

INVESTIGATING COMMERCIAL TRUCK CRASHES

Brian F. Davis
DAVIS LAW GROUP, P.A.
1 North Pack Square, Suite 412
Asheville, North Carolina
888-773-8388 (toll free)
828-279-7799 (direct dial)
888-454-5291 (fax)



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,

transmission style, “quick” or “hard” stop rate, event codes, engine diagnostic codes, and fuel efficiency parameters. An EMC can be downloaded by a trained technician. Having someone who can competently interpret the provided data is key to understanding and applying it to the case.”ⁱⁱ

There are many accident reconstruction engineers who claim to be experts in the interpretation of ECM data. Upon questioning, most will admit that they have interpreted ECM data in cases involving certain engine manufacturers. I have heard accident reconstructionists indicate that interpretation of ECM data is a relatively simple task, and that one only needs to obtain the manufacturer’s guidebook on how to interpret the data in order to understand the report. Unfortunately, it is not that simple.

Depending on the type of ECM involved, the way that the data is downloaded can sometimes mean the difference between getting the data you need and not getting it at all. A qualified ECM expert will understand the subtle differences between the various ECM models produced by the manufacturer in your specific case. He will also know how to maneuver within the ECM system and locate the information you need. Therefore, it is important to have your ECM expert talk with the download technician so that everyone is on the same page regarding the information being sought - before the download is attempted.

The ECM download report contains a substantial amount of data that is counter-intuitive, and without the proper education and experience regarding ECM data interpretation, there is a reasonable chance that a general accident reconstructionist will make an error interpreting the data. In other words, the data may appear to say one thing, when in fact it says something completely different. Errors made by a designated expert can seriously damage the value of your client’s case.

An example that I encountered a few years ago involved the ECM parameter for *Engine Governor Max Speed*. That parameter appeared *disabled* on the EMC download report, indicating that the truck would have had the potential to run at speeds approaching 90 mph. My accident reconstruction expert’s calculations relied completely on his interpretation of the EMC governor being disabled. After deposing the defendant’s ECM expert, it became apparent that there was another parameter within the ECM that governed the speed of the engine in another way. The engine was actually governed at 68 mph, and the plaintiff’s expert had to admit that he had made a serious and careless mistake – thereby casting doubt on all of his conclusions, including the defendant’s negligence and the cause of the crash.

The point is that you need an EMC expert, not simply an accident reconstructionist who claims that they know, or can learn, how to interpret ECM data. I am aware of only two ECM experts in the United States who have had articles published by the Society of Automotive Engineers (SAE) regarding the interpretation of ECM data. Tim Reust is one of those experts, and his website is www.accidentscience.com. If you need an ECM expert, you must do your homework on the front end and make sure the expert is qualified to interpret the data.

D. ITEMS TO INSPECT AS SOON AS POSSIBLE

i. Truck. The tractor-trailer is a potential treasure trove for the plaintiff's attorney. Once you are retained, you should contact the motor carrier or their insurance carrier and request an inspection of the truck. While permission is usually required to inspect the vehicles, that permission should be readily forthcoming. If it is not, then you should either file a temporary restraining order to prevent the negligent or intentional spoliation of evidence (ECM, EOBR, etc.) or you should file suit immediately and serve a request to inspect with your complaint.

Just as your engineer surveyed the crash site using a total station device, he should also do a total station survey of the crush damage on the tractor-trailer. This data may be critically important when the engineer begins calculating the speed of the big rig. The tractor and trailer should also be documented (inside and out) using high quality digital photography.

A specific protocol should be followed in photographing the commercial truck. The following list is an example of the items that should be documented:

- Photograph all mirrors
- Photograph the ICC, DOT and tractor and trailer unit numbers
- Photograph all reflective surfaces, including but not limited to the back and sides of both the tractor and trailer, the rear guards and the trailer's apron
- Photograph all tractor and trailer tires such that you can see the manufacturer's name, the model number, the side, and any other writing located on the tire (tractor tire information is critical when calculating speed based upon ECM data)
- Photograph all trace evidence including dings, dents, scratches, rust, streaks or paint smears
- Photograph any exterior markings for weight or length
- Photograph the manufacturer's specification plates on both the tractor and trailer
- Photograph the rear guards, and place a measuring device from the bottom of the rear guards to the ground, and document their height in a photograph
- Photograph the fifth wheel
- Photograph an stickers with slogans, warnings, or company instructions printed on them
- Photograph all cargo restraints, ties, clamps, etc.
- Photograph both the tractor and the trailer from close up, from the front, the back, both sides, and from far away
- Photograph all damage to the tractor and the trailer
- Photograph all lights and reflectors
- Photograph the filaments of any damaged lights or signals

- Photograph miscellaneous information such as inspection dates, placed out of service papers, special warnings such as a sticker that says "This vehicle makes wide turns."ⁱⁱⁱ
- Photograph any large teeth or fangs found attached to the front grill of the tractor (I would have my investigator take possession of the fangs).

