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**Shifting into First:
Early Development of the
Commercial Truck Crash Case**

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**SHIFTING INTO FIRST:
EARLY DEVELOPMENT OF THE
COMMERCIAL TRUCK CRASH CASE**

By Mike Davis

Large commercial trucks account for a disproportionate percentage of the injuries and deaths occurring on American roadways. The Federal Motor Carrier Safety Administration (FMCSA) conducted a study in which it gathered data from crashes involving large trucks between 2001 and 2003. The FMCSA reported that, during the 33-month study period, there were approximately 141,000 fatal or injury causing crashes involving large trucks.¹ FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, REPORT TO CONGRESS ON THE LARGE TRUCK CRASH CAUSATION STUDY (2005), <http://www.fmcsa.dot.gov/facts-research/research-technology/report/ltccs-2006.htm>.

According to the FMCSA's report, two-thirds of the crashes caused by large trucks were attributable to either the truck driver's failure to recognize a potential crash risk as a result of inattention, distraction or failure to observe, or the driver's poor decision-making such as driving too fast for conditions, following too closely, misjudging the speed of other vehicles or making incorrect assumptions about the other driver's actions. *Id.* at 12. An estimated 60% of the crashes caused by large trucks resulted from one of two types of driving failures—driving outside the truck's proper lane of travel or loss of control. *Id.* at 13.

Unfortunately, when a large truck collides with a passenger vehicle, the passenger vehicle loses. In fatal crashes involving a large truck and a passenger vehicle, the persons killed or injured are usually the occupants of the passenger vehicle.

¹ Large truck was defined as a truck with a gross vehicle weight rating greater than 10,000 pounds.

Occupants of passenger vehicles are 12 times more likely to be killed than the occupants of the large truck. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, LARGE TRUCK AND BUS CRASH FACTS 2007 58 (2009), <http://www.fmcsa.dot.gov/facts-research/research-technology/report/2007-LT-BCFs.pdf>. In 2007, there were 4,190 fatal crashes involving large trucks in the United States, resulting in 4,808 fatalities, *id.* at 4, and 58,043 non-fatal, injury-causing crashes, resulting in 86,245 injuries. *Id.* at 10. In this same period, buses were responsible for 277 fatal crashes, resulting in 322 deaths, *id.* at 26, and another 7,130 injury-causing crashes, resulting in 16,237 injuries. *Id.* at 27.

Texas has the dubious distinction of leading the nation in trucking injuries and deaths. In 2007, there were 421 fatal crashes in Texas, resulting in 493 deaths, and 6,955 injury crashes, resulting in 10,257 injuries. *Id.* at 35–36. Texas’s 493 deaths in truck wrecks account for over 10% of the fatalities suffered in truck wrecks in the entire country in 2007, and are over 35% higher than the number of deaths from truck wrecks reported by the state that had the next highest fatality rate from truck crashes—California. *Id.* at 36.

TRUCK CRASHES DIFFER FROM CAR CRASHES

In addition to the increased severity of injury when a vehicle weighing tens of thousands of pounds collides with a vehicle weighing only a few thousand pounds, truck wrecks differ from car wrecks in several other significant respects. Trucking companies and truckers are controlled by an extensive framework of federal and state regulation and, as a general rule, trucking companies and truckers are in violation of these regulations every day. Truck wreck cases also require much more investigation into the pre-wreck conduct of both the truck driver and the trucking company, the driver’s

training, and the condition of the vehicle than would ordinarily be involved in a routine car wreck case. In addition, there are critical, time-sensitive aspects to investigation and discovery in truck crash cases that require prompt attention and thorough investigation.

On the whole, handling a truck crash case is far more complicated and more expensive than handling a routine car wreck case. The flip side, however, is that most truck crash cases present opportunities for enhanced damages. The focus in a truck crash case is at least as much on the culpability of the trucking company as the immediate driving conduct of the truck driver that caused the wreck. The focus is also as much, if not more, on pre-wreck misbehavior as it is on the driver's immediate wreck-causing negligence. To the extent possible, the goal should be to develop egregious facts, repeated violations of the Federal Motor Carrier Safety Regulations (FMCSR), and/or lack of supervision or oversight by the trucking company employer. Much of the investigation and discovery in a truck crash case is directed toward these issues because it is the threat of punitive damages or enhanced compensatory damages that give truck crash cases their increased value.

THE REGULATORY FRAMEWORK

Since much of the focus in truck crash cases is on the applicable federal and state regulations, it is appropriate to begin any discussion of handling trucking cases with a review of the applicable regulations. The Federal Motor Carrier Safety Administration (FMCSA), the U.S. Department of Transportation's administrative body in charge of regulating interstate trucking, has promulgated a comprehensive regulatory scheme to govern interstate trucking. Most trucking cases involve an analysis of the trucking company's and driver's compliance with these regulations.

The starting point in the analysis is the extent to which the Federal Motor Carrier Safety Regulations (FMCSR) apply to a particular truck or trucking company. The FMCSR apply to carriers involved in interstate commerce. Interstate commerce involves situations in which the vehicle, its passengers, or its cargo cross state boundaries or it is intended that the vehicle, passengers or cargo cross state boundaries. *State of Texas v. United States*, 866 F.2d 1546, 1556 (5th Cir. 1989). Interstate carriers must comply with the FMCSR and federal operating authority rules. In addition, interstate carriers are subject to any state regulations not incompatible with the FMCSR.

Intrastate commerce involves trade, traffic, or transportation within a single state. Intrastate carriers, however, are not immune from the FMCSR. Most states have simply adopted the FMCSR as part of their own regulatory framework. Texas has adopted most of the FMCSR. The Texas Transportation Code authorizes the Director of the Texas Department of Public Safety to adopt rules regulating the operation of commercial motor vehicles. TEX. TRANSP. CODE § 644.051. The Director has adopted the FMCSR with a few exceptions and a few modifications of definitions. *See* 37 TEX. ADMIN. CODE § 4.11(a). These rules apply to “all movements by motor vehicle, interstate and intrastate, over the streets and highways of this state.” 37 TEX. ADMIN. CODE § 4.11(b)(3). The FMCSR control interstate commercial vehicles, while the rules adopted by the Director of the Texas Department of Public Safety control commercial vehicles operated solely intrastate. TEX. TRANSP. CODE § 644.002(a).

A “commercial motor vehicle” used to transport persons or property in interstate commerce is defined by the FMCSR as:

Any self-propelled or towed motor v

ehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

- 1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight of 4,536 kg (10,001 pounds) or more, whichever is greater; or
- 2) Is designed or used to transport more than eight passengers (including the driver) for compensation; or
- 3) Is designed to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- 4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. § 5103 and transported in a quantity requiring placarding.

49 C.F.R. § 390.5.

Commercial motor vehicles operated solely intrastate in Texas are defined as:

- 1) vehicle or a combination of vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;
- 2) a farm vehicle or combination of farm vehicles with an actual gross weight, a registered gross weight, or a gross weight rating of 48,000 pounds or more when operating intrastate;
- 3) a vehicle designed or used to transport more than 15 passengers, including the driver; or
- 4) a vehicle transporting hazardous material requiring a placard.

37 TEX. ADMIN. CODE § 4.11(c)(1). Intrastate commercial motor vehicles that fall within this definition are governed by the FMCSR, subject to certain exemptions. For example, Texas exempts certain vehicles used in oil or water well servicing or drilling, mobile cranes, vehicles transporting cottonseed, or concrete pumps from compliance

with the FMCSR. 37 TEX. ADMIN. CODE § 4.12(a)(1). In addition, as will be discussed further below, Texas applies different hours-of-service rules to intrastate drivers.

Interstate motor carriers are required to obtain a U.S. Department of Transportation (U.S. DOT) number. 49 C.F.R. § 385.301(a). The carrier must submit a Motor Carrier Identification Report (MCS-150) and a Safety Certification Application (MCS-150A) in order to receive a U.S. DOT number. 49 C.F.R. §§ 385.305, 390.19. These forms can be found on the FMCSA website at www.safer.fmcsa.dot.gov.

In addition to a U.S. DOT number, for-hire interstate motor carriers must obtain operating authority and a Motor Carrier (MC) number from the FMCSA. To obtain operating authority, the carrier:

- 1) must file the appropriate Application for Motor Property Carrier & Broker Authority (Form OP-1) or Application for Motor Passenger Carrier Authority (Form OP-1(P)), available at www.safer.fmcsa.dot.gov; 49 C.F.R. § 365.105(a),
- 2) must file the appropriate surety bonds, certificates of insurance, proof of self-insurance or other securities or agreements with the FMCSA; 49 C.F.R. § 387.301, and
- 3) must file a Designation of Agent for Service of Process, Form (BOC-3), designating a registered agent for service of process for each state in which the carrier operates. 49 C.F.R. § 366.2.

The FMCSA will issue a MC number once the OP-1 application is received, but will not issue an operating authority permit until the appropriate insurance forms and BOC-3 form are received. A motor carrier cannot operate in interstate commerce until its operating authority permit is officially issued. 49 C.F.R. § 392.9a(a).

FEDERAL MOTOR CARRIER SAFETY REGULATIONS

The FMCSR control motor carriers, drivers, and commercial motor vehicles, which transport property or passengers in interstate commerce. 49 C.F.R. § 390.3(a). With a few exceptions, every employer is required to be knowledgeable and comply with all regulations, to instruct all drivers and employees regarding applicable regulations, and to ensure that all motor vehicle equipment and accessories are maintained in compliance with applicable regulations. 49 C.F.R. § 390.3(e). Under the FMCSR, a motor carrier is required to ensure compliance with any duty or prohibition imposed upon its drivers by the regulations. 49 C.F.R. § 390.11. The motor carrier’s obligation or duty to ensure its drivers’ compliance with the applicable FMCSR is non-delegable—it cannot be delegated to the drivers themselves to avoid liability.

A motor carrier should not be able to avoid liability by delegating compliance with any duty or prohibition imposed by the FMCSR to an independent contractor where such duty or prohibition is intended to protect the public safety. *MBank El Paso N.A. v. Sanchez*, 836 S.W.2d 151, 153 (Tex. 1992) (“As a general rule, when a duty is imposed by law on the basis of concerns for public safety, the party bearing the duty cannot escape it by delegating it to an independent contractor.”). While application of this “general rule” by Texas courts is rare, it has occurred principally in the context of statutes governing common motor carriers. *Id.* at 156 (Cook, J., dissenting); *see also Berry v. Golden Light Coffee Co.*, 327 S.W.2d 436, 439 (Tex. 1959) (observing that “numerous provisions of the Texas Motor Carrier Act are patently designed for protection of the public” and, thus, there would be no injustice in holding a party who colluded with independent contractor to avoid effect of such provisions liable for

injuring plaintiff); *Wardlow v. Newberry*, 319 S.W.2d 437, 442 (Tex. Civ. App.—Eastland 1958, no writ) (holding that the right of control of a driver by one operating under certain motor carrier regulations is a non-delegable right and cannot be delegated in an effort to escape liability for injury to others).

PART 40 – PROCEDURES FOR TRANSPORTATION WORK-PLACE DRUG AND ALCOHOL TESTING PROGRAMS

Part 40 contains the procedures to be used in required drug and alcohol testing.

