet in length.^{vii} North Carolina General Statute § 20-115.1 recognizes an exception to this trailer length restriction if the semi-trailer is a 1982 model or older, in which case the trailer can be up to a maximum of 28 feet 6 inches long.

For most federally funded highways, which includes most interstate highways, the maximum width of any vehicle is 102 inches, and the maximum height is 13 feet, six inches. The maximum length is regulated on a state by state basis.^{viii} The various size and weight configurations of commercial vehicles depends on the type of load being hauled as well as the motor carrier's desire to deliver the load as efficiently as possible.

From a motor carrier's perspective, consolidating loads means lowering costs and increasing profits. Understanding what motivates a motor carrier is important if you are going to handle commercial motor vehicle cases. Most commercial motor vehicle collisions have an underlying or root cause. One of your goals, as a plaintiff's attorney,

is to discover the motor carrier's complicity in each crash. Was the truck driver fatigued because the motor carrier demanded that he take back to back runs? Was the truck driver speeding to avoid facing a late delivery fine? Was the load too heavy or too wide because the motor carrier did not want to incur the cost for multiple trips? Was the truck driver over hours because the dispatcher wanted his weekly efficiency bonus? These are the types of questions that should always be in the back of your mind when working on a commercial motor vehicle case. Finding the answer is not easy. You will have to dig and fight to gather the documents and testimony to answer these questions in your case. Finding the answers will make your liability case stronger and significantly increase the value of your case.

When investigating a collision involving a commercial motor vehicle, the plaintiff's attorney should consider the size and weight of these combination vehicles and the rules and statutes that limit their use.^{ix} The following are some of the unique characteristics involved in the investigation of commercial motor vehicle collisions:

- The greater the number of units and axels in a configuration leads to increased complexity of analysis;
- Different types of loads behave differently under dynamic conditions, such as braking, turning, and colliding;
- The high vehicle weights of commercial motor vehicles causes some analysis methods used in passenger vehicles to be inappropriate;
- The size and weight of these vehicles requires very different vehicle systems, such as powertrains, tires, and brakes, that are up to the task at issue and that have significantly different characteristics than those in passenger vehicles;
- Loads are subject to securement requirements;
- Drivers of these vehicles have specialized knowledge, skill and training; and
- Drivers and motor carriers are subject to federal regulations.^x

Therefore, due to a number of different variables, collisions involving commercial motor vehicles are complex. The investigation of these crashes requires an understanding of the vehicles involved, the load, the regulations applicable to the driver and motor carrier, and industry custom and practice, as well as the dynamics of the crash itself.^{xi}

B. THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS. The purpose of the Federal Motor Carrier Safety Regulations ("FMCSR") is to "help reduce or prevent truck and bus accidents, fatalities and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner."^{xii}

Each state administers a test for becoming licensed to operate a commercial vehicle. There are three (3) different classes of licenses: A, B and C. Drivers who operate combination vehicles must have a Class A license. Those who operate single vehicles must have Class B. Those who operate vehicles that do not require a Class A or B license but are used to transport 16 or more passengers including the driver must have a Class C license.

The FMCSR apply to every driver of a commercial motor vehicle as defined therein, in interstate or intrastate commerce. The FMCSR change on a regular basis as the result of truck industry lobbyists trying to loosen the restrictions on their clients' businesses. Therefore, you must keep abreast of these changes by regularly reading the publications and literature in this area and by attending the education seminars sponsored by the organizations that focus on commercial motor vehicle cases (APITLA and AAJ).

In order to competently handle a commercial motor vehicle case, you are required to have expert knowledge of the regulations that may apply to your particular fact situation. Since commercial motor vehicle drivers must pass a test to receive their CDL, and since the body of the FMCSR is substantial, one can and should argue that commercial motor vehicle drivers are professional truck drivers because they are required to possess specialized knowledge and specialized skills.