The interior of the tractor should also be carefully inspected, looking in each compartment, under the seats, in the overhead bins, and everywhere else for any evidence that might lend itself to proving what the driver was doing, looking at, reading, writing, or consuming in the several days prior to the crash. You should also be looking for any operator's manuals or guides regarding the use of a Qual Comm, Cadec, or other on-board satellite positioning system. The interior of the tractor should be cataloged by your investigator. Your investigator should take possession of any items deemed pertinent to your investigation for the purpose of preserving them and preventing their loss, destruction or alteration. Your investigator should be knowledgeable regarding chain of custody rules and documentation. Without a proper chain of custody, the defense may challenge the admissibility of the evidence discovered inside of the tractor.

For instance, with regard to items that are found inside of the tractor that might be relevant evidence, the investigator should first photograph the item before moving it. Then he should place all such items in a plastic container, seal the container, place a paper sticker on the container, place the date on the sticker, initial the sticker, and then place the plastic container inside of an evidence locker at the investigator's office that can be secured by lock and key. The chain of custody protocol must also be followed any time an item is removed from the evidence locker for any reason, including attending deposition or trial.

On more than one occasion, I have found incriminating evidence inside the cab of the tractor. This is one reason it is very important for you to personally inspect the interior of the truck.

Many times, unless you have an investigator that is very experienced in truck litigation, important items inside the truck may not be recognized for what they are. Items that one should look for include the following:

1. Driver's Daily Log Book(s)
2. Insurance & license documents
3. Trip documents (bills of lading, fuel receipts, etc.)
4. CB radio
5. XM radio, MP3 player, iPod
6. Radar detector
7. Cell phone
8. Cell phone adapter
9. Laptop computer
10. Blood pressure monitor

11. Blood sugar monitor
12. Pager
13. Television
14. DVD player
15. CDs or DVDs
16. Books and magazines
17. Food and/or empty wrappers
18. Drink containers
19. Alcoholic beverages or empty containers
20. Large plastic containers (pee jugs)
21. Cooler
22. Refrigerator
23. Caffeine pills and liquids
24. Diet pills
25. Over the counter medicines
26. Prescription medicines
27. Illegal substances – contact local authorities
28. Syringes
29. Any item that raises questions about the driver's conduct

ii. The Truck's Electronic Evidence. This paper has already discussed ECM data above in the ECM Expert section, but there is additional electronic data that should be obtained from the tractor / motor carrier as soon as possible. "The mobile communications and vehicle tracking systems are used to link the vehicles in the fleet to the dispatch center. Messages can be sent to drivers, drivers can send messages to the dispatch center, and vehicle location can be tracked at the dispatch center."^{iv}

1. GPS and Mobile Communications Systems. If the tractor was equipped with a mobile communications system and/or global positioning system (GPS), then you will need to either file your lawsuit immediately or obtain a temporary restraining order to preserve the GPS data. The reason for filing is that unless you can immediately obtain the electronic data, it will likely disappear or be erased by the motor carrier. The motor carrier's obligation to retain the data is limited to six months.

Documentation of where a truck driver and/or his tractor trailer were located at a particular time can be used to determine whether the truck driver is falsifying his logs. For example, if a truck driver has a wreck, and tells the investigating trooper that he left Raleigh the morning of the wreck, went to Wilmington, North Carolina and was on his return trip at the time of the accident, but then the GPS tracking data shows that the truck was actually in Atlanta, Georgia just 7 hours prior to the crash, it shows that the driver is lying to a police officer and is likely trying to cover-up his true route to conceal a violation of the hours of service regulations. Some GPS based tracking systems, like CADEC and QUALCOM, also have the ability to record vehicle data in the event of a crash, much like an event data recorder (EDR) on a passenger car's airbag system.

Mobile communications systems allow communications between the driver and the dispatcher. This data is usually typed into a touch screen computer located inside the tractor, and the data is then sent via a cellular communications device to the dispatcher. Following a wreck, the truck driver will often be communicating with the dispatcher about what happened while he is waiting on the highway patrol or emergency workers to arrive. These communications are saved on the dispatch-end and are retrievable.