PART 380 – SPECIAL TRAINING REQUIREMENTS

Part 380 establishes minimum training requirements for entry-level drivers and for longer combination vehicles—truck tractors with two or more trailers or semi-trailers. Texas has adopted all of Section 380 for interstate commercial motor vehicles, but only Subpart E—pertaining to entry-level driver training requirements—for intrastate drivers. 37 TEX. ADMIN. CODE § 4.12(b)(8).

Any driver who first began operating a commercial motor vehicle requiring a commercial driver’s license after July 20, 2003 must receive the training required in § 380.503 of Subpart E, and each employer must ensure that each entry-level driver receives the required training. 49 C.F.R. §§ 380.507, 380.509. The required training includes instruction in four areas: driver qualification requirements, hours of service for drivers, driver wellness, and whistleblower protection. 49 C.F.R. § 380.503. An entry-level driver is required to obtain a training certificate documenting this training. This certificate must be kept by the employer in the driver’s personnel file or Driver Qualification File during the driver’s employment and for one year thereafter. 49 C.F.R. §§ 380.509(b), 380.511, 380.513.

PART 382– CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

All drivers who are required to have a commercial driver’s license, including drivers from Mexico or Canada, must comply with the Part 382 controlled substance and alcohol testing rules. 49 C.F.R. § 382.103. A driver is prohibited from reporting for duty or remaining on duty while having a blood alcohol level equal to or greater than 0.04. 49 C.F.R. § 382.201. An employer is prohibited from allowing the driver to perform or continue to perform any safety-sensitive functions if the employer has actual knowledge that the driver has a blood alcohol level equal to or greater than 0.04. *Id.* A driver is prohibited from on-duty use of alcohol and is prohibited from pre-duty use of alcohol within four hours of reporting for duty. 49 C.F.R. § 382.207. Similar prohibitions apply to the use of controlled substances. 49 C.F.R. §§ 382.213, 382.215.

An employer is required to administer a pre-employment controlled substance test and may, but is not required to, administer pre-employment alcohol testing. 49 C.F.R. § 382.301. When a driver has a wreck, an employer is required to administer tests for alcohol and controlled substances under the following circumstances: 1) if there is a fatality as a result of the wreck; 2) if bodily injury occurs and the driver receives a citation for a moving traffic violation; or 3) if one or more vehicles must be towed and the driver receives a citation for a moving traffic violation. 49 C.F.R. § 382.303.

Reference Chart for FMCSA Regulations for Post-Accident Drug and Alcohol Tests

TYPE OF ACCIDENT INVOLVED	CITATION ISSUED TO THE CMV DRIVER	TEST MUST BE PERFORMED BY EMPLOYER
Human fatality	Yes	Yes
	No	Yes
Bodily injury with immediate medical treatment away from the scene	Yes	Yes
	No	No
Disabling damage to any motor vehicle requiring tow away	Yes	Yes
	No	No

A driver who is subject to a post-accident alcohol test after a wreck is prohibited from using alcohol for eight hours following the wreck. 49 C.F.R. § 382.209

An employer also must conduct random drug and alcohol testing throughout the year. These unannounced, random-testing programs must accomplish alcohol testing for at least 10 percent of an employer’s drivers and drug testing for at least 50 percent of an employer’s drivers. 49 C.F.R. § 382.305. An employer is further required to test a driver for alcohol or controlled substances any time the employer “has reasonable suspicion to believe” the driver has violated the prohibitions relating to controlled substances or alcohol. 49 C.F.R. § 382.307. A driver who has violated FMCSA drug or alcohol rules must submit to return-to-duty testing by the employer in accordance with the requirements of 49 C.F.R. §§ 40.281 through 40.313. *See* 49 C.F.R. § 382.309.

Records of positive alcohol or drug testing must be maintained by an employer for five years. 49 C.F.R. § 382.401(b)(1). Records relating to an employer’s alcohol and controlled substances testing process must be maintained for two years, 49 C.F.R. § 382.401(b)(2), while records of negative tests must be maintained for at least one year. 49 C.F.R. § 382.401(b)(3).

Employers are required to make inquiries to a prospective driver's previous employers for the two-year period preceding the driver's date of application to obtain the following information:

- 1) alcohol tests with results greater than or equal to 0.04;
- 2) positive drug tests;
- 3) refusals to be tested;
- 4) other violations of drug and alcohol testing regulations; and
- 5) successful completion of return-to-duty requirements for any employee to whom those requirements would be applicable.

49 C.F.R. §§ 40.25, 382.413. In addition, Texas law requires an employer to report to the Motor Carrier Bureau of the Texas Department of Public Safety all positive alcohol or controlled substance tests or refusals to be tested. TEX. TRANSP. CODE § 644.252; 37 TEX. ADMIN. CODE § 4.21.

PART 383 – COMMERCIAL DRIVER'S LICENSE

Part 383 establishes the commercial driver's license requirements for operation of commercial motor vehicles.² Texas has not adopted Part 383 and will not enforce violations of Part 383 by intrastate drivers, but Part 383 is applicable to Texas drivers on

² Part 383 provides a definition of "commercial motor vehicle" that differs from the definition furnished in Part 390. Part 383 defines "commercial motor vehicle" as:

- [A] motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—
- a. Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or
 - b. Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or
 - c. Is designed to transport 16 or more passengers, including the driver; or
 - d. Is of any size and is used in the transportation of materials as defined in this section.

49 C.F.R. § 383.5.

interstate trips and may impact an intrastate driver's qualifications as required under Part 391 of the FMCSR, which has been adopted by Texas. The Texas commercial driver's license requirements are codified in Chapter 522 of the Texas Transportation Code, which are essentially similar to the requirements of Part 383 and comply with the federally-imposed minimum requirements.

This part of the FMCSR prohibits a driver from operating a commercial motor vehicle without a commercial driver's license, which requires passing both written and driving skills tests. 49 C.F.R. § 383.3 There are certain limited exceptions to this general prohibition. *See id.* Similarly, in Texas, the operation of certain vehicles are exempted from Texas commercial driver's license requirements. TEX. TRANSP. CODE § 522.004.

Under the FMCSR, a driver must pass a written test, evidencing the knowledge required in 49 C.F.R. § 383.111, as well as a driving skills test, evidencing those skills required in 49 C.F.R. § 383.113. 49 C.F.R. § 383.71. The driving skills test must be conducted in a vehicle similar in type to the one the driver will be operating. *Id.* A driver applying for a commercial driver's license must:

- 1) certify that the applicant is not subject to any disqualification or driver's license suspension, revocation or cancellation;
- 2) certify that the driver does not have a driver's license from more than one state; and
- 3) provide a list of all states in which the driver was previously licensed during the preceding ten years.

49 C.F.R. § 383.71(a). A driver may have only one commercial driver's license at a time. 49 C.F.R. § 383.21.

A driver convicted of any traffic violation must notify the driver's employer and the appropriate state agency within 30 days of the conviction. 49 C.F.R. § 383.31. The driver must notify the driver's employer before the end of the next business day of any driver's license suspension, revocation, or cancellation. 49 C.F.R. § 383.33. Possession of a commercial driver's license is considered to be consent to alcohol testing. 49 C.F.R. § 383.72.

Under the FMCSR, when reviewing a job application for the position of driver, employers must request—and the driver must provide—his or her employment history for a specified period of time depending on the type of vehicle the prospective employee will be driving. Drivers who operate commercial motor vehicles requiring a commercial driver's license are required to provide a prospective employer with their employment history for the previous ten years. 49 C.F.R. § 391.21(b) (11). Otherwise, the driver need only furnish his or her employment history for the previous three years. 49 C.F.R. § 391.21(b) (10). This employment history must include:

- 1) the name and address of previous employers;
- 2) the dates of employment; and
- 3) the reasons for leaving that employment.

49 C.F.R. § 391.21(b)(10)–(b)(11).

Certain types of conduct or offenses disqualify a driver from operating a commercial motor vehicle. A driver is prohibited from driving a commercial motor vehicle if the driver is disqualified as a result of violations identified in 49 C.F.R. § 383.51. *See* Tables of Penalties in Appendix A.

PART 385 – SAFETY FITNESS STANDARDS

Part 385 of the FMCSR regulates registration of new motor carriers and safety ratings of motor carriers. Before a motor carrier can begin interstate operations, it must register with the FMCSA to receive a U.S. DOT number. 49 C.F.R. § 385.301. If the carrier is to operate as a for-hire carrier, then it must obtain operating authority and an MC number as well. *Id.* For the first 18 months of operation, the new motor carrier is subject to new entrant safety monitoring procedures. 49 C.F.R. § 385.307. If the carrier’s basic safety management controls are inadequate, its U.S. DOT number will be revoked until corrective action is taken. 49 C.F.R. § 385.319(c).

All motor carriers are subject to a FMCSA compliance review to ensure adequate safety management controls. 49 C.F.R. § 385.5. A carrier receiving an “unsatisfactory” rating is prohibited from operating a commercial motor vehicle after a designated remedy period. 49 C.F.R. § 385.13. A carrier’s final safety rating is public information and may be obtained at www.safersys.org. 49 C.F.R. § 385.19.³

In Texas, safety regulations governing intrastate carriers are set forth in the Texas Administrative Code. *See* 37 TEX. ADMIN. CODE § 4.15. Although some specifics and some timetables are different, the Texas intrastate rules are very similar to the federal interstate rules. Intrastate motor carriers, however, are not subject to the new entrant registration rules applicable to interstate carriers. Intrastate carriers in Texas must register with the Motor Carrier Division of the Texas Department of Transportation before operating any commercial motor vehicle or a vehicle transporting household goods on a for-hire basis. TEX. TRANSP. CODE § 643.051.

³ The FMCSA has “temporarily” removed safety rating data from the Safersys website.

PART 387 – FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Interstate motor carriers transporting property are required to maintain the following minimum levels of financial responsibility: \$750,000 for commercial motor vehicles transporting non-hazardous materials and \$5,000,000 for vehicles transporting hazardous substances. 49 C.F.R. §§ 387.7, 387.9. Interstate passenger carriers are required to maintain the following minimum levels of financial responsibility: \$1,500,000 for vehicles with a seating capacity of 15 or less and \$5,000,000 for vehicles with a seating capacity of 16 or more. 49 C.F.R. §§ 387.31, 387.33.

Intrastate carriers in Texas must maintain proof of a minimum level of insurance at the carrier's principal place of business and in each individual vehicle. The minimum level of insurance coverage required for Texas intrastate commercial motor vehicles transporting non-hazardous materials or transporting 15 or fewer passengers is \$500,000. Vehicles transporting hazardous materials or 16 passengers or more are required to maintain a minimum coverage of \$5,000,000. See Texas Department of Transportation Form 1899 in Appendix B for a complete schedule of Texas minimum insurance requirements.

In order to meet the financial responsibility requirements of the FMCSR, motor carriers are required to have endorsements to their liability insurance policies as provided for in 49 C.F.R. §§ 387.15 and 387.39. The most common endorsement is the MCS-90 endorsement, which extends coverage to injury victims regardless of available policy defenses or coverage issues. A carrier's proof of financial responsibility is public information and may be obtained on the FMCSA's website at http://li-public.fmcsa.dot.gov/LIVIEW/pkg_carrquery.prc_carrlist.