Generally, it is a relatively easy task to accredit a commercial motor vehicle driver in his deposition by asking him questions about what he does as a truck driver, having the driver describe what he does for a pre-trip inspection of his commercial motor vehicle, having him explain the process of coupling and uncoupling, having him explain about air brakes and how they work, and other processes that only a truck driver would know and understand. Then you can lead him into admitting that he has knowledge and skills that most other people do not have, and that his knowledge and skills are specialized because they deal with a commercial motor vehicle.

1. SPECIALIZED KNOWLEDGE. A commercial motor vehicle operator is *required* to have specialized knowledge in order to safely operate his or her vehicle. Section 383.111 of the FMCSR lists the following areas of required knowledge: alcohol and drug related conduct and testing, motor vehicle inspection, repair and maintenance requirements, procedures for safe vehicle operations, the effects of fatigue, poor vision, hearing and general health upon safe commercial motor vehicle operation, types of motor vehicles and cargo requirements, proper use of safety systems like horns, lights, side and rear-view mirrors, proper mirror adjustment, fire extinguishers, symptoms of improper operation revealed via instruments, motor vehicle operation characteristics, and diagnosing malfunctions, correct procedures to use in the event of a sudden stop, skid or loss of brakes, the purpose and proper use of all safety controls and instruments commonly found on a commercial motor vehicle, procedures for performing basic maneuvers, shifting rules and patterns, rules for backing maneuvers, the importance of proper visual search, proper visual search methods, the principles and procedures for proper communications and the hazards of failing to signal properly, speed management and the effects of speed, the procedures and techniques of proper space management around the vehicle, night driving preparations and procedures, techniques and hazards related to extreme driving conditions, basic skills for hazard perception and recognition, how and when to make emergency maneuvers, causes of and major types of skids, as well as how to recover from skids, principles and procedures for managing cargo, hazardous materials knowledge, air

brake nomenclature, principles and procedures for detecting air brake problems, and the objectives and procedures for performing vehicle safety inspections.

2. SPECIALIZED SKILLS. Not only does a commercial motor vehicle operator have to possess the requisite knowledge to safely operate a commercial vehicle, he or she must also have the technical skills to do so in a safe manner. The specific skills are detailed in § 383.113 and § 383.123 of the FMCSR and include:

- Ability to start, warm up and shut down the engine;
- Ability to put the motor vehicle in motion and smoothly accelerate forward and backward;
- Ability to bring the motor vehicle to a smooth stop;
- Ability to back the motor vehicle in a straight line and check path and clearance while backing;
- Ability to position the motor vehicle to negotiate and then make a left and right turns;
- Ability to shift as required and select appropriate gear for speed and highway conditions;
- Ability to back along a curved path;
- Ability to observe the road and behavior of other drivers, particularly before changing speed and direction;
- Ability to use proper visual search methods;
- Ability to signal appropriately when changing speed or direction;
- Ability to adjust speed to the configuration and condition of the road, weather and visibility conditions, traffic conditions, and motor vehicles, cargo and driver conditions;
- Ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic;
- Ability to position the motor vehicle correctly before and during a turn to prevent other vehicles from passing on the wrong side as well as to prevent problems caused by offtracking;
- Ability to maintain a safe following distance; and
- Ability to adjust operation of the motor vehicle to prevailing weather conditions to maintain control.

3. THE PROFESSIONAL TRUCK DRIVER. Once the truck driver has admitted that he or she have the required specialized knowledge and skills to operate a commercial motor vehicle, then you are one short step away from having him admit that he is a professional truck driver. Given the details set out in §§383.111 and 383.113, it would be difficult for any defense lawyer to argue that truck and bus drivers do not have specialized knowledge and skills. Once you obtain these admissions, then you are well on your way to successfully arguing that a higher standard of care applies to the truck driver in your case. If the court rules in your favor on that issue, then you can craft some very favorable jury instructions about the special standard of care for commercial motor vehicle drivers.

