

Trucking Accident Liability

How to Plan and Prepare for Future Litigation

Presented by: Chip E. Williams, Esq.

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- Chip E. Williams was born in Beckley, West Virginia on June 23, 1974. He was admitted to the West Virginia Bar in 1999.
- Mr. Williams is admitted to practice before the West Virginia Supreme Court of Appeals, the United States District Court for the Southern and Northern Districts of West Virginia, and the Supreme Court of the United States.
- Mr. Williams attended West Virginia University earning his B.S. in Accounting in 1996 and his J.D. in 1999.
- Mr. Williams became associated with Pullin, Fowler & Flanagan in 1999. His primary focus is in motor vehicle collisions, education law, civil rights litigation, and general governmental liability.
- Mr. Williams has taught multiple seminars dealing with education law, police liability, and toxic torts.



Inevitability Of Litigation

- Over 500,000 trucking accidents occur every year in this country. Of these, approximately 5,000 result in fatalities, and many more result in serious personal injury or property damage.
- U.S. Department of Transportation - http://www.fmcsa.dot.gov/facts-research/LTBCEP2009/2009_LargeTruckCrashOverview.aspx
- Thus, it is imperative that trucking companies be prepared to place themselves in the best possible position when an accident does occur.

Minimizing The Risk Of Potential Litigation

- Minimizing the risk of potential litigation begins with the hiring process.
 - Ensure that your company has an adequate employment application process which includes, at a minimum, the following:
 - Pre-employment drug screen
 - Pre-employment DOT physical
 - Verification of applicant's employment history
 - Verification of applicant's driving history

Company Policy

- Every company should have a policy concerning the following:
 - Maintenance of vehicles;
 - Pre-trip inspections;
 - Loading of vehicles;
 - Weight of load; and
 - Maintaining proper log books;
 - Accident policy.

Maintenance of Vehicles

- Maintenance of vehicles becomes a critical issue when accidents occur.
- If there is any evidence that the vehicle was defective, in any manner, at the time of the accident such defect may create an inference or implication of negligence.
- Thus, it is imperative that each trucking company establish some sort of policy regarding maintenance of its vehicles.

49 C.F.R. § 396.11

- (1) Report required. Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated, except for intermodal equipment tendered by an intermodal equipment provider. The report shall cover at least the following parts and accessories:
 - (i) Service brakes including trailer brake connections;
 - (ii) Parking brake;
 - (iii) Steering mechanism;
 - (iv) Lighting devices and reflectors;
 - (v) Tires;
 - (vi) Horn;
 - (vii) Windshield wipers;
 - (viii) Rear vision mirrors;
 - (ix) Coupling devices;
 - (x) Wheels and rims;
 - (xi) Emergency equipment.

49 C.F.R. § 396.11 Continued

- (2) Report content.
 - (i) The report must identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If a driver operates more than one vehicle during the day, a report must be prepared for each vehicle operated. The driver of a passenger-carrying CMV subject to this regulation must prepare and submit a report even if no defect or deficiency is discovered by or reported to the driver; the drivers of all other commercial motor vehicles are not required to prepare or submit a report if no defect or deficiency is discovered by or reported to the driver.
 - (ii) The driver must sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified.
- (3) Corrective action.
 - (i) 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 be likely to affect the safety of operation of the vehicle.
 - (ii) 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.
- (4) Retention period for reports. Every motor carrier shall maintain the original driver vehicle inspection report, the certification of repairs, and the certification of the driver's review for **three months from the date the written report was prepared.**
- (5) Exceptions. The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness), a driveway-towaway operation, or any motor carrier operating only one commercial motor vehicle.