PART 390 – GENERAL

Part 390 establishes the general requirements and applicability of the FMCSR. The rules “are applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce.” 49 C.F.R. § 390.3(a). An employer must be knowledgeable of and comply with these rules, and every driver and employee must be instructed regarding these risks and comply with the rules. 49 C.F.R. § 390.3(e). A motor carrier has a duty to ensure that its drivers comply with the rules. 49 C.F.R. § 390.11.

For accidents occurring after April 29, 2003, motor carriers are required to maintain an accident register for any occurrence that resulted in a fatality, bodily injury requiring immediate medical treatment away from the scene, or towing of one or more vehicles. Such records must be retained for a period of three years. 49 C.F.R. § 390.15(b). This accident register must include the following information for each accident: 1) date of the accident; 2) state as well as city, town or nearest location where the accident occurred; 3) driver’s name; 4) number of injuries; 5) number of fatalities; and 6) whether hazardous materials other than fuel from the fuel tanks were released in the accident. 49 C.F.R. § 390.15(b)(1). In addition to the information required in § 390.15(b)(1), the accident register must include all reports required by state or governmental entities or by insurers. 49 C.F.R. § 390.15(b)(2).

A motor carrier is required to preserve and maintain all records required by the FMCSR at its principal place of business or a regional office. Records must be available for inspection by authorized state or federal agents within 48 hours of request. 49 C.F.R. § 390.29.

A motor carrier is required to file a Motor Carrier Identification Report (MC-150) before beginning operations and every 24 months thereafter. 49 C.F.R. § 390.19(a).

Each interstate commercial truck must be marked with the motor carrier's name and U.S. DOT number on each side of the vehicle. 49 C.F.R. § 390.21. Markings on intrastate commercial motor vehicles are governed by Texas law. *See* TEX. TRANSP. CODE § 642.002.

49 C.F.R. § 390.17 permits the use of added equipment and accessories inside a commercial truck or bus, but requires that the added equipment not decrease the safe operation of the vehicle. As a result of a recent study, *Driver Distraction in Commercial Vehicle Operations*, www.fmcsa.dot.gov/facts-research/art-research.aspx, the FMCSA has issued a regulatory guidance interpreting § 390.17 as prohibiting mobile phone texting while driving a commercial vehicle. *Regulatory Guidance Concerning the Applicability of the FMCSRs to Texting by Commercial Motor Vehicle Drivers*, 75 Fed. Reg. 4305 (Jan. 27, 2010) (to be codified at 49 C.F.R. ch. III). The FMCSA intends to address texting and use of other electronic devices in a stand-alone rule after completing the required notice-and-comment requirements, but the safety risks associated with texting are so significant that the agency decided to also address the issue with the regulatory guidance interpreting § 390.17. In its discussion of the regulatory guidance, the agency states that the regulatory guidance does not prohibit the use of electronic dispatching tools and fleet management systems. *Id.* at 4396. Use of these devices will be addressed in the notice-and-comment rulemaking proceeding; however, the agency notes that it “believes safety-conscious fleet managers would

neither allow nor require their drivers to type or read messages while driving.” *Id.* The agency states that to the extent that there are carriers which require drivers to type or read messages while driving, “the Agency will consider appropriate regulatory action to address the safety problem.” *Id.*

PART 391 – QUALIFICATIONS OF DRIVERS

The general qualifications necessary to operate an interstate commercial motor vehicle are set forth in Part 391. The driver must:

- 1) be at least 21 years old;
- 2) be able to read and speak the English language;
- 3) be able to safely operate the type of commercial motor vehicle being driven;
- 4) be physically qualified to drive a commercial motor vehicle;
- 5) have furnished his employer a list of any motor vehicle violations incurred;
- 6) not be disqualified to drive a commercial motor vehicle; and
- 7) have successfully completed a driver’s road test.

49 C.F.R. § 391.11. The driver requirements for intrastate drivers in Texas differ slightly. An intrastate Texas driver must be at least 18 years of age and may possess an intrastate-only medical waiver endorsement. TEX. TRANSP. CODE §§ 522.0235, 522.027.

Disqualifying offenses that prohibit a driver from operating a commercial motor vehicle include:

- 1) driving a commercial motor vehicle under the influence of alcohol or a Schedule I controlled substance;

- 2) refusing to take a required drug or alcohol test;
- 3) transportation, possession, or use of a Schedule I controlled substance while on duty;
- 4) leaving the scene of a wreck while operating a commercial motor vehicle;
- 5) committing a felony involving use of a commercial motor vehicle; or
- 6) conviction of violating any out-of service order.

49 C.F.R. § 391.15.

Part 391 also provides rules for application and acceptance of employment as a driver of a commercial motor vehicle. A driver is prohibited from driving a commercial motor vehicle unless the driver has furnished his/her employer with an application for employment. 49 C.F.R. § 391.21(a). The application must be signed and certified as true by the driver and must include the following information:

- 1) the applicant's name, address, date of birth, and social security number;
- 2) the applicant's residences for the past three years;
- 3) the date upon which the application is submitted;
- 4) the issuing state, license number, and expiration date of the applicant's commercial driver's license;
- 5) a description of the applicant's experience operating motor vehicles;
- 6) a list of all motor vehicle accidents in the past three years;
- 7) a list of all motor vehicle violations in the past three years;
- 8) the circumstances of any denial, revocation, or suspension of a driver's license; and
- 9) identification of all employers for the previous three years or ten years, depending upon the type of vehicle to be operated,

along with dates of employment and the reason for leaving such employment.

49 C.F.R. § 391.21(b).

An employer is required to conduct an investigation of each driver applying for a driving position by obtaining the driver's driving record for the past three years in every state in which the driver held a driver's license or permit. 49 C.F.R. § 391.23. A copy of these records must be placed in the driver's Driver Qualification File. 49 C.F.R. § 391.23(b). The employer must also make an inquiry regarding the driver's safety performance history with any U.S. Department of Transportation-regulated employer for the preceding three years. 49 C.F.R. § 391.23(a)(2). Replies to these inquiries must be placed in the driver's Driver Investigation History File. 49 C.F.R. § 391.23(c)(1).

An employer is required to conduct an annual inquiry and review of its drivers' driving records. At least once every 12 months, the employer must make an inquiry into the driving record of each driver it employs. 49 C.F.R. § 391.25. A copy of these records must be maintained in the driver's Driver Qualification File. 49 C.F.R. § 391.25(c). In addition to its own inquiry, an employer must also require each driver to provide a list of motor vehicle violations at least once every 12 months. 49 C.F.R. § 391.27. This list is also maintained in the driver's Driver Qualification File. 49 C.F.R. § 391.27(d).

Unless the driver already has a commercial driver's license with certifications allowing the driver to operate the specific type of vehicle involved or a valid Certificate of Road Test issued within the past three years, an employer must give each driver applicant a road test in the type of commercial motor vehicle the driver will be

operating. 49 C.F.R. § 391.31. The employer shall use a Road Test Form, which the examiner signs after rating the driver's performance in each tested activity. 49 C.F.R. § 391.31(d). Upon completion of the road test, the driver receives a Certification of Road Test. 49 C.F.R. § 391.31(e). A copy of the Certification of Road Test is given to the driver, and the original of the Certification of Road Test and the Road Test Form must be retained in the driver's Driver Qualification File. 49 C.F.R. § 391.31(g).

Subpart E of Part 391 regulates the physical qualifications and medical examinations required of interstate drivers. A driver is prohibited from operating a commercial motor vehicle unless physically qualified to do so. 49 C.F.R. § 391.41(a)(1)(i). The required physical qualifications are:

- 1) no loss of a foot, leg, hand or arm unless granted a skill performance certification under 49 C.F.R. § 391.49;
- 2) no impairment of a hand, finger, arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle;
- 3) no history or diagnosis of diabetes requiring insulin and no history or diagnosis of any type of cardiovascular disease which might cause syncope, dyspnea, collapse, or congestive heart failure;
- 4) no history or diagnosis of respiratory dysfunction likely to interfere with the ability to safely control or drive a commercial motor vehicle;
- 5) no current history of high blood pressure likely to interfere with the ability to operate a commercial motor vehicle;
- 6) no history or diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with the ability to safely operate a commercial motor vehicle;

- 7) no history or diagnosis of epilepsy or other condition which is likely to cause loss of consciousness or loss of ability to control a commercial motor vehicle;
- 8) no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with the ability to safely drive a commercial motor vehicle;
- 9) at least 20/40 corrected vision in each eye, at least 70° in the horizontal meridian in each eye, and not color-blind for red, green, or amber;
- 10) have the ability to perceive a forced whisper in the better ear with or without a hearing aid;
- 11) does not use Schedule I controlled substances unless prescribed by a doctor who has advised the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and
- 12) no current history of alcoholism.

49 C.F.R. § 391.41(b). The driver is required to carry a Medical Examiner's Certificate at all times when on duty. 49 C.F.R. § 391.41(a)(1)(i).

Texas intrastate drivers who are not transporting placarded hazardous materials and were employed in Texas as commercial motor vehicle drivers prior to August 28, 1989 are not required to meet federal medical standards. Drivers born after August 28, 1971 must meet all federal medical standards. *See* 37 TEX. ADMIN. CODE § 4.11(a) (incorporating by reference 49 C.F.R. § 391.41). The Texas Department of Public Safety may provide waivers for intrastate driving to drivers who would otherwise be disqualified under § 391.41(b)'s loss of limb or vision requirements if the driver meets certain standards established by the Department of Public Safety's License Issuance Bureau.

The employer is required to maintain a Driver Qualification File on each driver, which must include:

- 1) the driver's employment application;
- 2) the response to each driving record inquiry to state agencies for the past three years;
- 3) the driver's Road Test Certificate;
- 4) the response to each annual driver's record inquiry to each state agency;
- 5) the annual driver's certification of motor vehicle violations; and
- 6) a Medical Examiner's Certificate of the driver's physical qualification to drive a commercial motor vehicle.

49 C.F.R. § 391.51(b). The employer is required to retain the Driver Qualification File throughout the driver's employment and for three years thereafter. 49 C.F.R. § 391.51(c). In addition to a Driver Qualification File, an employer is also required to maintain a Driver Investigation History File containing the records obtained in the employer's investigation of the safety performance history of new or prospective drivers as required under 49 C.F.R. § 391.23 (d)–(e). 49 C.F.R. § 391.53(a).

PART 392 – DRIVING OF COMMERCIAL MOTOR VEHICLES

A driver may not operate, or be permitted to operate, a commercial motor vehicle while impaired or likely to become impaired by fatigue, illness, or other cause. 49 C.F.R. § 392.3. Unless prescribed by a doctor who has advised that the substance will not affect the driver's ability to safely operate a commercial motor vehicle, the driver is prohibited from possessing, using, or being under the influence of any Schedule I controlled substance, amphetamine, narcotic, or any other substance which

renders a driver unsafe to operate a motor vehicle. 49 C.F.R. § 392.4. Similarly, a driver is prohibited from using alcohol or being under the influence of alcohol while on duty or within four hours of going on duty. 49 C.F.R. § 392.5(a). A driver may not possess beer, wine or distilled spirits while on duty. *Id.* A driver in violation of § 392.5(a) shall immediately be placed out-of-service. 49 C.F.R. § 392.5(c). A driver must report any out-of-service order to the employer and to the appropriate State official. 49 C.F.R. § 392.5(d).

