

TRUCK LITIGATION

USING THE PIPER METHOD

Michael J. Walsh & Caitlyn S. Malcynsky | Walsh Woodard LLC

Motor vehicle collisions are the most common type of personal injury case in Connecticut. With the proper attitude, an experienced personal injury lawyer who handles car accident cases has the ability to handle a truck collision case.

Approaching a car case and a truck case in the same way, however, is the single biggest mistake that a lawyer can make.

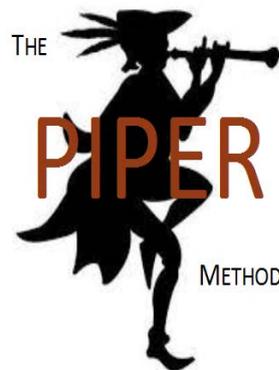
PRACTICE TIP!

Commercial Motor Vehicles include not only tractor-trailers, but also buses (including school buses), some RVs and tank vehicles.

Truck collisions differ from car accident cases in several important respects. The average midsize car weighs approximately 3,500 pounds. The average loaded tractor-trailer weighs approximately 80,000 pounds. Truck cases usually involve bigger crashes, devastating losses, complex insurance issues, multiple defendants, and state and federal industry-specific regulations.

It would be impossible to properly cover all aspects of truck litigation in one article. But

we have attempted to create a simple approach, which we call the Piper Method, to get an attorney started on their first trucking case.



PRESERVATION OF
EVIDENCE

INSURANCE COVERAGE

PARTIES

EXPERTS

REGULATIONS

Preservation of Evidence

In most trucking cases, the defense has a considerable advantage from the start. They often are in possession of the most critical evidence, such as the log book and maintenance records, and sometimes even the tractor-trailer itself. It is not unusual for large trucking companies to have experienced experts rushed to an accident site while the police and truck are still on scene.

It is critical to preserve *all* evidence as quickly as possible. Crucial information can be lost with delay, and federal regulations impose surprisingly short deadlines for the storage of some important data. In order to obtain this evidence – and to preserve a claim of spoliation at the time of trial – the plaintiff’s lawyer must send preservation letters and FOIA requests as soon as possible.

PRACTICE TIP!

Send FOIA requests to the Federal Motor Carrier Safety Administration: FOIA Team MC – MBI 400 7th Street SW, Washington, D.C. 20590.

Once you have attempted to preserve as much evidence as possible, you should focus on accessing the evidence. Electronic Control Modules (“ECMs”), or “black boxes”, should be secured as soon as possible. Often agreements are reached as to ECM removal and downloading. You should *attend* all on-site inspections or evidence gathering with your experts.

Evidence other than what is available from the vehicles, scene, witnesses, clients, police reports, and public information, will likely need to be requested and obtained in discovery.

PRACTICE TIP!

Don’t forget to preserve electronic data – ECM and EDR data, Mobile Communications Systems, GPS Tracking devices, Cellular phone data, EZ pass data.

Preservation of Evidence

What to collect:

Police and Fire Departments (State and Local): reports, witness statements, photograph or video evidence, markings, reconstructions, 911 recordings and records, dispatch records, local security footage or traffic camera information, evidence in police possession.

Truck Driver: all physical evidence, cellular phone, GPS device(s), manuals, driver’s logs, employment records, photographs or video of the scene, accident reports or informational records, citation and/or arrest record, bills of lading, receipts and trip documentation, CDL documentation, inspection reports.

Trucking Company: *Everything* that you request from the driver, *everything* that you request the police and fire departments, and ECM and EDR data, reconstruction reports, government agency records and reports on the incident, the entire personnel file of the driver, all records of driver alcohol and/or drug testing, GPS records, dispatch records, bills of lading, maintenance records, inspection reports, tractor and trailer ownership and/or leasing paperwork, company manuals, safety training records, policies and procedures, financial records.

For more sample requests go to:

<http://www.walshwoodard.com/practice/trucking-collisions/>

Insurance Coverage

Insurance coverage determinations in commercial motor vehicle cases are often complicated. Under the federal regulations, every motor vehicle carrier is required to carry at least \$750,000 in coverage. Many companies – especially large trucking companies – carry more.

The “primary” coverage is usually provided by the trucking company operating the vehicle. Even if the specific tractor/trailer is not a listed vehicle under the policy, federal regulations typically impose coverage under the policy of the trucking company responsible for the load. If the tractor and/or trailer is leased, there may be additional insurance coverage on the leased vehicle through the lessor’s policy. There may also be umbrella or excess coverage available.

Oftentimes, companies will argue that an insurance policy on the trailer alone does not apply to the tractor. There is a significant body of case law that negates this argument, but the language of the specific policy is critical.