Intermodal Equipment Providers

- 49 C.F.R. § 390.5
 - Any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.
- 49 C.F.R. § 390.5
 - Intermodal equipment means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

Requirement for Intermodal Equipment Providers (49 C.F.R. § 390.40)

- An intermodal equipment provider must—
 - (a) Identify its operations to the FMCSA by filing the Form MCS-350C required by § 390.41.
 - (a) Identify its operations to the FMCSA by filing the Form MCS-1 required by § 390.401.
 - (b) Mark its intermodal equipment with the USDOT number as required by § 390.41 before tendering the equipment to a motor carrier.
 - (c) Systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, in a manner consistent with § 396.3(b)(1), as applicable, all intermodal equipment intended for interchange with a motor carrier.
 - (d) Provide intermodal equipment intended for interchange that is safe and proper operating condition.
 - (e) Maintain a system of driver vehicle inspection reports submitted to the intermodal equipment provider as required by § 396.31 of this chapter.
 - (f) Maintain a system of inspection, repair, and maintenance records as required by § 396.3(b)(2) of this chapter for equipment intended for interchange with a motor carrier.
 - (g) Periodically inspect equipment intended for interchange, as required under § 396.17 of this chapter.
 - (h) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, have procedures in place, and provide sufficient space, for drivers to perform a pre-trip inspection of tendered intermodal equipment.
 - (i) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or replace the equipment, prior to the driver's departure. The repairs or replacement must be made after being notified by a driver of such damage, defects, or deficiencies.
 - (j) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in § 396.72(b)(2) of this chapter.

Requirements for Motor Carriers Utilizing Intermodal Equipment Providers (49 C.F.R. § 390.42)

- (a) Before operating intermodal equipment over the road, the driver accepting the equipment must inspect the equipment components listed in § 392.7(b) of this subchapter and be satisfied they are in good working order.
- (b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the items in § 396.11(b)(1) of this chapter.

Pre-Trip Inspections

- If an accident occurs and there was no pre-trip inspection performed it creates an inference that the driver and company were negligent and unconcerned with the safety of other drivers.
- If a pre-trip inspection is performed it could be used as evidence to show that the vehicle was not defective and was functioning properly prior to the subject accident.

TRUCK DRIVERS' PRETRIP CHECK LIST

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| | |
|---|---|
| <p>INSIDE</p> <ul style="list-style-type: none"> 1. Parking Brake Applied 1. START ENGINE 1. Oil Pressure Light or Gauge 1. Air Pressure or Gauge "Low" 1. Low Oil or Water Warning Device 1. All gauges below 0 (0 psi) check on pressure 1. Fuel gauge. All gauges above 0 (0 psi) display no 1. warning device ready. "Check" before 0 1. Check High Shock on back-up. Above 0 or too 1. High shock warning and driver visible 1. Warning Panel 1. Check Light on Instrument 1. Horn 1. Windshield Wiper and Washer 1. Horns - Operation 1. Mirror 1. Steering Wheel - Operation 1. Apply Traction Brakes or HILDRIBRACKET 1. Turn on All Lights including Backup Lights 1. Fuel Integrapack on Fuel Warning Device <p>OUTSIDE</p> <p>FRONT</p> <ul style="list-style-type: none"> 1. Head Light 1. Clearance Light 1. Horn/Warning Light 1. Turn Signal and Arrow Flasher 1. Tire and Wheel Comp. <p>LEFT SIDE</p> <ul style="list-style-type: none"> 1. Fuel Tank and Cap 1. Exhaust Light 1. Reflector 1. Tire and Wheel Comp. 1. Cargo Tank/Door on Drum | <p>REAR</p> <ul style="list-style-type: none"> 1. Tail Light 1. Stop Light 1. Turn Signal and Arrow Flasher 1. Clearance Light 1. Horn/Warning Light 1. Reflector 1. Tire and Wheel Comp. 1. Fuel Tank and Cap 1. Fuel Tank and Cap 1. Exhaust Light 1. Reflector 1. Tire and Wheel Comp. 1. Cargo Tank/Door on Drum <p>RIGHT SIDE</p> <ul style="list-style-type: none"> 1. Fuel Tank and Cap 1. Exhaust Light 1. Reflector 1. Tire and Wheel Comp. 1. Cargo Tank/Door on Drum <p>ON COMPLETION</p> <ul style="list-style-type: none"> 1. Horn and Gasoline 1. Exhaust Connection 1. Gasoline Tank Valve, use air, safety, check 1. Refueling System <p>ON VEHICLES TRANSPORTING HAZARDOUS MATERIALS</p> <ul style="list-style-type: none"> 1. Loading or Unload 1. Proper Shipping Paper <p>INSIDE</p> <p>STOP ENGINE</p> <ul style="list-style-type: none"> 1. Release Traction Brakes or Brakes 1. Apply parking Brake (or use other if not available) 1. Do not get out on single vehicle 1. Do not get out on combination |
|---|---|