A motor carrier cannot require a trip for which the length or time requirements necessitate speeds higher than posted speed limits. 49 C.F.R. § 392.6.

The driver has a duty to inspect and ensure that the commercial motor vehicle's equipment is in good working order, that required emergency equipment is in place, and that the load is secured. 49 C.F.R. §§ 392.7-392.9.

Subpart B of Part 392 addresses operation of commercial motor vehicles at railroad crossings and in hazardous conditions. 49 C.F.R. §§ 392.10–392.16.

Subpart C of Part 392 establishes requirements for stopped or parked commercial motor vehicles. 49 C.F.R. §§ 392.22–392.25.

Non-bus commercial vehicles are prohibited from transporting passengers. 49 C.F.R. § 392.60.

Radar detectors are prohibited in any commercial motor vehicle. 49 C.F.R. § 392.71.

PART 393 – PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Part 393 creates requirements for, among other things, wheels, lighting, brakes, fuel systems, cargo security, tires, suspension, and other equipment. *See, e.g.*, 49 C.F.R. §§ 393.205, 393.207, 393.24.

PART 395 – HOURS OF SERVICE OF DRIVERS

Hours-of-service rules differ for interstate drivers and Texas drivers who are operating solely intrastate. Subject to certain exceptions listed in 49 C.F.R. § 395.1, the hours-of-service requirements for interstate drivers transporting property are:

- (1) the driver may not operate a commercial motor vehicle more than 11 cumulative hours following ten consecutive hours off duty; 49 C.F.R. § 395.3(a)(1);
- (2) a driver cannot operate a commercial motor vehicle after being on duty more than 14 hours following ten consecutive hours off duty; 49 C.F.R. § 395.3(a)(2); and
- (3) a driver cannot operate a commercial motor vehicle after having been on duty more than 70 hours in any eight-day period, or 60 hours in any seven-day period if the motor carrier operates less than seven days per week. 49 C.F.R. § 395.3(b)(1)-(b)(2).

The hours-of-service requirements for interstate drivers transporting passengers are:

- (1) the driver may not operate a commercial motor vehicle more than ten hours following eight consecutive hours off duty; 49 C.F.R. § 395.5(a)(1);
- (2) a driver cannot operate a commercial motor vehicle after being on duty more than 15 hours following eight consecutive hours off; 49 C.F.R. § 395.5(a)(2); and
- (3) a driver cannot operate a commercial motor vehicle after having been on duty more than 70 hours in any eight-day period, or 60 hours in any seven-day period if the motor

carries operates less than seven days per week. 49 C.F.R. § 395.5(b)(1)–(2).

The Texas intrastate hours-of-service rules apply to all intrastate motor carriers whether transporting property or passengers. Under the Texas rules:

- (1) a driver cannot operate a commercial motor vehicle more than 12 hours following eight consecutive hours off duty;
- (2) a driver cannot operate a commercial vehicle after being on duty more than 15 hours after eight consecutive hours off duty; and
- (3) a driver cannot operate a commercial motor vehicle after having been on duty more than 70 hours in any seven-day period.

37 TEX. ADMIN. CODE §§ 4.12(a)(2), 4.12(b)(2).

A driver must keep a record of duty status for each 24-hour period. Section 395.8 provides very specific requirements for the driver's logbook. It must be kept current to the last change of duty status. 49 C.F.R. § 395.8(f)(1). All entries must be made by the driver. 49 C.F.R. § 395.8(f)(2). The driver must certify the accuracy of each record by signing the log. 49 C.F.R. § 395.8(f)(7). For a sample Driver's Daily Log, see Appendix C.

A driver must maintain a copy of the current duty status record as well as records for the preceding seven days. These records must be available for inspection while on duty. 49 C.F.R. § 395.8(k)(2). The driver must send each original record of duty form to the motor carrier, which must be retained by the motor carrier for six months. 49 C.F.R. §§ 395.8(i), 395.8(k)(1).

The FMCSA has recently issued a regulatory guidance, stating that despite § 395.8(a)(1)'s requirement that the record of duty status be prepared in duplicate, the

requirement can be met by having the driver scan the original handwritten document and electronically submit a copy to the carrier. Regulatory Guidance Concerning the Preparation of Drivers' Record of Duty Status to Document Compliance With the Hours-of-Service Requirements, 75 Fed. Reg. 32860 (June 10, 2010) (to be codified at 49 C.F.R. pts. 390, 395).

In lieu of a hand-written record of duty status, a motor carrier can require the use of an automatic on-board recording device. 49 C.F.R. § 395.15. The FMCSA may rescind authority to use on-board recording devices if a motor carrier has an unsatisfactory safety rating, if a driver has a pattern of exceeding the hours-of-service limitations or has failed to accurately record hours-of-service, or if the recording device has been tampered with. 49 C.F.R. § 395.15(j).

An interstate driver may be exempt from the daily logbook requirements if the driver operates within a 100-mile radius of the driver's work-reporting location and meets certain other requirements. 49 C.F.R. § 395.1(e)(1)(i). Texas has a similar exception for intrastate drivers operating within a 150-mile radius of the driver's work-reporting location. 37 TEX. ADMIN. CODE § 4.12(a)(4).

PART 396 – INSPECTION, REPAIR AND MAINTENANCE

Motor carriers must maintain records relating to the inspection, repair, and maintenance of all vehicles for a period of one year and for six months after the vehicle leaves the motor carrier's control. 49 C.F.R. § 396.3(c). A motor carrier is specifically required to make sure that each vehicle is properly lubricated and free of oil and grease leaks, 49 C.F.R. § 396.5, and is prohibited from operating any motor vehicle in a condition which is likely to cause an accident or breakdown. 49 C.F.R. § 396.7(a).

All commercial motor vehicles are subject to roadside inspection by authorized state or federal agents at any time. 49 C.F.R. § 396.9. If a condition is discovered that would likely cause an accident or breakdown, the vehicle is taken out of service. 49 C.F.R. § 396.9(c). The results of any roadside inspection are recorded in a Driver's Vehicle Examination Report, 49 C.F.R. § 396.9(b), which the driver must deliver to the motor carrier. 49 C.F.R. § 396.9(d). Violations or defects identified in the report must be corrected and the corrections certified to the issuing agency within 15 days. 49 C.F.R. § 396.9(d)(2)–(d)(3). A motor carrier must maintain these records for 12 months from the date of inspection. 49 C.F.R. § 396.9(d)(3)(ii).

Drivers are required to conduct a vehicle inspection each day and to submit a signed report to the motor carrier. 49 C.F.R. § 396.11(a)(1). Any defects or deficiencies identified in the report must be corrected before the vehicle is permitted to be driven again. 49 C.F.R. § 396.11(c). The inspection report and any certification of repairs must be maintained for at least three months from the date of the report. 49 C.F.R. § 396.11(c)(2). For a sample Driver's Vehicle Inspection Report, see Appendix D.

Before driving a vehicle, a driver is required to conduct a pre-trip inspection to make sure the vehicle is in safe operating condition. 49 C.F.R. § 396.13. During the course of this inspection, the driver must also review the previous driver's inspection report and sign off on it, confirming that any needed repairs were performed. *Id.*

A motor carrier is also required to conduct an inspection of each of its commercial motor vehicles at least once every 12 months. 49 C.F.R. § 396.17. The inspection must be performed by a qualified inspector. 49 C.F.R. § 396.19. The

inspector must prepare a report, which is retained by the motor carrier for 14 months from the date of the inspection. 49 C.F.R. § 396.21. For a sample Annual Vehicle Inspection Report, see Appendix E.

PART 397 – TRANSPORTATION OF HAZARDOUS MATERIALS

Part 397 provides special rules applicable to motor vehicles transporting hazardous materials which must be marked or placarded in accordance with 49 C.F.R. § 177.823. 49 C.F.R. § 397.1. In addition to Part 397, the rules of Parts 390 through 396 apply to motor carriers and drivers transporting hazardous materials. 49 C.F.R. § 397.2. Commercial motor vehicles transporting hazardous materials are subject to special requirements relating to parking of the vehicle. 49 C.F.R. § 397.7. A vehicle transporting hazardous materials may not be left unattended. 49 C.F.R. § 397.5.

INVESTIGATION

Because much of the critical evidence in a truck wreck case is not within the plaintiff's control and trucking companies are required to retain key information for only a limited time—in some cases only six months—it is imperative to move quickly in investigating the crash, seeking to preserve evidence, obtaining access to the truck and trailer, and hiring expert witnesses. In most instances, you will need to consider immediately retaining experts to document the scene, begin a reconstruction, and inspect the truck and trailer. You will also want to consider sending a preservation letter to the defendant to retain important documents. Many times you are better off filing a lawsuit quickly in order to establish an element of control and access to key evidence.

PRESERVATION LETTER

Much of the critical evidence that you will need will be in the possession of the trucking company or driver, and the required retention period may be very short. Immediately following your client interview and opening the file, you may want to send a letter to the defendant motor carrier, the driver, and their insurance carrier listing the materials sought to be preserved. One strategy is to include a detailed itemization of materials, essentially tracking your future discovery requests. A lengthy detailed list, however, might result in a defendant subsequently contending that the preservation letter was so overly broad and burdensome that it was impossible to understand or comply with. Another approach is a shorter letter identifying general categories of documents, but with enough specificity to identify the relevant types of materials that need to be preserved. Whichever tactic you choose, you need to consider how this letter may ultimately be used. Your primary purpose is to place a duty on defendants to preserve critical evidence. If, however, a defendant fails to do so despite your letter, you need to remember that your letter will be an important exhibit in the forthcoming motion for spoliation sanctions, so you need to consider how it will be viewed by the court.

In addition to documentary evidence, you want to put the trucking company on notice that it needs to preserve the truck and trailer in the condition they were in immediately following the wreck, so that your trucking expert can have the opportunity to perform a meaningful inspection. You will want the trucking company to preserve the electronic data recorder from the truck, as well as any other recording devices and

any on-board communication or tracking systems. Some trucks are even equipped with video event recorders that, when triggered, download video of the event.

INITIAL INVESTIGATION

It is important that you and your accident reconstruction expert carefully document the scene of the wreck as soon as possible. The scene should be well-photographed from all directions, being careful to document any physical evidence at the scene such as skid marks, scrapes, or gouge marks. Photographs should also include any traffic signs or other traffic control devices, as well as any trees, signs, fences, or other objects which may have obstructed the respective drivers' views or otherwise played a role in the wreck.

You should obtain the accident report prepared by the investigating officer as it may contain measurements, diagrams, and a description of what happened. The accident report will usually contain the officer's opinion on causation and may identify witnesses. The officer's field notes may contain information not included in the report. Many investigating officers also take photographs of the vehicles and scene. It is often beneficial to talk to the officer in addition to reviewing the accident report.

