

INVESTIGATING COMMERCIAL TRUCK CRASHES

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You have just agreed to represent a catastrophically injured person in an interstate truck wreck case. This paper will address the first steps that should be taken when investigating a commercial truck case.

I. INVESTIGATION – PHASE 1: WITNESS STATEMENTS & REPORTS

ATTORNEY MENTALITY: ACT IMMEDIATELY. Analyzing liability in a trucking case is often complex and involves a multitude of factors. One factor that you have no control over is time. Often, your potential 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 investigation teams immediately after learning of a commercial truck crash, important evidence is often long gone by the time you get involved. Therefore, once you are hired, you should move forward with all due haste. All relevant witnesses should be interviewed as soon as possible.

A. CLIENT'S STORY. If your new client is able, you should spend a considerable 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 get to 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. I am a strong believer that this client interview should be handled by the lawyer who is going to handle the case and not by a paralegal or 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 crash unfolded, and what kind of a witness your client is going to make at deposition and trial.

After meeting with the client, your next phone call should be to your accident reconstruction engineer to schedule a time to inspect the scene and all vehicles involved in the collision. Since it may take an engineer 24 to 48 hours to get to the scene, you should continue your investigation by contacting and interviewing the investigating officer and 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 I interview after meeting with my client.

In North Carolina, the State Highway Patrol investigates the majority of commercial truck collisions because most truck 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 police officer will likely investigate the collision. Even though local officers generally have less formal accident investigation training than State Troopers, you should still be able to gather valuable information from the local officer.

After obtaining the investigating officer's report, you should meet with the officer at the scene. The purpose of this meeting is to have the officer show and tell you everything that he or she did during the investigation of the collision. Understanding where the various vehicle's tires started to skid, the location of gauge marks, the point(s) of impact, and the point of rest for each vehicle will be vitally important information as your investigation moves forward. Many times tire impression marks will have faded by the time you get to meet with the officer at the scene, but often the officer will remember where the marks were or can locate a faint tire impression that might not otherwise be identifiable. Understanding why the officer interpreted certain physical evidence one way and not another is helpful to you and your accident reconstruction engineer.

Obtaining a copy of the officer's file is also warranted. In most instances, you can obtain a copy of the file by simply requesting it. In the officer's file, you should find field notes that contain the officer's first diagram of the scene, tire impression measurements, the location and size of any gauge marks, and miscellaneous notes. Within the file, you may also find written statements from drivers and witnesses, photographs, dispatch records, and 911 call records.

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. These 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 at the scene, downloading electronic evidence, surveying by use of 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.

That said, these troopers are not engineers, and important evidence is sometimes overlooked or not given appropriate weight in their investigation.

In many cases, the investigating officer will contact the State Highway Patrol Motor Carrier Enforcement Unit. These officers are specially trained to conduct equipment inspections of tractors and trailers. They are also adept at identifying violations of the Federal Motor Carrier Safety Regulations, such as Hours of Service violations. These officers have the authority, depending on the violations discovered, to order the driver and/or the rig out of service.

C. TRUCK DRIVER. Many attorneys never attempt to interview the truck driver. The rationale given is that they feel it is a waste of time because the motor carrier or its insurance company has surely told the driver not to talk with anyone about the crash. While that is generally true, I have gotten lucky on more than one occasion, and the recorded interview of those truck drivers definitely increased the value of the case.

There are scenarios where you actually have a decent shot at talking with a truck driver. 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 carriers. On some occasions, if the driver was terminated as a result of the wreck, he may willingly speak to you about what occurred and may seek to bury the hatchet with his former employer. Therefore, you should always try to take a recorded statement from the truck driver. In North Carolina, you may record a telephone conversation without disclosing that it is being recorded, as long as one party to the conversation (you) knows that the conversation is being recorded. If the truck driver is located in another state, then you should research the law of that state before recording a conversation without the driver's knowledge.

D. OTHER WITNESSES. Either you or your investigator should attempt to interview everyone that was even tangentially involved prior to the wreck, during the wreck, and after the wreck. In a major crash, there may be dozens of people involved at the scene. Each person should be interviewed, and the interview should be digitally recorded and then transcribed. Most of the time, the interviews of the people at the scene after the crash are not that helpful, but they take only a few minutes each. Once in a while, however, you will find someone who has information that is critically important to your case. The following is a list of people you should attempt to interview following a truck crash:

1. Eyewitnesses
2. Law enforcement
3. Firemen
4. First Responders
5. EMS Workers
6. Ambulance Drivers
7. Life Flight Personnel
8. Emergency Room Personnel

- 9. Post Incident Lay Witnesses – bystanders
- 10. Media
 - a. Photographers
 - b. Reporters
 - c. Cameramen
- 11. Private Photographers
- 12. Tow Truck Drivers

E. COLLISION REPORT. You should obtain the police collision report (DMV-349) as soon as possible. Since these reports are often not available for several days or even weeks following a commercial truck crash, it is extremely important that the attorney contact and interview the investigating trooper and/or reconstructionist. It is always helpful to meet with the investigating police officer at the scene of the collision. The investigating trooper may be able to share information with you that will eventually be contained in the report, such as point of impact, point of rest, causation, and statements by the truck driver. I record all telephone conversations related to a crash investigation, and always request the person's permission to use a recorder. If meeting with a trooper at the scene, then you should consider videotaping the interview. Officers almost never object to being recorded. Having a video record of an interview can be helpful if the case drags on for a year or more, not to mention that you can also use clips from the video interviews at mediation.