FASTEN SEAT BELT

DRIVER'S NAME _____

DATE: _____

TRACTOR / TRAILER UNIT NO. _____

Loading of Vehicles

- Each Company is responsible for its vehicle regardless of who loads the vehicle, unless there is a contract or agreement stating otherwise.
- If the driver does not believe that a vehicle is loaded properly the drivers should not accept the load.
- If an accident occurs and it is determined that the cause of the accident was improper loading of the vehicle you will likely be liable for the damages.

Weight of Load

- If a vehicle is overloaded at the time of any accident such evidence may create an inference of negligence.
- Drivers should routinely check the weight of their loads to ensure that they are not overloaded nor overloaded on any particular axle.

Maintaining Proper Log Books

- In 2012, the United States Congress enacted the "Moving Ahead for Progress in the 21st Century" bill, or, more commonly referred to as MAP-21. That bill, which also outlined the criteria for highway funding, included a provision requiring the FMCSA to develop a rule mandating the use of electronic logging devices (ELDs).
- In its simplest form, an electronic logging device — or ELD — is used to electronically record a driver's Record of Duty Status (RODS), which replaces the paper logbook some drivers currently use to record their compliance with Hours of Service (HOS) requirements. Fleets have until December 2017 to implement certified ELDs to record HOS.

Who Will be Required to Implement the New ELD Policy?

- The ELD rule applies to most motor carriers and drivers who are currently required to maintain records of duty status (RODS) per Part 395, 49 CFR 395.8(a). The rule applies to commercial buses as well as trucks, and to Canada- and Mexico-domiciled drivers.
- The ELD rule allows limited exceptions to the ELD mandate, including:
 - Drivers who operate under the short-haul exceptions may continue using timecards; they are not required to keep RODS and will not be required to use ELDs.
 - Drivers who use paper RODS for not more than 8 days out of every 30-day period.
 - Drivers who conduct drive-away-tow-away operations, in which the vehicle being driven is the commodity being delivered.
 - Drivers of vehicles manufactured before 2008.

Maintaining Proper Log Books

- Maintaining proper log books/ELDs helps show that truckers are not operating their vehicle in violation of any state or federal laws.

Accident Policy

- Companies should have accident policies and all of their drivers should be aware of the same:
 - In creating an accident policy, instruct drivers, that if possible, obtain as much information as possible at the accident scene.
 - Equip trucks with accident packages (i.e. camera, note pad, pen etc.)
 - Take pictures of any and all pertinent evidence (i.e. damage to vehicles, damage to other property, skidmarks, speed limits signs if available, mile marker posts, etc.;
 - Obtain contact information of any witness; also
 - Instruct drivers not to make any admission of liability at the accident scene whether to the police or third-party.

Implement Incident Drug Testing Policy

- Implementation of an incident drug testing policy may prevent later allegations that the driver was operating their vehicle under the influence of an intoxicating substance.
 - The policy should either provide for on site drug screens from a third-party if possible; or
 - Screening at a designated facility as soon as possible.

What To Do At The Scene

- It is important that, if there is an accident involving a commercial vehicle, that a representative from the trucking company, preferably the driver if they are physically able to do so, conduct an initial investigation/fact gathering.
- Take pictures of any damage to any vehicle involved in the subject accident.
- Get pictures of any skid marks or pictures of any evidence showing that the truck attempted to avoid the subject accident.
- Have the driver or other company personnel gather all relevant information such as information of the other drivers, location of the accident, the investigating agency and officer, any witnesses from the scene, if willing to speak to the company personnel, and any information regarding personnel who reported to the scene (EMS, wrecker services, police, fire department personnel, etc.)
- Collect what you can without interfering with police or other emergency services personnel

Post-Accident

- Immediately notify insurance carrier
- Procure and retain any relevant evidence concerning the accident.
- Maintain log book for the driver.
- Pull any video or other similar electronic evidence.