The Graves Amendment, which oftentimes precludes suit against a lessor, is an important consideration in trucking cases. Graves only applies to those “in the business of leasing”, which generally means where the owner has a “fleet” of vehicles, as opposed to one leased truck. Closely analyze small companies that attempt to invoke the provisions of the Graves Amendment by creating artificial leasing arrangements. In addition, claims of direct negligence against lessors – including negligent entrustment – are not subject to Graves preclusion.

“Bobtail” insurance and UIM coverage should also be considered in every trucking case. Bobtail policies – designed to protect truck drivers when they are off-the-clock – are usually small policies (typically \$100,000) and come into play only if the

tractor is being driven unloaded or sans trailer. UIM coverage also needs to be considered if applicable.

For commercial motor vehicle (CMV) carriers, you can also search “Safersys”: a DOT information site that allows you to see and preserve a great deal of information about CMV carriers, including safety history and insurance coverage information. DOT-required crash reports are also available online.

Parties

In trucking cases, it is imperative to explore all possible theories of liability against all potential responsible parties. Culpable parties differ in every case, but may include:

- The Driver
- The Common Carrier (Trucking Company)
- The Owner of the Tractor
- The Owner of the Trailer
- The Shipper
- The Consignee (in some cases)
- The Broker / Brokerage Company
- The Logistics Company

PRACTICE TIP!

Companies often argue that the driver is an “independent contractor”, not an employee. The FMCSR specifically guts this defense, making the motor carrier a statutory employer. (See FMCSR § 390.5).

PRACTICE TIP!

Internet Brokerage Companies are a relatively new addition to the trucking world – and designed to shield shippers and carriers from liability. ALWAYS inquire about brokers in written discovery and at deposition.

Experts

Because trucking cases often involve complicated and technical issues, it is imperative to identify and obtain experts early in the process. In most cases, you will need a true trucking expert and an accident reconstructionist with trucking experience. You may also need specialized experts in human factors, conspicuity, truck maintenance/mechanics, safety compliance, load securement, tires, weather, and/or ECM data analytics , just to name a few.

Truck cases are *not* car accident cases, and they are too industry-specific for most car accident experts. You need to retain experts with experience with the Federal Motor Carrier Safety Regulations (FMCSR) and the trucking industry.

Regulations (FMCSR)

In most states and in Connecticut, the “standard of care” for a truck driver is the same as for all drivers : “reasonable care”. *What* constitutes “reasonable care” when driving a commercial motor vehicle, however, is vastly different.

PRACTICE TIP!

390.11 Gives you Direct Negligence against the motor carrier

All truck drivers and motor vehicle carriers operating on United States roads must be familiar with and comply with the FMCSR. These regulations apply to all *interstate* carriers, but most states have also adopted the FMCSR to apply to *intrastate* operations (in Connecticut, C.G.S. § 14-163c-1, *et seq.*).

These regulations are the Rules of the Road for these drivers, are taught in driving schools and are the basis for all standard trucking road manuals. A good liability trucking case will be based on enumerated violations of these regulations, and they should be the cornerstone of written discovery, depositions (particularly 30b(6) depositions of company management and safety directors) and trial.

PRACTICE TIP!

Coupling the FMCSR with the CDL Manual is an effective tool for establishing Rules of the Road and violations at deposition.

PRACTICE TIP!

390.13 Can serve as foundation to apply the FMCSR regulations to non-carriers

The Federal Regulations address:

Driver Qualification and training, drug and alcohol screening, driver medical examinations, hazardous conditions, night operations, hours of service, driver logs, driver fatigue, underride guards and many, many other areas.

For more complete listing of the federal regulations with annotations to specific regulatory sections go to:

<http://www.walshwoodard.com/practice/trucking-collisions/>

Approximately 327,000 commercial motor vehicle collisions occur each year, according to a 2013 study. Just over 3,500 involve fatalities, and 73,000 involve injury. 64% occur on rural roads, while only 25% occur on interstate highways. 84% occur on weekdays.

PRACTICE TIP!

Post-Accident, the motor carrier is required to ensure the driver receives a test for alcohol within eight hours of the incident, and a drug test within thirty-two hours. Failure to comply is grounds for a spoliation charge.

Among reported commercial motor vehicle collisions, the US Department of Transportation has concluded that 46% can be traced to drug use – 26% due to prescription drug use, 17% over-the-counter drug use, and 3% illegal drug use. 8% are caused by abuse of alcohol. 13% are caused by driver fatigue. And 23% are caused by travelling too fast for conditions.

PRACTICE TIP!

A driver cannot drive after 15 hours of work, cannot exceed 10 hours of driving during a 15 hour period, and cannot exceed 60/70 hours within 7/8 days (depending on the motor carrier schedule). After the 60/70 mark is reached, the driver must have a 34-hour “restart”.

Conclusion

Trucking cases can be daunting and challenging – but they are manageable. If you handle motor vehicle cases, you have the skills necessary to handle a truck case. But you must be willing to invest the time and effort to effectively build your case. Recognize that truck litigation is a highly specialized area of the law, and be prepared to put in the work!