C. INSURANCE COVERAGE. The minimum financial responsibility for a commercial motor vehicle is \$750,000.^{xiii} The most insurance required under the FMCSF is \$5,000,000.00 for hauling hazardous materials. Most of the larger motor carriers carry more than the mandatory minimum limits of insurance, generally in the form of excess or umbrella coverage. Many of the smaller motor carriers, such as owner-operators, carry only the minimum limits. Given the severity of the injuries in most crashes involving commercial motor vehicle, the minimum limits of insurance coverage are often insufficient to adequately compensate your client. Occasionally, you will discover that there is liability insurance coverage for both the tractor and trailer. Since both the tractor and trailer are considered "vehicles," both *may* be insured. There are also situations where it may appear that there is no insurance coverage for your client's case, such as where a motor carrier has purchased a vehicle, and it is not listed on the insurance policy as a covered vehicle. In most instances, an MCS-90 Endorsement will still provide coverage.

D. MCS-90 ENDORSEMENT. The Motor Carrier Act is designed to protect members of the public from motor carriers' attempts to escape from liability for negligence of drivers by claiming their drivers were independent contractors. The Form MCS 90 is an endorsement issued to a motor carrier by an insurance company to show proof that the carrier has in effect the minimum levels of financial responsibility required by the FMCSA under 49 CFR 387.9. The MCS 90 is not an actual insurance policy, and it serves only as proof the carrier is in compliance with the FMCSA's requirements that carriers maintain coverage for protection of the public for injury or property damage resulting from the operation of the vehicle.

The federal MCS-90 endorsement is basically a suretyship or guarantee to the motoring general public that is required to be attached to every interstate motor carrier's liability insurance policy. The public policy consideration behind the MCS-90 endorsement is to provide a safety net to individuals who are injured as the result of the negligent operation of a commercial motor vehicle used in interstate commerce.^{xiv} Because motor carriers are required to carry insurance coverage, the insurance companies that write that coverage must endorse the policies to extend that coverage to the public. Such an endorsement is a certification by the insurance company that the policy meets the requirement of the federal law.

The effect of the MCS-90 endorsement is that you should always have at least the minimum limits of coverage for a crash involving a motor carrier operating in interstate commerce. For instance, even if the tractor involved in your client's crash was not listed on the motor carrier's insurance policy as a covered vehicle, the MCS-90 endorsement will provide coverage for that tractor.

E. EDUCATE YOURSELF. If you have never handled a commercial motor vehicle case before, then you should educate yourself now, before you get your first case. Reading this chapter is an excellent place to start to familiarize yourself with some of the key aspects of handling a commercial motor vehicle case, but there have been multi-volume treatises written on this subject, so this chapter does not address

every topic or issue on the subject. If you have handled at least one commercial motor vehicle case and want to handle more, then you should educate yourself in this specialized area of motor vehicle liability. One way to continue your education regarding this area of law is to create your own library or resource center. The following books, treatises and publications should be purchased and studied if you want to become highly competent in this field:

- a. Invaluable articles and materials available to only plaintiff attorney members of the Association of Plaintiff's Interstate Trucking Lawyers of America (APITLA) and the AAJ Interstate Trucking Litigation Group.
- b. Litigating Truck Accident Cases, Michael Jay Leizerman, AAJ Press.
- c. The Law of Commercial Trucking: Damages to Persons and Property, Davis Nissenberg (Lexis).
- d. FMCSR (have a copy for each year) Available at www.JJKeller.com.
- e. Fleet Safety Compliance Manual, Available at www.JJKeller.com.
- f. Truck and Trucking Handbook A Primer, Ruhl and Associates Forensics, Inc.
- g. Truck Accident Litigation, Laura Ruhl Genson and Anita Kerezman, ABA.
- h. Motor Fleet Safety Supervision Principles and Practices, North American Transportation Management Institute (NATMI).
- i. Motor Carrier Liability, Dennis, Corry & Porter, LLP.
- j. Commercial Vehicle Preventable Accident Manual, FHA, US DOT, Office of Motor Carriers available through www.JJKeller.com.
- k. Commercial Vehicle Accident Reconstruction and Investigation, Roy Sutphen & Rick Varner, Lawyers & Judges Publishing Company.
- l. Fleet Safety Compliance Manual, Available at www.JJKeller.com.