Document Retention

- The following is a list of documents that should be retained following any accident in anticipation of litigation:
 - Police Report
 - Statement of Driver
 - Statement of any witnesses
 - Pre-Inspection Forms
 - Driver Personnel File
 - Truck Maintenance Logs
 - Trailer Maintenance Logs
 - Dispatch Log
 - Location History Log
 - Driver Logs
 - Drug test records
 - Employee Manual

Why Document Retention is Important

- The previous list of documents to retain is key to the defense of a truck involved should the same result in a lawsuit being filed
- These documents can aide in determining what theories of defense can be raised
 - I.e. Driver logs show driver was not on the road more than allowed, trailer and truck were properly maintained, etc.
- The documents can also aide in defending the actions of the driver
 - I.e. driver had no reason to exceed speed limit, driver was not under the influence of any substance
- Will help identify what agencies (Police, fire, etc.) to send FOIA or other requests

Other Items to Retain

- Photographs of the Truck and/or Trailer after you obtain possession
- Photographs of the accident scene once clear of debris, the vehicles, etc.
- Copies of any documents pertaining to any repairs made to the truck or trailer
- Any documentation sent to or received from your insurance carrier
- Any documentation sent to or received from an attorney or insurance carrier regarding the accident

Electronic Control Module (ECM)

- Most trucks manufactured in the United States since the 1990's have an Electronic Control Module (ECM)
- These "black boxes" are designed to capture a variety of on-going data regarding the operation of the truck.
- Specifically, ECM's record operational data over a period of time (usually thirty days) including: Overall average speed; highest speed; time driven; amount of time driving over 65 miles per hour; average revolutions per minute (RPMs); seat belt usage; air bag performance; and idling time.
- Most ECMs only record data for 30 days, so early preservation is key

Electronic Control Module (ECM) (Cont.)

- ECMs are key for the defense of any case where liability is at issue:
 - Shows speed prior to and at the time of impact
 - Indicates the time the driver was on the road prior to the accident (idle and drive time)
 - Can help an expert later determine the force of impact based on speed, air bag deployment, etc.
- **Some ECMs also record data sent from the company to the driver**
 - Messages
 - Trip information
 - Other key information

Driver Departure

- Often times following an accident, per company policy, a driver's employment relationship is severed.
- There are a few tips that will assist in the defense of a lawsuit regarding this topic:
 - Document in detail the reasons for termination
 - Make specific citations to company policy and include language from the Employee Manual, if one exists
 - Obtain a forwarding address and non-company issued telephone number
 - Obtain copies of any documents in the driver's possession regarding any logs, accident, and the days leading up to their departure.

When Suit is Filed

- Contact your carrier
- Provide copies of all relevant, accident-related information
- Provide contact information for your safety personnel (those who conducted internal investigation of the accident)
- Discuss whether or not you have any information regarding liability
- Provide any written correspondence from other carriers, other attorneys, or any other outside agency

Initial Meeting with Counsel

- During the initial meeting with counsel following suit being filed:
 - Provide all documents outlined above
 - Provide a status as to the preservation of ECM data and provide the same if possible
 - Be prepared to provide an overview of the accident
 - Provide a status as to the driver and his or her current contact information
 - Be prepared to discuss all relevant company policies regarding the handling of accidents, document retention, etc.



Contact Information:

Chip E. Williams, Esq.

Pullin, Fowler, Flanagan, Brown & Poe, PLLC

600 Neville Street, Suite 201

Beckley, WV 25801

Phone: (304) 254-9300

Email: cwilliams@pffvw.com

Visit our website at: www.pffvw.com