If a criminal investigation is pending against the truck driver, then you will need to speak with and obtain the consent of the prosecuting attorney in order to obtain a copy of the final accident/reconstruction report. The information contained in the report will be helpful in determining whether liability is going to be clear or contested.

F. INSPECTION REPORT. In most major wrecks involving CMVs, a member of the State Highway Patrol's Motor Carrier Enforcement section will be called. These officers are expert at inspecting the mechanical workings of the tractor and trailer, especially with regard to the braking systems. They make detailed reports that you can obtain by simply contacting their office. They often also speak with the driver about their findings and seek an explanation from him regarding the equipment's condition and/or mechanical failure. The driver will occasionally try to put the blame on the motor carrier by saying something like "I've asked my employer to fix those brakes a dozen times; I knew there were going to go out."

II. INVESTIGATION – PHASE 2: EXPERTS & DATA COLLECTION

In all things, success depends on preparation, and without such preparation, there is sure to be failure. – Confucius

A. TIME. It should be abundantly clear by now that a commercial truck case is very different from other motor vehicle tort cases, and you must proceed accordingly. If you fail to appreciate the differences from the start, you will probably hurt your client's case and likely commit malpractice. One of the biggest differences between a truck

case and an ordinary automobile collision case is the element of time. Time is not on your side in a truck case. Critical evidence necessary to prove the truck driver's and the motor carrier's liability can dissipate quickly. Under the federal regulations, motor carriers and their drivers are only required to retain the Driver's Daily Logs and supporting trip documents for a period of six (6) months.

B. PRESERVING EVIDENCE. Since the motor carrier and driver are only required to retain the Driver's Daily Logs and supporting documents for the very short time of six (6) months, it is very important that a spoliation letter¹ be sent immediately upon being your being retained. The spoliation letter should be mailed certified mail, return receipt to the following:

1. Truck Driver
2. Motor Carrier Officers
3. Insurance Companies
4. Lessee
5. Lessor
6. Shippers and Receivers of Goods

A sample spoliation letter is attached in the Appendix.

C. RETAIN EXPERTS EARLY. In CMV cases, it is especially important that you retain your experts early. Having someone on your team at the very beginning who can help you identify the key issues in the case regarding liability is very helpful. Identifying these issues early will allow you to develop case themes and strategies. Having your experts involved early will also decrease the chances that you will miss an important issue or piece of evidence. I generally hire the following experts as soon as possible in a CMV case: an accident reconstruction engineer, a trucking or truck safety expert, and an ECM expert.

1. Accident Reconstructionist Engineer. The accident reconstruction engineer is the person who will help you figure out how and why the crash happened. This expert will address such issues as point of impact, point of rest, speed, change in velocity, crush, braking, skidding, causation, driver's conduct, and a host of others. This expert will also document the scene with a total station or similar surveying device, photograph and video the site, inspect and document the vehicles and any other physical evidence, prepare to scale diagrams, inspect and/or test the important components of the vehicles, conduct re-enactments of the incident, and prepare video animations. It is important that you take the time to make sure that the person you retain is sufficiently trained and experienced in investigating CMV cases.

You should inquire of any potential accident reconstructionist regarding the protocol the expert plans to use during his investigation to collect the data and the source of the protocol. The expert should be able to articulate which protocols and methodologies he generally uses in CMV cases *and why*. The expert should also be able to explain the

differences between investigating a CMV case and an ordinary automobile case. If the expert is unable to do so, then it would be wise to look elsewhere for an expert.

You should visit the site of the crash with the reconstructionist engineer as soon as possible, document everything that can be documented, and then move on to inspect the vehicles. It is important for you to be actively involved in the investigation phase of the case because visiting the site, listening to the reconstructionist's initial analysis of what happened, seeing the physical evidence, and then viewing the vehicles will give you greater insight into the dynamics of the incident, the likely thought processes of the defendant as he moved toward the impact.

The plaintiff's vehicle should be retained and stored in an environment that will prevent its physical condition from deteriorating. The vehicle damage may become an important issue in the case later, and it is much easier to go to the vehicle and gather the information needed as opposed to trying to extrapolate the needed information from a photograph.

2. Trucking Expert. This expert will focus on the driver and the motor carrier. He should be completely familiar with all of the requirements of the FMCSR. The truck expert should also be particularly adept at explaining how the driver and motor carrier failed to comply with the applicable regulations and how this conduct caused or contributed to the crash. The best trucking experts, in my opinion, are those that have had actual, on the job, experience driving a tractor-trailer. The experts who have that experience bring a great deal of credibility to the table when they testify. They also tend to have a more common sense approach to what went wrong and why. One of the best trucking experts I have worked with is Mr. Mike Nappier. His contact information follows:

Email: mikenapier@truckingexpert.com
Website: www.truckingexpert.com
Snail Mail: 103 The Masters Cove
Macon, GA 31211

3. ECM Expert. The final expert that you should consider retaining early in the case is an Electronic Control Module (ECM) expert. An ECM is a device that is mounted to the engine of the tractor, and it *controls* various engine functions and records a host of data that can be critically important to proving liability and punitive damages. This data can be automatically erased if not downloaded in a timely fashion. That said, regardless of how long after a crash you are retained, you should always attempt to download the ECM data.

"ECMs . . . were first developed to meet emission standards and fuel economy needs, but today they can do everything from governing speed to recording data before, during, and after an accident. Cummins, Caterpillar, Mack, and Detroit Diesel, leading manufacturers for the heavy vehicle industry, all offer highly intelligent engine control systems. Downloading an ECM can provide such information as vehicle identification number, engine serial number, governed speed, cruise control parameters,