2. EDRs and EOBRs. Electronic Data Recorders (EDRs) and Electronic on Board Recorders (EOBRs) were originally referred to as *trip recorders*. These devices “are used to record electronic drivers logs for driver hours of service compliance and typically also to capture miles driven within a state for fuel tax reporting. In some cases they will also store a small amount of information pertaining to speed and RPM, such as a 30-to-90 second window, that can be used for accident reconstruction.^v The records from EDRs and EOBRs must be retained by the motor carrier for 6 months. Drivers must have the last seven days of logs with them in the system.^{vi}

iii. Victim’s motor vehicle. With regard to the inspection of the victim’s vehicle, you and your accident reconstructionist should follow the same protocol as was followed for the tractor and trailer. Total station data should be obtained regarding crush. The inside and outside of the vehicle should be documented by still photo and video. As mentioned above, the victim’s vehicle should be retained and stored if possible. If your client’s vehicle was equipped with airbags, then your accident reconstructionist should download the data from the airbag module.

1. Event Data Recorders. EDRs have been in use in passenger motor vehicles for years. These devices, however, are still not being used in heavy commercial motor vehicles. The EDR can be found inside the control module for the vehicle’s air bag system. The control module uses sensors located inside of the control module and/or placed at various locations on the vehicle to deploy the airbag. The crash data is then recorded in the event data recorder.^{vii} The information one can obtain from an EDR depends on the make, model and year of the vehicle at issue, and includes the following:

1. vehicle speed 5 seconds prior to impact
2. engine speed 5 seconds prior to impact
3. brake status 5 seconds prior to impact
4. throttle position 5 seconds prior to impact
5. delta-V (change in velocity) for up to .3 seconds after event
6. time from vehicle impact to max delta-V
7. maximum delta-V
8. ignition cycle count information
9. driver’s seat belt switch position
10. seatbelt pretensioner activation
11. airbag deployment
12. passenger’s air bag (enabled/disabled)^{viii}

Helpful data can be recovered from EDRs even if the airbag did not deploy. Therefore, you should always attempt to download the EDR data from your client's vehicle.

2. **911 Emergency Tapes.** While these recordings are not part of the crash data, they can provide valuable insight into how and why the crash occurred. One should always attempt to obtain copies of any and all recordings made to a 911 operator. In one instance, I represented a pedestrian that was run over by a tractor-trailer after his car had become disabled in a travel lane of a major highway. The defendants had denied liability, arguing that the vehicle was invisible to oncoming traffic because of its position in the road and because the lights were not illuminated. We obtained 11 calls to the 911 operator during the 10 minutes prior to this crash saying that there was a disabled vehicle in the road and that someone needed to help the person who was standing near the car. This evidence helped convince the defendants at mediation that the car was in fact visible, and the case resolved.

III. INVESTIGATION – PHASE 3: RECORDS REQUESTS

A. **Federal Motor Carrier Safety Administration.** One source of fruitful information that should not be overlooked is the records created from information gathered by the Federal Motor Carrier Safety Administration (www.fmcsa.com). You can obtain a number of important documents **without** a Freedom of Information Act (FOIA) request. A new program is about to take off that so far has proved to increase driver and carrier safety and compliance. This new program (CSA-2010) should produce many helpful documents for the plaintiff's interstate truck lawyer.

i. **Comprehensive Safety Analysis (CSA-2010)** CSA-2010 is an initiative by the FMCSA to improve the effectiveness and efficiency of the Agency's motor carrier enforcement and compliance program. This program represents a significant change in the way that the FMCSA looks at the safety practices of drivers and motor carriers. Prior to CSA-2010, the FMCSA's primary way of identifying dangerous practices was to conduct on-site Compliance Reviews of motor carriers. These DOT Inspections were labor intensive and time consuming, and as a result a only about two percent (2%) of all motor carriers had an annual Compliance Review. Based on the Compliance Review findings, the FMCSA would issue a safety rating for the motor carrier – either **Satisfactory, Conditional, or Unsatisfactory**.

The CSA-2010 introduces three (3) new components to FMCSA's enforcement and compliance program. First, there will be a new Safety Measurement System (SMS) that replaces SafeStat. *(SafeStat {short for Motor Carrier Safety Status Measurement System} is an automated, data driven analysis system designed by the Federal Motor Carrier Safety Administration (FMCSA). SafeStat combines current and historical carrier-based safety performance information to measure the relative (peer-to-peer) safety fitness of interstate commercial motor carriers. This information includes Federal and State data on crashes, roadside inspections, on-site compliance review results and enforcement history. SafeStat enables FMCSA to quantify and monitor the safety*

status of individual motor carriers on a monthly basis and thereby focus enforcement resources on carriers posing the greatest potential safety risk.)

