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Using DOT Documents to Help Frame Your Trucking Case

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A common pitfall for personal injury attorneys is treating a trucking accident case like any other motor vehicle crash. Given the professional status of commercial truck drivers and the obligations of those drivers, and motor carriers, under the Federal Motor Carrier Safety Regulations (FMCSR), a more detailed fact investigation must take place in order to explore all potential claims. For example, in a disputed liability case more legwork is required than merely reviewing the police report, visiting the scene, taking photographs, and contacting witnesses. Even where the trucker's liability appears clear additional investigation is required from the outset.

Some motor carriers choose to sacrifice safety in their operations by failing to adequately audit and supervise their employee and independent contractor drivers. The motor carrier still remains liable for drivers' violations of the FMCSR, however, and the US Department of Transportation is the entity responsible for overseeing their operations. Obtaining background safety information on a motor carrier can assist in framing independent claims against the company and ultimately holding them accountable.

In every trucking case counsel should make sure all relevant driver and company records are preserved (through a specifically-tailored spoliation letter), and should collect data from the electronic control module (ECM) of the tractor-trailer involved where possible. (These measures are the subjects of separate articles unto themselves.) But an additional, and often overlooked, component to a trucking lawyer's initial investigation is securing US Department of Transportation (USDOT) documents regarding the motor carrier in order to help frame the issues and discovery in the case.

By way of background, companies that operate commercial vehicles transporting passengers or hauling cargo in interstate commerce must be registered with the Federal Motor Carrier Safety Administration and must have a USDOT number issued by the Department of Transportation. The USDOT number serves as a unique identifier when collecting and

monitoring a company's safety information obtained during audits, compliance reviews, crash investigations and vehicle and driver inspections.

There is substantial information regarding interstate motor carriers available online. A “Company Snapshot” can be obtained from the Safety and Fitness Electronic Records (SAFER) System maintained by the USDOT at <http://www.safersys.org/>. The Company Snapshot provides background information regarding the carrier (including operating status, physical address, number of power units and drivers, fleet mileage, and operation classifications), the number of inspections in the prior 24 months, the number of crashes in the preceding 24 months, and the company's safety rating. A motor carrier's on-road safety performance can be found on the Safety Measurement System website: <http://ai.fmcsa.dot.gov/sms/>. Current license and insurance information for interstate carriers is also maintained by the DOT online at <http://li-public.fmcsa.dot.gov/>. Beyond this online information, however, the DOT maintains additional documentation which is available upon written request under the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552.

By way of example, in a recent case, a truck driver and his employer disputed liability for a high speed collision at an intersection which resulted in the death of the driver and occupant of a minivan. As part of the Ohio State Highway Patrol's investigation, a trooper from the Motor Carrier Enforcement Division was called to the scene. After securing the driver's written duty status logs for the week leading up to the accident, the trooper compared those logs to several receipts found in the tractor cab. Based on the times and locations reflected in the receipts, the Highway Patrol was able to determine the driver had falsified his duty status on three separate occasions a week before the crash. However, because the driver had not yet submitted the logs to the motor carrier, extending independent liability to the company for negligent supervision appeared questionable at the outset. Fortunately, documents later obtained from the USDOT regarding the company's safety practices became instrumental in framing discovery in the case and pursuing independent claims against the motor carrier.

In the case referenced above, the motor carrier was an Ohio-based company in existence for over 20 years with a fleet of over 200 motor vehicles. A FOIA request to the DOT produced over a thousand documents regarding the company's practices. Contained within the DOT documents produced was a “Compliance Review” performed by the DOT at the

company headquarters less than a year before the subject accident. During the course of the compliance review, the DOT discovered that, while most of the fleet had been converted to an on-board, electronic logging system, ten percent of the fleet was still utilizing paper logs like the driver involved in the collision. When the DOT compared the paper logs to fuel reports obtained from the company fuel cards, it discovered that nine of the ten drivers checked in the audit had submitted false duty status reports. As a result of the compliance review, the company's safety rating was downgraded from "Satisfactory" to "Conditional."

In responding to the compliance review, the company submitted a statement to the DOT, signed by the owner, wherein the company promised to check 100% of paper logs submitted on a daily basis by comparing the logs to fuel data. Based on this promise and other affirmative safety measures the company agreed to implement, the DOT reinstated the company's satisfactory rating six months before the crash. However, a comparison of the subject driver's fuel logs and daily engine usage data from the ECM to his paper logs after the crash demonstrated the driver routinely falsified his logbooks. Given this clear pattern of log falsifications, it was obvious the carrier failed to follow through on its promises to the DOT regarding supervision of drivers and auditing of log books. Indeed, in light of the promises made by the company to the DOT mere months before this accident, the theme of the case changed from the actions of a single, neglectful driver, to a culture of non-compliance by a safety department which merely gave lip service to log book requirements and turned a blind eye to its drivers' compliance with federal safety regulations.

When requesting records from the DOT under the Freedom of Information Act, specifically request copies of any inspection reports, logs, citations, insurance filings, disciplinary actions, licenses, authorities, correspondence, safety records, accident registers or any other documents concerning, referencing or relating to the motor carrier, identified by the carrier's DOT number. FOIA requests to the USDOT can be addressed as follows:

FMCSA/FOIA
1200 New Jersey Ave. SE
Washington, DC 20590

Should you have any questions please do not hesitate to contact any of the OAJ Trucking Safety Committee members for further information.