At trial, the portions of the report containing the officer's observations at the scene should be admissible as business records or public records. TEX. R. EVID. 803(6), (8). Opinions, conclusions, and hearsay statements, however, are not admissible unless their admissibility is established under an appropriate rule of evidence. *Tex. Dept. of Public Safety v. Nesmith*, 959 S.W.2d 443, 447 (Tex. Civ. App.—Corpus Christi 1977, no writ); *Logan v. Grady*, 482 S.W.2d 313, 317 (Tex. Civ. App.—Fort Worth 1972, no writ). *But see Hawkins v. Gorea Motor Express, Inc.*, 360 F.2d 933, 934 (2d Cir. 1966)

(holding that it was not error to admit trooper's report based upon information derived from trooper's own observations and conversations with the driver).

It is always important to interview witnesses and get their authorization to obtain any statements they have given. The accident report or officer's field notes may contain the names and addresses of people at the scene. You will also want to interview EMS personnel and other first-responders, as well as wrecker drivers. Additional witnesses may be identified from news reports. Witness interviews or statements will help you to understand early in the case what the evidence is going to be and assist your accident reconstruction.

Photographs and other information may be obtained from newspaper or television reporters who may have been present at the accident scene. You may also want to consider obtaining aerial photographs of the scene or hiring a survey company to survey the scene.

As part of your investigation, you need to find out whether or not the scene has been changed since the wreck. For example, if the road has been resurfaced, the coefficient of friction and other important factors may have changed. Information concerning road resurfacing can be obtained from the Texas Department of Transportation.

INSPECTION OF DEFENDANT'S TRUCK AND TRAILER

While it's important to maintain control over your client's vehicle for purposes of the reconstruction and to show the extensive damage incurred as a result of the collision, access to the defendant's truck and trailer is critical. You will want your trucking expert to inspect the brakes, steering, tires, and other mechanical systems of the

truck and trailer. You will also want your expert to document damage from the wreck with measurements and photographs. A state or federal agency also may have conducted a post-accident inspection of the truck and trailer. If so, you will want to obtain records from this inspection. You will still, however, always want your own trucking expert to inspect the truck.

Your expert will want to discover what type of data recording devices the truck was equipped with, as well as any on-board communication or video systems. It is also important in these inspections to inventory the contents of the cab and look for any evidence of alcohol or drug use, any prohibited equipment like a radar detector, or devices that may have distracted a driver's attention such as computers, hand-held mobile devices, CB-radios, televisions or DVD players. This inspection is also a good time to document any helpful signs, bumper stickers, or mud flaps. The truck inspection should be carefully documented with photographs and the driver's logbook should be copied.

DISCOVERY

INFORMAL DISCOVERY

There are numerous websites and other sources of helpful information available. Government websites from which you can obtain a lot of information about a defendant motor carrier include:

- 1) www.fmcsa.dot.gov. This is the official Federal Motor Carrier Safety Administration website. From this website you can access the rules and regulations relating to motor carriers, registration and licensing information, and analysis and research.
- 2) www.safersys.org. This link takes you to the Safety & Fitness Electronic Records System. From this website you

can get a company snapshot of a particular motor carrier. It is searchable by U.S. DOT number, motor carrier number, or name. These snapshots provide general information regarding the company including legal name, address, U.S. DOT number, motor carrier number, any state identification number, the number of units and drivers employed, and the type of operation and cargo. The snapshot includes inspection results for the past 24 months with a comparison to the national average. You can also obtain the number of reported crashes for the past 24 months, insurance coverage data for the carrier, and carrier safety information.

The site also offers, for a \$20 fee, a company safety profile which includes:

- a. a history of the carrier's safety/compliance reviews, educational contacts, and federal safety ratings;
 - b. a history of the carrier's enforcement cases;
 - c. a crash summary of the preceding 4 years with individual crash data for 1-2 years; and
 - d. an inspection summary for the preceding 2 years with individual inspection data for 1-2 years.
- 3) www.ai.fmcsa.dot.gov/SafeStat/SafeStatMain.asp. This is a link to the FMCSA's SafeStat data through its Analysis and Information portal. The SafeStat site allows you to search for a motor carrier's safety fitness information. It includes information about both interstate and intrastate carriers searchable by U.S. DOT number, motor carrier number, or name. You can also obtain a carrier list by state. By selecting a specific carrier, you can obtain a lot of safety evaluation information about the carrier; however, despite the requirement in 49 C.F.R. § 385.19 that a carrier's safety rating be public information, the FMCSA has decided to "temporarily" remove access to carrier safety ratings and the Accident Safety Evaluation Area of this website ostensibly because the agency has decided that some state-provided crash reports are unreliable.⁴

⁴ <http://www.ai.volpe.dot.gov/dataquality/dataquality.asp> provides information reflecting the FMCSA'S assessment of the reliability of data submitted by the various states.

Despite this limitation, there is still a lot of valuable information on the SafeStat website. You can obtain a list of the accidents in which the motor carrier's vehicles have been involved over the last 30 months and, by clicking on a specific accident, you can pull up some accident details. Similarly, you can pull up information on driver compliance review, inspection results, or moving violations. By clicking on a specific instance, you can pull up details, including the VIN of the vehicle involved. The site also contains data on a motor carrier's vehicles, including inspections performed on the same, and permits a visitor to pull up details of those inspections and safety data along with a list of Safety Management Review violations. The site also includes a summary section of historical data for the carrier.

- 4) http://apps.dot.state.tx.us/apps/mccs/MCCS_Frame_Inquiry.asp. This is the Texas Department of Transportation website that allows you to search for information on Texas intrastate carriers although the available information is nowhere near as extensive as the federal interstate carrier sites. You can search for a particular motor carrier by name, DBA, Texas DOT number, city, or zip code. The site provides the legal name of the carrier, the owner/officers of the carrier, and its business address. The site identifies the motor carrier's registration status, its insurance carriers, and a list of vehicles. Motor carrier safety records for intrastate carriers are not available through this website. This data must be sought through an Open Records Request to the Motor Carrier Bureau of the Texas Department Public Safety.
- 5) <https://apps.dot.state.tx.us/apps/cms/>. This site has a searchable database for complaint histories for motor carriers, but is not particularly helpful as it only contains complaints filed after October 13, 2008. To obtain a complete complaint history requires an Open Records Request.

Other helpful websites include:

- 1) www.ai.volpe.dot.gov/CrashProfile/StateCrashProfileMain.asp. This website contains summarized crash statistics for large trucks and buses in the United States. By clicking on a particular state, you can obtain the crash statistics for that state.
- 2) www.ai.volpe.dot.gov/ProgramMeasures/Intro/ProgramMeasuresMain.asp. This website provides summary statistics for

compliance reviews, roadside inspections, and traffic enforcement. By clicking on a specific state, you can obtain the data for that state.

- 3) www.dot.state.tx.us/business. This page of the Texas Department of Transportation's website has links under the Motor Carriers heading to several sections with helpful information, including TX DOT databases, forms and publications, and a search engine that provides road condition information. This site also includes links to the Texas Transportation Code and the Texas Administrative Code provisions relevant to the motor carrier industry.
- 4) www.legis.state.tx.us/. This State of Texas website also allows you to view online Texas statutes and the Texas Administrative Code.
- 5) www.texasonline.com. This government website links to State of Texas information, including Texas statutes and the Texas Administrative Code.
- 6) <http://www.txdps.state.tx.us/internetforms/FormDetail.aspx?Id=671&FormNumber=MCS-9.pdf>. From this location on the Texas Department of Public Safety website, you can download a publication entitled "A Texas Motor Carriers Guide To Highway Safety." This guide is a useful source which summarizes the various FMCSR and compares them to Texas intrastate rules and regulations.
- 7) <http://www.txdps.state.tx.us/InternetForms/Forms/DL-7C.pdf>. This is a link to the Texas Commercial Motor Vehicle Drivers Handbook, an invaluable source of applicable regulations, rules of the road, and driving instruction.
- 8) www.jjkeller.com. This is a website for J. J. Keller & Associates, Inc., a company which provides consulting, forms, and management or training tools for the trucking industry. This is an excellent site for obtaining all types of industry forms or training materials.
- 9) www.heavytruckedr.org. This website provides general information about data recorders in commercial motor vehicles. It contains a VIN decoder that might help identify the type of electronic data recorder a particular truck might

have and a table with lists of data available from recorders associated with some heavy truck engine types.

- 10) http://www.qualcomm.co.in/products_services/mobile_content_services/enterprise/assetmanagement/omnivision.htm.

This link is to the transportation management portion of the Qualcomm website which provides an example of vehicle tracking and communications systems.

- 11) http://www.qualcomm.co.in/products_services/mobile_content_services/government_technologies/tracking.html.

This company provides fleet risk-management services through the use of video event recorders triggered by certain driving forces, such as hard braking, swerving, or collision.

- 12) www.fmcsa.dot.gov/facts-research/systems-technology/product-guides/vehicle-stability.htm.

This page from the FMCSA website provides information about Electronic Stability Control or Roll Stability Control systems that are installed or available in some commercial motor vehicles. In addition to their stability control functions, these units also store historical data that can be downloaded.

- 13) www.fmcsa.dot.gov/facts-research/systems-technology/product-guides/collision-warning.htm.

This page from the FMCSA website provides information about Collision Warning and Adaptive Cruise Control systems that are installed or available in some commercial motor vehicles. These units also store historical data that can be downloaded.

- 14) www.fmcsa.dot.gov/facts-research/systems-technology/product-guides/lane-departure.htm.

This page from the FMCSA website provides information about Lane Departure Warning systems that are installed or available in some commercial motor vehicles. These units also store historical data that can be downloaded.

- 15) <http://www.hireright.com/trucking-background-checks>.

Hire Right is an example of a third-party vendor who provides employee screening and other employment services to motor carriers. A comparison of the various screening, testing, and monitoring services available with the actual practices of your defendant motor carrier might be helpful.

- 16) www.trucksafety.org.

This is the website for the Truck Safety Coalition, a partnership of the trucking safety

advocacy groups Citizens for Reliable and Safe Highways Foundation (CRASH) and Parents Against Tired Truckers (P.A.T.T.).

- 17) www.etrucker.com. This is a website that caters to the trucking industry. It includes news, products, and photographs.
- 18) www.truckline.com. This is the website of the American Trucking Associations, a national trade association of the trucking industry.

DISCOVERY FROM DEFENDANT DRIVER

Examples of items that should be requested from the defendant driver include:

Logbook. Because drivers are frequently paid by the mile or have other incentives to drive fast or to exceed the hours-of-service limitations, careful analysis of the driver's logbook is important. You would like to obtain logs for as long a period as possible in order to evaluate any pattern of exceeding hours-of-service limitations, but in any event, you should not accept logs for less than the eight day period preceding the wreck at issue.

Trip receipts and other documentation of trip expenses and stops. Sometimes these are contained in or referred to as the driver's trip envelope. Ask for: gas, lodging, and meal receipts; other vehicle expenses; personal expenses; and state checkpoint records. These items, along with some of the other records listed below can be invaluable for comparing to the data recorded in the driver's logbook in order to determine the driver's average speed and compliance with the hours-of-service requirements.