Another way to learn how to competently handle a commercial motor vehicle case is by attending commercial motor vehicle specific seminars. There are two national organizations that sponsor continuing legal education for plaintiff's attorneys regarding commercial motor vehicle cases: APITLA – the Association of Plaintiff's Interstate Trucking Lawyers of America (www.APITLAmerica.com) and AAJ – Interstate Truck Litigation Section (www.justice.org). Both organizations produce top notch conferences and seminars, and they both have some of the foremost trucking lawyers in the country as members and teachers. While these two commercial motor vehicle litigation specific organizations charge membership fees, the costs of joining are truly insignificant in light of the incredible benefits of membership and networking.

The AAJ Interstate Truck Group offers its members the opportunity to join a national listserv that is made up of plaintiff's interstate trucking attorneys. If you have a unique fact scenario and want to know if anyone else in the United States has ever faced the same situation, all you have to do is post your email query on the listserv. If you are preparing for a defendant's motion for summary judgment on the issue of punitive damages, and want to know if anyone has a brief that you could use as a starting point, just post an email. More likely than not, if you post an email to the list, you will receive multiple responses, often from more than one of the leading truck litigation attorneys in

the nation. By simply monitoring these listserv posts, you gain valuable knowledge about hot button issues in commercial motor vehicle litigation.

Even if you read all of the above books and publications, and even if you join the plaintiff's national truck organizations and attend commercial motor vehicle classes, you should not attempt to handle a commercial motor vehicle case by yourself unless you have been actively involved in such a case before. The defense lawyers who represent commercial motor carriers and their drivers are very competent, experienced and seasoned. They definitely know what they are doing. The commercial motor vehicle industry is well-funded, and they host several national educational programs for their defense attorneys each year. They know the ins and outs of truck litigation, and you will put your client at a serious disadvantage if you attempt to go after a truck company without the benefit of prior experience.

II. INVESTIGATION – PART 1: WITNESS STATEMENTS & REPORTS

ATTORNEY MENTALITY: ACT IMMEDIATELY. Analyzing liability in a commercial motor vehicle case is often complex and involves a multitude of factors. One factor that you have no control over is time. Often, your client has been out of commission for days, if not weeks and/or months, following the crash and has not been able to contact a lawyer. Since motor carriers and their insurance companies dispatch crash response teams immediately after learning of a commercial vehicle collision, important evidence is often long gone by the time you get involved. Therefore, once you are hired, you should immediately move forward with a well organized investigation. One of the first things to accomplish is to have all pertinent witnesses thoroughly interviewed. (See Appendix 2: New Truck Case Checklist).

A. CLIENT'S STORY. If your new client is able, you should spend a generous amount of time interviewing the client and gathering as many details regarding the accident sequence as possible. Your client will often be the only eye witness to the crash that you can interview before the truck driver's deposition. Do not overlook this opportunity.

The client can provide you with valuable information regarding the events that occurred before, during and after the collision. This author strongly suggests that this client interview be conducted by the attorney who is going to handle the case and not by a paralegal or even an associate. By pulling the details out of the client, you will gain valuable insight into exactly what happened, the various reasons for why it happened, what was going through your client's mind as the collision unfolded, and what kind of impression your client is going to make at deposition and at trial.

After interviewing the client and deciding to move forward in the case, your next phone call should be to an accident reconstruction engineer. The plaintiff's lawyer should immediately schedule a time with the engineer to inspect the scene and all vehicles involved in the collision. You should ideally have your accident reconstruction engineer on retainer, so that when you call, they ask, "Where do I need to be, and how long do I

have to get there?" If your reconstructionist is not on retainer, then it may take him or her 24 to 48 hours to get to the scene. If this is your situation, then you should continue with your investigation by contacting and interviewing the investigating officer and any other witnesses.

B. INVESTIGATING OFFICER. The investigating officer is usually the first person on the scene to investigate and determine the cause of the collision. For this reason, he or she should be interviewed as early in the process as possible. The investigating officer is usually the first person to interview after meeting with the client. Conversations with potential witnesses, specifically including the investigating officer, should be recorded with either a hand-held digital recorder or by using a video camera.

