

Look Under the Hood: Examining Tractor Maintenance records in Tractor Crashes

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“Let he who is without sin cast the first stone”-Jesus

After observing many focus groups, there is one lesson that I have learned; the more one can divorce the conduct from the defendant from the actions the jury have taken in the past-or could imagine taking in the future- the more opportunity the jurors will ignore their anti-plaintiff bias and focus on the real issues of holding companies accountable for choosing to violate the safety rules.

How does this apply to trucking cases? In most trucking cases, you are alleging that the driver may have been speeding, texting while driving, blew a stop sign or red light or even drove while tired. Most of your jurors have done the same things repeatedly. Most have even driven under the influence of alcohol or drugs. The jurors are not in the mood to throw stones because there is a feeling that they have done the same thing, albeit in vehicles that cannot carry 80,000 pounds.

Enter the FMCSA maintenance regulations. While most jurors have violated traffic laws, very few (if any) violate federal safety regulations to save money and increase profits. Looking into a company's maintenance practices may provide crucial evidence to take your case beyond simple human error and into the realm of corporate indifference to human safety in the endless pursuit of profits. Nothing motivates a juror to throw stones more.

While every case is unique, here are some areas that I have found futile in showing trucking company indifference to human safety .

Tip 1 Make sure the maintenance personnel know the rules

FMCSA 396.1 states as follows

“ General – Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of motor vehicles shall comply and be conversant with the rules of this part.”

Rule 1 is to know the rules. I have been astounded that in major trucking companies, mechanics have testified that they were unaware that the FMCSA has maintenance regulations. I have even had the directors of maintenance of major trucking companies testify that they were unaware that FMCSA has maintenance regulations. They will make comments like “FMCSA are for drivers, not mechanics.”

Some mechanics have been prepped properly or may even know that the FMCSA has regulations. If that is the case, ask them to state the sum and substance of any of them.

Tip 2 Preventative Maintenance

FMCSA 396.3 requires “Every motor carrier shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control.”

Companies often to skimp on preventative maintenance. Not only does it increase their mechanic costs, it also adds down time for their tractors. The good news is that manufacturers publish preventative maintenance schedules and have significant warnings in their manual. Remember the tractor manufacturer wants to protect itself from product liability claims and the manual is a way to pin tractor defects on failing to follow their schedules. Get the tractor manufacturer’s manuals and the engine manufacturer’s manuals (most can be ordered from a dealer) and check the preventative maintenance files and see if the company is following the manufacturer’s recommendations. You will not be disappointed.

Tip 3 Make sure the company knows how to handle pre and post trip inspection paperwork

FMCSA 396.11 states:

“Corrective Action. Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would likely to affect the safety of the operation of the vehicle.

Every motor carrier or its agent shall certify on the original driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.”

396.11 works in conjunction with 396.13 which states

“Before driving a motor vehicle, the driver shall:

- (a) Be satisfied that the motor vehicle is in safe operating condition;
- (b) Review the last driver vehicle inspection report; and
- (c) Sign the report, only if defects or deficiencies were noted by the driver who prepared the report, to acknowledge that the driver has reviewed it and that there is a certification that the required repairs have been performed. The signature requirement does not apply to listed defects on a towed unit which is no longer part of the vehicle combination.”

Many companies do not instruct their drivers to look at the past inspection report to make sure deficiencies are corrected. Many drivers do not know that they must check the prior inspection report to make sure either that there are no deficiencies or that the deficiencies have been corrected by a mechanic.

Tip 4 Make sure the mechanics doing brake work are certified brake mechanics

396.25 requires all mechanics performing repairs on an air brake system to be properly trained:

“(b) For purposes of this section, “brake inspector” means any employee of a motor carrier who is responsible for ensuring all brake inspections, maintenance, service, or repairs to any commercial motor vehicle, subject to the motor carrier’s control, meet the applicable Federal standards.

(d)(1) Understands the brake service or inspection task to be accomplished and can perform that task; and

(d)(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an assigned brake service or inspection task; and

(d)(3) Is capable of performing the assigned brake service or inspection by reason of experience, training or as follows:

(d)(3)(i) Has successfully completed an apprenticeship program sponsored by a State, a Canadian Province, a Federal agency or a labor union, or a training program approved by a State...

(d)(3)(ii) Has brake related training or experience or a combination thereof totaling at least one year. Such training or experience may consist of:

(d)(3)(ii)(A) Participation in a training program sponsored by a brake or vehicle manufacturer or similar commercial training program designed to train students in brake maintenance or inspection similar to the assigned brake service or inspection tasks.”

The motor carrier is required to keep on file the air brake certification. A lot do not. Also, test the mechanic of his/her knowledge of the air brake system. Being a certified brake mechanic is more than a piece of paper, they must “Understands the brake service or inspection task to be accomplished and can perform that task; and Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an assigned brake service or inspection task.” In one case these “certified” brake mechanics were totally unaware that a tractor with automatic slack adjusters should not be manually adjusted and if an automatic slack adjuster was falling out of adjustment, that it is a sign that there is something wrong with the slack adjuster. Their ignorance of that well known fact precludes them from working on a tractor with automatic slack adjusters.

These are some of the areas that I have found useful in finding institutional holes in a trucking company’s maintenance policies. If you can find these holes, you can make a convincing argument to the jury that the tragic crash was a predictable result of choices made by the company long before the crash. If you can convince the jury of that fact, then they will be ready to throw stones.