Bills of lading

Weight tickets

Toll receipts or Toll Tag records

Dispatch & Trip reports (required under the International Fuel Tax Agreement)

GPS or satellite tracking data

Cell phone provider records

Pay stubs or other pay records

Commercial driver's license

Employment application

Road test records and Road Test Certificate

Medical Certificate

Annual certification of traffic violations

DISCOVERY FROM DEFENDANT TRUCKING COMPANY

Examples of items that should be requested from the defendant trucking company include:

Electronic Data Recorder data

Data from Electronic Stability Control or Roll Stability Control Systems

Data from Collision Warning and Adaptive Cruise Control Systems

Data from Lane Departure Warning Systems

Data from Video Recording Systems

GPS or satellite tracking data

Qualcomm records or other in-cab communication systems data

Logbooks

Bills of lading

Weight tickets

Toll receipts or Toll Tag records

Dispatch & Trip reports (required under the International Fuel Tax Agreement)

Trip receipts or trip envelope

Pay stubs or other pay records

Driver Qualification File. This file should include the driver's employment application, records relating to inquiries to previous

employers, responses to driving record inquiries, the driver's Road Test Certificate, records relating to driver's annual review, driver's annual certification of traffic violations, and the driver's Medical Certificate.

Driver Personnel File. A motor carrier may maintain a separate personnel file in addition to the Driver Qualification File.

Driver Investigative History File. This file includes the records obtained from the driver's previous employers relating to a driver's safety performance history.

Driver's Employment Application

Road test records and Road Test Certificate

Medical Certificate

Driver's Performance Reviews

List of Driver Traffic Violations

List of Driver Traffic Accidents

Annual driving record inquiries

Driver's annual certification of traffic violations

Carrier's Accident Register

Drug and Alcohol Testing Records, including any post-accident testing, the driver's pre-employment screening, records relating to any random testing, records relating to any reasonable suspicion testing, any refusal to submit to testing, and any rehabilitation records.

Driver Vehicle Examination Reports. These are the forms given to drivers after completion of roadside inspections.

Records relating to FMCSA Compliance Reviews

Driver inspection reports and certification of any needed repairs

Annual Truck Inspection Records

Truck inspection, maintenance and repair records

Out-of-service records for the accident vehicle

Any photographs taken by the driver following the collision

Carrier policy and procedures manuals

Driver training materials

Insurance policies

MCS-90 endorsements

DISCOVERY FROM THIRD PARTIES

You should not rely exclusively on discovery responses from the defendant driver and trucking company. Records requested from third parties might provide different or more complete information. Some examples of third party discovery sources include:

Driving records from appropriate state agencies

Records from previous employers

Records from medical providers and pharmacy records

Cell phone records

Credit card records

Records from toll tag providers

Unemployment records if the driver is no longer employed by the motor carrier. What a motor carrier says about an employee when the carrier is contesting an unemployment claim may differ from the company line in your lawsuit.

FOIA requests to governmental agencies to obtain information relating to the trucking company and driver, including any notes from any U.S. DOT field or safety audits.

Records from any outside repair shops or maintenance facilities

Records from third party providers of services to motor carriers, including:

- 1) drug and alcohol testing services;
- 2) employing training;
- 3) rule compliance services;
- 4) logbook auditing services;
- 5) pre-employment services;
- 6) employee qualification and investigation services; and
- 7) safety or inspection compliance services.

THEORIES OF LIABILITY

While most truck wreck cases involve issues of driving errors, there are other sources of potential liability involving commercial motor vehicles that should not be overlooked in your initial review of potential liability. Large commercial vehicles are particularly susceptible to rollover. Rollovers can result for numerous reasons, including improperly loaded trailers, improper speed or driving maneuvers, wind, and improper tire maintenance and care. The truck driver is frequently unaware of the impending rollover until it is too late because most often the trailer will begin to roll over before the truck begins to tip. Other trucking liability issues include improper parking or stopping of commercial motor vehicles, conspicuity problems that make trailers difficult to see, and underride issues. You will want to explore these potential areas of liability in cases in which there is no obvious driving error on the part of the truck driver.

DRIVER ERROR

Most truck wreck cases will involve issues of traditional driver misconduct or error such as: following too closely, speeding, disobeying traffic control devices,

departures from proper lane of travel and improper lane changes. These errors are frequently caused by driver fatigue, driver incapacity, driver conduct caused by incentives to speed or exceed hours-of-service limitations, or lack of adequate training or specialized knowledge peculiar to the operation of large commercial vehicles. The Commercial Driver's License Manual is a good place to start when analyzing driver conduct. This manual will provide driving instruction, techniques, and other information you can use to establish driver negligence.

DOCTRINE OF RESPONDEAT SUPERIOR

While it is usually important to keep the driver as a party to the lawsuit because, more often than not, your investigation will reveal evidentiary nuggets that you will want to place in front of the jury, the primary target defendant in most trucking accident cases is frequently the trucking company that owns, operates or leases the truck involved in the collision. Thus, for the most part, theories of liability in a trucking accident case focus on ways of holding the trucking company responsible—vicariously or directly—for the often horrendous injuries incurred by the plaintiff as a result of the accident.

Under the common law doctrine of *respondeat superior*, an employer may be held liable for the negligent acts and/or omissions of their employees that cause injury to a third party when such acts and/or omissions are committed during the course and scope of employment. *Lowry v. Anderson-Barney Bldg. Co.*, 161 S.W.2d 459 (Tex. 1942). Because this type of liability is vicarious, or derivative, of the employee's own liability, no actual negligence on the part of the employer need be shown for liability to attach to the employer. *Newspapers, Inc. v. Love*, 380 S.W.2d 582, 589–90 (Tex. 1964).

In an ordinary negligence action, a plaintiff will have to demonstrate that the tortfeasor—the individual trucker—owed a duty of care to the plaintiff and negligently committed an act or omission that proximately caused injury to the plaintiff. For liability to attach to a trucking company employer under the doctrine of *respondeat superior*, a plaintiff must overcome the following two additional hurdles. First, the plaintiff must establish the existence of an employment relationship between the individual trucker and the trucking company. *See, e.g., Drennan v. Cmty. Health Inv. Corp.*, 905 S.W.2d 811, 818 (Tex. App.—Amarillo—1995, writ denied) (holding that doctrine of *respondeat superior* would not apply where plaintiff was unable to demonstrate that negligent physician was an employee rather than an independent contractor of the defendant hospital). Historically, this has been problematic for plaintiffs in trucking accident litigation because a common economic model in the interstate trucking industry has been for trucking companies to lease the trucks used to carry cargo and classify the drivers of these rigs as “independent contractors.” *Sharpless v. Sim*, 209 S.W.3d 825, 829 (Tex. App.—Dallas 2006, pet. denied). By doing so, trucking companies have sought to avoid vicarious liability for the driver’s negligence under the doctrine of *respondeat superior* by denying the existence of an employment relationship with the individual trucker who caused the collision. *See id.*

Second, the plaintiff must establish that the trucker was acting within the course and scope of his employment when he committed the negligent acts or omissions that injured the plaintiff. Under Texas law, this means that, when the act or omission occurred, the trucker must have been acting (1) within the scope of his authority as an employee; (2) in the course—that is, in furtherance—of his employer’s business, and (3)

for the purpose of accomplishing the objective of the employee's employment. *Minyard Food Stores, Inc. v. Goodman*, 80 S.W.3d 573, 577 (Tex. 2002).

STATUTORY EMPLOYEE RULE

Even if a trucking company tries to avoid vicarious liability by contracting with the driver as an "independent contractor" or leasing the truck at the time of the accident, the trucking company may still be vicariously liable for the acts or omissions of the individual trucker under the FMCSR. The regulations eliminate the distinction between independent contractors and employees. Under the regulations, the definition of employee includes an independent contractor operating a commercial motor vehicle. 49 C.F.R. § 390.5; *see Ooida Risk Retention Group, Inc. v. Williams*, 579 F.3d 469, 474 (5th Cir. 2009) (independent contractor qualifies as statutory employee under §390.5); *Consumers County Mut. Ins. Co. v. P.W. & Sons Trucking, Co.*, 307 F.3d 362, 365 (5th Cir. 2002) (section 390.5 eliminates the traditional common law distinctions between employees and independent contractors); *Perry v. Harco Nat'l Ins. Co.*, 129 F.3d 1072, 1075 (9th Cir. 1997) (terms employee and independent contractor synonymous under the FMCSR). Some courts in applying this statutory employee doctrine, however, have limited its application to individual independent contractors as opposed to corporations or other business entities contracting with a motor carrier. *See Brown v. Truck Connections Int'l, Inc.*, 526 F. Supp. 920, 925 (E.D. Ark. 2007); *Ill. Bulk Carrier, Inc. v. Jackson*, 908 N.E.2d 248, 256-57 (Ind. Ct. App. 2009).

Efforts to avoid liability through lease arrangements are similarly thwarted by the federal safety regulations. The FMCSR create liability by requiring the lease agreements executed by trucking companies to contain provisions that give the lessee

carrier—the trucking company—“exclusive possession, control, and use of” and “complete responsibility for the operation of the equipment for the duration of the lease.” 49 C.F.R. § 376.12(c)(1). In effect, this regulation statutorily imposes an employment or agency relationship between the trucking company and driver for third-party personal injury liability purposes. The object of this regulatory requirement is to protect the public from efforts to avoid liability through lease arrangements. *See Price v. Westmoreland*, 727 F.2d 494, 496 (5th Cir. 1984).

Under the statutory employee rule, a trucking company is vicariously liable for the negligence of the driver of leased equipment. *Id.* In *Price*, the Fifth Circuit stated that the federal regulations preempted state common law agency theories.⁵ Citing *Simmons v. King*, 478 F.2d 857 (5th Cir. 1973), the court in *Price* held that the federal regulations “require the carrier lessee to ‘assume complete responsibility for the operation of the equipment for the duration of the lease.’” *Id.* at 496. In *Simmons*, the Fifth Circuit had held the lessee carrier vicariously liable as a matter of law for the leased driver’s negligence, stating that the carrier’s “‘liability for equipment and drivers covered by leasing arrangements is not governed by the traditional common law doctrine of master-servant relationships and respondeat superior.’” *Simmons*, 478 F.2d at 867.