In North Carolina, the State Highway Patrol investigates the majority of commercial vehicle collisions because most heavy truck and bus wrecks occur on U.S. Highways or Interstate Highways. State Troopers receive considerable training as cadets and in continuing education classes in the area of accident investigation and causation. For the remainder of collisions that occur within or near a city or town, a local municipal police officer will likely investigate the collision.

Although city police officers generally have less formal accident investigation training than State Troopers, the investigating city police officer can still provide you with valuable information, including written or recorded statements from drivers and witnesses, scene measurements, points or areas of impact, skid and gauge mark locations, vehicle points of rest, scene photographs, sight distance measurements, weather conditions, and other contributing factors. Without this information, your accident reconstruction engineer may have a difficult time accurately forming his initial opinions regarding causation and fault.

In many commercial motor vehicle cases, tire impressions or skid marks may have faded by the time you become involved in the case. For this reason, conducting your interview at the scene may help the officer recall important details from his investigation that he might not be able to remember if you meet with him at his office. These are often the details that make the difference between success and failure. Knowing the basis for each finding and conclusion is helpful to you and your accident reconstruction engineer. If you treat this like a common car wreck case and only send your investigator or paralegal to meet with the investigating officer, you will likely never know the details that were missed.

The North Carolina Highway Patrol has an Accident Reconstruction Unit based out of Raleigh that investigates and reconstructs most commercial truck crashes that involve multiple vehicles, major injury or death. Accident Reconstruction Unit troopers do a huge service for the victim and plaintiff's attorney because they are usually on the scene within a short time following the crash. The reconstruction unit is excellent at documenting the physical evidence, downloading electronic data, surveying the scene using a total station device, taking numerous photographs of the scene and vehicles,

obtaining aerial photography of the area in question, and doing their best to determine what happened.

The fact that the State Highway Patrol dispatches a member of the reconstruction unit to investigate your commercial vehicle collision does not mean that you can sit back and not hire your own accident reconstruction engineer. Failing to have an accident reconstruction engineer conduct an independent investigation and analysis of the crash would likely constitute a deviation of the legal standard of care and could result in a malpractice action against you.

In many commercial motor vehicle cases, the investigating officer will contact the State Highway Patrol Motor Carrier Enforcement Unit. These officers are specially trained to conduct equipment inspections of commercial vehicles and also analyze a commercial driver's log books for hours of service violations. Motor Carrier Officers have the authority, depending on the violations discovered, to order the driver and/or the rig out of service for an indefinite period of time.

C. TRUCK DRIVER. Many attorneys never attempt to interview the truck driver. The rationale most often given is that they feel it would be a waste of time because the motor carrier or its insurance carrier has surely told the driver not to talk with anyone about the crash. While that is often true, this author has interviewed numerous commercial motor vehicle drivers prior to filing suit, and without exception those recorded interviews substantially increased our chances of success on the liability issues.

Common sense and best practices dictate that you should always attempt to interview the truck or bus driver very early in your investigation. They may have information that impacts your decision to accept the case. There are actually a few scenarios where you have a very good chance of success. For instance, an owner-operator is often more willing to talk about a collision than a driver that is employed by one of the national motor carriers. Mom and pop operations rarely have a safety manager or fleet risk manager, and the truck driver of such a company may be more than willing to tell his side of the story.

If the situation is one where the motor carrier terminated the truck or bus driver as a result of the wreck, the driver may gladly talk to you about how and why the wreck happened and may seek to bury the hatchet with his former employer. Often, especially in fatigued driver cases, the truck driver feels like a victim too, because his employer has been forcing him to drive an 80,000 pound vehicle when he is physically and mentally exhausted and has required him to violate the law or risk losing his job.

If the commercial motor vehicle driver will talk with you about the collision on the telephone, then you should seek his permission to record the conversation. Couching such a request by saying that it will help shorten the conversation if it can be recorded and explaining that, otherwise, hand written notes will have to be taken, and that will make the interview much longer is usually all that has to be said to gain consent. In