Next, FMSCA will take a new approach to intervention that strengthens Compliance Reviews. Finally, FMSCA will use a new model for making the Safety Fitness Determination (SFD).

The new Safety Measurement System calculates the safety of drivers and carriers based on seven (7) **Behavior Analysis and Safety Improvement Categories (BASICS)**. These categories include: **unsafe driving, fatigued driving, driver fitness, drugs/alcohol, vehicle maintenance, improper loading/cargo issues, and crash indicator**. From now on, each time a driver undergoes a roadside inspection, he will be evaluated on this BASIC system. All driver violations will go toward the carrier's Safety Fitness Determination, and the SFD will be updated on a monthly basis. The new categories regarding a motor carrier's safety will be

The bottom line for plaintiff's interstate truck lawyers is that this new CSM-2010 system is going to be a ripe area for discovery. FMSCA has been conducting pilot programs in several over the last few years. In late 2010, FMSCA plans for the system to be in full effect nationwide. The Safety Fitness Determination will likely go into effect in 2011. There are some new Interrogatories and Requests for Production of Documents regarding CSM-2010 in the Appendix.^{ix}

The FMCSA will also be issuing **warning letters** to motor carriers that are identified as having safety deficiencies during roadside inspections. You should add this warning letter to you standard set of Request for Production of Documents in trucking cases. I have attached a sample warning letter in the Appendix.

ii. Pre-employment Screening Process (PSP). There is also a new Pre-employment Screening Program (PSP) that allows carriers to review a potential driver's inspection and crash data prior to hiring. This information is not available to the public, but if a motor carrier hires a new driver without checking his PSP records, and the driver turns out to have a history of safety violations, then the driver's next crash would certainly give rise to a claim for negligent hiring.

iii. Motor Carrier Safety Ratings. Each motor carrier receives a safety fitness rating based upon the carrier's compliance with the federal motor carrier safety regulations. You can request a rating by calling 1-800-832-5660.

iv. Carrier Snapshots. These snapshots include a record of the carrier's identification, size, commodity data, safety record and rating, out of service records, and insurance information. This data can be found at the Safety and Fitness Records Electronic System (SAFER) at www.safer.fmcsa.dot.gov.

v. Licensing and Insurance. The Federal Motor Carrier Safety Administration provides licensing and insurance information for all authorized motor carriers, freight forwarders, and property brokers. This site is found at: www.li-public.fmsca.dot.gov/.

vi. Freedom Of Information Act (FOIA) Request Additional documents regarding a motor carrier can be found if you will make a Freedom of Information Act (FOIA) request. These requests must be made in writing. The written request can be send by email or regular mail. The records that you can obtain include the following:

1. State accident reports
2. Roadside inspection reports (MCS-63s)
3. Enforcement reports
4. Compliance reviews
5. General correspondence
6. Final orders of the agency regarding the motor carrier
7. Final opinions and orders following adjudication

A FOIA request can be made by email to: www.foia.@fmcsa.dot.gov.

IV. CONCLUSION

Too many plaintiff's attorneys tend to approach CMV crashes like any other motor vehicle wreck case. Not only are the vehicles different, but the laws and regulations governing commercial trucks and their drivers are very specific and include a multitude of issues for the victim's attorney. Many of the FMCSR were designed to protect the motoring public from the careless and reckless conduct of truck drivers and their motor carriers. "Understanding the finer details of CMV law is essential to handling a tractor-trailer case. You must investigate the driver, his qualifications, his character, his experience, and how he got behind the wheel."^x Many of these driver safety issues can only be investigated after you file suit and can conduct formal discovery.

In order to successfully handle a CMV case, it is imperative that you become an expert with regard to the FMCSR and that you also review the safety records of both the motor carrier and the driver. To maximize the potential recovery in a truck case, you must go to the scene in order to understand the crash, participate in the vehicle inspections and electronic evidence retrieval, conduct extensive written discovery followed-up by extensive motion practice, and follow-up with depositions of the driver, the safety department personnel, the human resources personnel, the dispatchers, the log auditors, and various company managers and executives. This is true even in clear liability cases where the truck driver's conduct is so clearly negligent that the insurance company only wants to talk about settlement. If you go ahead and settle the case without doing the above things, you will never know the underlying cause – and the complicity of the truck company – of the crash.^{xi} The