In Texas, the statutory employee doctrine in the context of leased vehicles was first addressed in *John B. Barbour Trucking Co. v. State*, 758 S.W.2d 684 (Tex. App.—Austin 1988, writ denied). The court in *Barbour* states that the application of the

⁵ The only exception to this rule is in instances involving injury to a co-employee which would be covered by workers compensation. *See White v. Excalibur Ins. Co.*, 599 F.2d 50, 55 (5th Cir. 1979).

statutory employee doctrine arises when three factors are present: 1) the trucking company does not own the vehicle; 2) the trucking company is using the truck in interstate commerce under an arrangement with the owner; and 3) the trucking company does not employ the driver. *Id.* at 688; *see also Sharpless v. Sim*, 209 S.W.3d 825, 829. (Tex. App.—Dallas 2006, pet. denied); *Mata v. Andrews Transport, Inc.*, 900 S.W. 363, 366 (Tex. App.—Houston [14th Dist.] 1995, no writ).⁶

There is a split of authority over the application of common law respondeat superior defenses, such as whether the driver was acting outside the course and scope of his employment or agency when the accident occurred. The court in *Barbour* adopted the minority view, treating the statutory employee rule as a legal fiction that creates an employer-employee relationship which results in employer liability under respondeat superior, but remains subject traditional common law defenses. *John B. Barbour Trucking Co.*, 758 S.W.2d at 688; *see also Mata v. Andrews Transport, Inc.*, 900 S.W. 363, 366 (Tex. App.—Houston [14th Dist.] 1995, no writ) (statutory employee rule does not create strict liability; carrier may raise available state law defenses); *see also Wilcox v. Transamerican Freight Lines, Inc.*, 371 F.2d 403, 404 (6th Cir. 1967) (regulations do not impose any greater liability on lessee than when operating its own equipment).

Unlike *Barbour*, the clear majority of courts which have considered this issue, including the two cases relied upon by *Barbour*⁷, treat the statutory employee doctrine as an independent means of vicarious liability, separate and apart from respondeat

⁶ The origin of these factors is uncertain. They are not mentioned in *Price* and *Simmons*, the two cases relied upon by *Barbour*. In addition, while probably applicable in almost any leased vehicle circumstance, these factors would not be applicable in the form of statutory employee liability addressed previously in which a carrier contracts with a driver to operate the carrier's own vehicle.

⁷ And the seemingly clear language of 49 C.F.R. § 376.12(c)(1).

superior, which creates full responsibility as a matter of law for the negligence of the leased driver at any time the driver is operating the lease vehicle. *See Price v. Westmoreland*, 727 F.2d 494, 496-97 (5th Cir. 1984); *Simmons v. King*, 478 F.2d 857, 867 (5th Cir. 1973) *see also Hartford Ins. Co. v. Occidental Fire & Cas. Co.*, 908 F.2d 235, 237 (7th Cir. 1990) (lessee carrier directly responsible for leased driver's negligence whether or not truck was being used in lessee's business at time of accident); *Planet Ins. Co. v. Transport Indem. Co.*, 823 F.2d 285, 287-88 (9th Cir. 1987) (federal regulations and not state common law rules govern responsibility of lessee; carrier must assume complete responsibility from the time the carrier takes possession until equipment is returned to lessor); *Grinnell Mut. Reinsurance Co. v. Empire Fire & Marine Ins. Co.*, 722 F.2d 1400, 1404 (8th Cir. 1983) (lessee carrier liable for negligent acts of leased driver who was not on trip for lessee's benefit); *Rodriguez v. Ager*, 705 F.2d 1229, 1236 (10th Cir. 1983) (lessee responsible as matter of law even though leased driver was not on mission for lessee); *Proctor v. Colonial Refrigerated Transp., Inc.*, 494 F.2d 89, 92 (4th Cir. 1974) (regulations eliminate independent contractor concept and cast full responsibility for leased driver's negligence on lessee carrier). A subsequent Texas Court of Appeals decision declined to follow the minority viewpoint adopted in *Barbour* and *Mata*. *See Morris v. JTM Materials, Inc.*, 78 S.W.3d 28, 40-41 (Tex App.—Fort Worth 2002, no pet.); *see also Omega Contracting, Inc. v. Torres*, 191 S.W.3d 828, 848-49 (Tex. App.—Fort Worth 2006, no pet.) (statutory employee liability is governed by FMCSR rather than common law doctrine of respondeat superior).

The same public safety concerns that impose liability on a motor carrier for driver or lessee misconduct also apply in a maintenance context. Attempts to avoid responsibility by shifting the motor carrier's duties to third parties such as mechanics, garages or repair facilities should not insulate a motor carrier from liability. The duties imposed by the FMCSRs to properly inspect, maintain, repair and service commercial trucking vehicles are the responsibility of the motor carrier regardless of who performs the work. Although some motor carriers may use third party mechanics to make such repairs, the FMCSRs do not allow motor carriers to absolve themselves of responsibility by placing the vehicle in the hands of a mechanic. The Federal Motor Carrier Safety Administration has explained that:

The motor carrier must either inspect, repair, maintain and keep suitable records for all vehicles subject to its control for 30 consecutive days or more, or cause another party to perform such activities. The motor carrier is ***solely responsible*** for ensuring that the vehicles under its control are in safe operating condition and that defects have been corrected.

Regulatory Guidance for the Federal Motor Carrier Safety Regulations, 62 Fed. Reg. 16370, 16427 (April 4, 1997) (emphasis added).

This guidance from the FMCSA is consistent with Texas case law, which recognizes that a motor carrier's duties under the FMCSRs are nondelegable. See *MBank El Paso, N.A. v. Sanchez*, 836 S.W.2d 151, 153 (Tex. 1992); *Fifth Club Inc. v Ramirez*, 196 S.W.3d 788, 795. It is also consistent with the language of the applicable regulations. For example, § 390.5 specifically includes "a mechanic" in the statutory definition of "employee." 49 § C.F.R. 390.5. Similarly, § 396.17(e) authorizes a motor carrier to delegate the required annual vehicle inspection to another entity, but only if that entity "perform[s] the inspection as its agent." *Id.* at

§ 396.17(e). Still another provision, addressing a driver's daily inspection report, requires that any defect or deficiency must be repaired and certified by the "motor carrier or its agent" before the vehicle is put back into operation. *Id* at 396.11(c) & (c) (1).

NEGLIGENT ENTRUSTMENT

In addition to the strictly vicarious theories of liability discussed above, there are theories of liability that are based upon the actual or direct negligence of the trucking company itself. For example, an action for negligent entrustment against the trucking company is a tort claim separate and apart from a claim against the individual driver alleging negligent operation of the vehicle. *Rodgers v. McFarland*, 402 S.W.2d 208, 210 (Civ. App.—El Paso 1966, writ ref'd n.r.e.).

To prevail in an action for negligent entrustment, a plaintiff must show that (1) the owner entrusted the vehicle to another driver; (2) the driver was not properly licensed or competent to operate the vehicle or was a reckless driver; (3) the owner knew or should have known that the driver was not properly licensed or competent or was reckless; (4) the driver was negligent in his or her operation of the vehicle, and (5) the driver's negligence was a proximate cause of the injuries incurred by the plaintiff. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 758 (Tex. 2007) (citing *Schneider v. Esperanza Transmission Co.*, 744 S.W.2d 595, 596 (Tex. 1987)). Although this theory of liability is based upon the trucking company's own negligence, establishing the negligence of the driver to whom the vehicle was entrusted is still required to succeed on an action for negligent entrustment. *See id.*

NEGLIGENT HIRING, RETENTION AND SUPERVISION

Another theory of liability premised on the actual negligence of the trucking company is a claim for negligent hiring, retention and supervision. A claim for negligent hiring, retention and supervision is premised on the notion that an employer owes an affirmative duty to the general public, as well as its other employees, to determine “the qualifications and competence of the employees it hires, especially when the employees are engaged in occupations that require skill or experience and that could be hazardous to the safety of others....” *Morris*, 78 S.W.3d at 41.

An employer, therefore, can be held liable for negligent hiring, supervision and retention if it hires an unqualified or incompetent employee—an employee whom it knows or should have known through the exercise of reasonable care was unqualified or incompetent—and that employee injures others in the course of his or her employment. *Id.* A trucking company, for example, could be held liable for failing to exercise reasonable care in hiring a job applicant as a driver if it fails to obtain a copy of the applicant’s driving record or conduct a criminal background check and such a review would have shown that the driver was not qualified or competent to operate the vehicle the driver was hired to drive. *Id.* at 51–52; *see also N. Houston Pole Line Corp. v. McAllister*, 667 S.W.2d 829, 835 (Tex. App.—Houston [14th Dist.] 1983, no writ).

NEGLIGENT UNDERTAKING/NEGLIGENT TRAINING

A trucking company may also be held directly rather than vicariously liable for injuries resulting from a collision with one of the trucking company’s drivers as a result of the company’s deficient training program. If a trucking company operates a training program for its drivers, it can be argued that the trucking company has affirmatively

undertaken responsibility for training its drivers in the safe operation of their vehicles and, therefore, has voluntarily assumed a duty to ensure that such training properly educates its drivers in the safe operation of their vehicles. *See Builders Transport, Inc. v. Grice-Smith*, 167 S.W.3d 1, 9 (Tex. App.—Waco 2005, pet. denied).

To establish a trucking company's liability for negligent training, which is based upon a negligent undertaking claim described in § 324A of the Restatement (Second) of Torts, a plaintiff must show: (1) the trucking company knew or should have known that its training program was intended to protect the public safety—that is, the safety of others; (2) the trucking company failed to exercise reasonable care in training its drivers, and (3) the trucking company's failure to properly train its drivers increased the risk of harm to the plaintiff. *Grice-Smith*, 137 S.W.3d at 9–10; *Coastal Corp. v. Torres*, 133 S.W.3d 776, 780 & n.5 (Tex. App.—Corpus Christi 2004, pet. denied).

NEGLIGENT INSPECTION, MAINTENANCE AND REPAIR

A plaintiff might also bring an action for negligent inspection, maintenance and/or repair of the truck against the trucking company when the accident causing the plaintiff's injuries resulted from the trucking company's failure to have the truck properly inspected, maintained and/or repaired. *See Bituminous Cas. Corp. v. Maxey*, 110 S.W.3d 203, 207–08 (Tex. App.—Houston [1st Dist.] 2003, pet. denied).

NEGLIGENCE PER SE

Negligence per se or negligence as a matter of law may be alleged against a trucking company and/or its driver where it can be shown that a federal or state statute or regulation, which was designed to prevent injury to the class of persons to which the plaintiff belongs, has been violated and that this violation was a proximate cause of the

plaintiff's injuries. *Perry v. S.N.*, 973 S.W.2d 301, 305 (Tex. 1998). Because a central objective of the FMCSR is to “promote the safe operation of commercial vehicles” and “enhance motor vehicle safety and thereby reduce highway fatalities, injuries, and property damage,” violation of the FMCSR may be considered negligence per se. *Omega Contracting*, 191 S.W.3d at 839–40; *see also N. Am. Van Lines, Inc. v. Emmons*, 50 S.W.3d 103, 124 (Tex. App—Beaumont 2001, pet. denied) (holding that a negligence per se instruction was proper with respect to FMCSR's prohibition against an employer knowingly allowing a person to operate a commercial vehicle without a commercial driver's license).

INSURANCE COVERAGE

Both federal and state regulations require commercial motor vehicles transporting property or passengers to maintain certain minimum levels of insurance coverage.⁸ Insurance coverage information for interstate motor carriers can be found at www.safersys.org. By clicking on the Active/Pending Insurance link on a motor carrier's company detail page, you can see the carrier's insurance companies, policy numbers, policy limits, and effective dates.

Frequently, coverage from multiple policies may be available. The tractor and the trailer of a typical commercial motor vehicle configuration may each be covered under separate policies and coverage under each policy may be applicable in a truck wreck scenario. *See Blue Bird Body Co. v. Ryder Truck Rental, Inc.*, 583 F.2d 717, 726–27 (5th Cir. 1978) (holding that, when truck and attached trailer are in a wreck, the

⁸ The applicable minimum coverage requirements are discussed *supra* in the section addressing Part 387 of the FMCSR.

wreck arises out of the use of both regardless of which unit may have actually been impacted). Coverage of multiple parties may also be applicable. In the fairly typical situation in which a truck, trailer or driver has been leased by or loaned to another carrier, each party's insurance coverage may be applicable, depending upon policy language and the effect of mandatory policy endorsements.

MCS-90 ENDORSEMENT

The FMCSR require that all interstate motor carrier insurance policies include an endorsement to guarantee that coverage, at the required levels, is available to cover injuries suffered by the general public caused by motor carrier negligence. 49 C.F.R. § 387.15. The most common endorsement is the MCS-90 endorsement. This federally-mandated endorsement requires that the motor carrier's insurance carrier pay, within the limits of the policy:

[A]ny final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles ... regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment.... It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured.

49 C.F.R. § 387.15, Illustration I. For a sample form MCS-90, see appendix F.

Under this endorsement, an insurer is responsible for paying damages for liability to injured third parties resulting from the negligence of an interstate motor carrier. *T.H.E. Ins. Co. v. Larsen Intermodal Servs.*, 242 F.3d 667, 671 (5th Cir. 2001). The

endorsement is intended as a safety net or surety to protect the public. *Id.* at 672. The policy purpose behind this requirement is “to assure that injured members of the public would be able to obtain judgments collectible against negligent authorized carriers.” *Canal Ins. Co. v. First Gen. Ins. Co.*, 889 F.2d 604, 611 (5th Cir. 1990). The provisions of the endorsement only apply when the underlying insurance policy does not otherwise provide coverage, and the provisions of the endorsement apply only to liability to third party victims. *Larsen Intermodal Servs.*, 242 F.3d at 671. The endorsement specifically mandates that the insured motor carrier is obligated to reimburse the insurance company for any payments the insurance company would not have been obligated to make, if not for the terms of the endorsement. *Id.* at 671.

In addition to coverage for non-scheduled vehicles, an MCS-90 endorsement has been held to require payments when there are coverage issues or exclusions under the policy, including an insured’s failure to give notice or to cooperate. *See Campbell v. Bartlett*, 975 F.2d 1569, 1580–81 (10th Cir. 1992). Even policy cancellation may not defeat coverage. The MCS-90 endorsement is subject to different cancellation requirements that are independent of the underlying policy’s cancellation provisions. 49 C.F.R. § 387.15.

There is some dispute among the cases whether the endorsement applies only to the named insured or if the endorsement also applies to omnibus insureds and even non-named or non-covered drivers. One Texas court of appeals has held that a driver, who was not an insured under the terms of the policy, was not covered under the terms of the MCS-90 endorsement. *Progressive County Mut. Ins. Co. v. Carway*, 951 S.W.2d 108, 114 (Tex. App.—Houston [14th Dist.] 1997, pet. denied); *see also Ooida Risk Retention*

Group, Inc. v. Williams, 579 F.3d 469, 477-78 (5th Cir. 2009). Other courts, however, have reached different conclusions. See *John Deere Ins. Co. v. Nueva*, 229 F.3d 853, 859–60 (9th Cir. 2000) (noting that endorsement created duty on part of insurer to indemnify permissive users of vehicle not covered by policy for injuries caused to public); *Adams v. Royal Indemn. Co.*, 99 F.3d 964, 970–71 (10th Cir. 1996) (observing that endorsement precluded policies from limiting definition of insured to one who owned, hired, or borrowed named vehicle); *Integral Ins. Co. v. Lawrence Fulbright Trucking, Inc.*, 930 F.2d 258, 260–61 (2d Cir. 1991) (endorsement creates coverage for trailer owner even though owner not using trailer or in possession of it at time of wreck); *Pierre v. Providence Washington Ins. Co.*, 784 N.E.2d 52, 59 (N.Y. 2002) (concluding that endorsement created coverage for driver of tractor-trailer and owner of tractor that had been leased to insured trailer owner). The FMCSA has issued a regulatory guidance indicating that the Agency’s interpretation is that MCS-90 is only intended to require coverage of the party named in the policy as an insured. Regulatory Guidelines for Forms Used to Establish Minimum Levels of Financial Responsibility of Motor Carriers, 70 Fed. Reg. 58065 (Oct. 5, 2005) (to be codified at 49 C.F.R. pt. 387).

TEXAS FORMS E AND F

Intrastate Texas motor carriers must comply with Texas’s financial responsibility requirements by use of Forms E and F. Form F is the actual policy endorsement that attaches to the insurance policy to provide coverage to satisfy a judgment against a motor carrier arising out of the motor carrier’s operations. The effect and purpose of Form F are essentially the same as the MCS-90. “The purpose of these requirements is to ensure that liability insurance is always available for the protection of motorists

injured by commercial motor carriers.” *Nat’l Cas. Co. v. Lane Express, Inc.*, 998 S.W.2d 256, 263 (Tex. App.—Dallas 1999, pet. denied) (citing *Commercial Standard Ins. Co. v. McKissack*, 153 S.W.2d 997, 1001 (Tex. Civ. App.—Fort Worth 1941, writ ref’d)). Like the MCS-90, Form F only acts as:

[A]n insurer of last resort when no insurance would otherwise be available. This may occur, for example, when a motor carrier fails to pay the required premium for insuring a vehicle or another carrier covering the vehicle refused or is unable to honor a claim.

Lane Express, 998 S.W.2d at 263. Also like the MCS-90, Form F provides for reimbursement from the motor carrier if an insurance company has to pay what it otherwise would not have been obligated to pay. Texas Form E is the form filed with the Motor Carrier Division of the Texas Department of Transportation certifying that the motor carrier is in compliance with Texas’s minimum insurance requirements.

FOREIGN MOTOR CARRIERS

Mexican-domiciled motor carriers who are operating in the United States outside certain defined commercial zones must carry insurance through a U.S. insurance company and are subject to the same requirements and conditions as domestic carriers. Mexican-domiciled motor carriers operating solely within commercial zones can operate under 24-hour insurance certificates while in the U.S., but, again, are subject to the same requirements and conditions as domestic carriers. *See* 49 C.F.R. § 387.7(b)(3).

BOBTAIL POLICIES

Bobtail policies provide coverage when a commercial truck is not being operated in the business of the trucking company. Because the legal and regulatory interpretation of when a truck is engaged in trucking company business is very broad, bobtail

coverage rarely applies. Most of the time a truck would be considered engaged in trucking company business and, therefore, covered under the standard motor carrier liability insurance policy. In those few instances in which it is not so engaged, the bobtail policy would apply.

APPENDIX A

**Table 1
Duration of Disqualification for Major Offenses**

If a driver operates a motor vehicle and is convicted of:	First conviction or refusal to be tested while operating a CMV:	First conviction or refusal to be tested while operating a non-CMV:	First conviction or refusal to be tested while operating a CMV transporting hazardous materials:	Second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV:	Second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV:
(1) Being under the influence of alcohol as prescribed by State law.	1 year.	1 year.	3 years.	Life.	Life.
(2) Being under the influence of a controlled substance.	1 year.	1 year.	3 years.	Life.	Life.
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV.	1 year.	Not applicable.	3 years.	Life.	Not applicable.
(4) Refusing to take an alcohol test as required.	1 year.	1 year.	3 years.	Life.	Life.
(5) Leaving the scene of an accident.	1 year.	1 year.	3 years.	Life.	Life.
(6) Using the vehicle to commit a felony.	1 year.	1 year.	3 years.	Life.	Life.
(7) Driving a CMV when CDL is revoked, suspended, or canceled, or the driver is disqualified.	1 year.	Not applicable.	3 years.	Life.	Not applicable.
(8) Causing a fatality through the negligent operation of a CMV.	1 year.	Not applicable.	3 years.	Life.	Not applicable.
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.

Table 2
Duration of Disqualification for Serious Traffic Violations

If a driver operates a motor vehicle and is convicted of:	Second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV:	Second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges:	Third or subsequent conviction of offenses in this Table in a separate incident within a 3-year period while operating a CMV:	Third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges:
(1) Speeding excessively, 15 mph or more above the posted speed limit.	60 days.	60 days.	120 days.	120.
(2) driving recklessly.	60 days.	60 days.	120 days.	120.
(3) making improper or erratic traffic lane changes.	60 days.	60 days.	120 days.	120.
(4) following the vehicle ahead too closely.	60 days.	60 days.	120 days.	120.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident.	60 days.	60 days.	120 days.	120.
(6) driving a CMV without obtaining a CDL.	60 days.	Not applicable.	120 days.	Not applicable.
(7) driving a CMV without a CDL in the driver's possession.	60 days	Not applicable.	120 days	Not applicable.
(8) driving a CMV without the proper class of CDL and/or endorsements.	60 days.	Not applicable.	120 days.	Not applicable.

**Table 3
Duration of Disqualification for Offenses at Railroad Grade Crossing**

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because:	First conviction:	Second conviction of any combination of offenses in this Table in a separate incident within a 3-year period:	Third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period:
(1) The driver is not required to always stop, but fails to show down and check that tracks are clear of an approaching train.	No less than 60 days.	No less than 120 days.	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear.	No less than 60 days.	No less than 120 days.	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing.	No less than 60 days.	No less than 120 days.	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping.	No less than 60 days.	No less than 120 days.	No less than 1 year.
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing.	No less than 60 days.	No less than 120 days.	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance.	No less than 60 days.	No less than 120 days.	No less than 1 year.

Table 4
Duration of Disqualification for Out-of-Service Violations

If the driver operates a CMV and is convicted of:	First conviction while operating a CMV:	Second conviction in a separate incident within a 10-year period while operating a CMV:	Third or subsequent conviction in a separate incident within a 10-year period while operating a CMV:
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials.	No less than 90 days or more than 1 year.	No less than 1 year or more than 5 years.	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials, or while operating a vehicle designed to transport 16 or more passengers, including the driver.	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.

APPENDIX B



Form 1899 (Rev. 2/04)
Page 3 of 5

Insurance Requirements

Texas Department of Transportation, Motor Carrier Division
PO Box 12984, Austin, Texas 78711-2984
(800) 299-1700 (Select 2, then 1 from the automated menu)

Before an application is approved, an insurance company authorized to do business in Texas must provide proof of required insurance. Liability insurance coverage is filed on a Form E or E2 and is submitted with the carrier's Texas Motor Carrier Application. Please do not submit a Form E with limits. This will result in the form being returned. Household goods carriers or tow truck carriers that perform non-consent tows are also required to provide proof of cargo insurance on a Form H and I. **Each insurance filing** must be accompanied by a \$100 filing fee made payable to the Texas Department of Transportation. **All insurance filing forms are available through your insurance company.**

Type No. and Type of Motor Carrier	Description	Minimum Insurance Requirement	
1 - HAZ	Transporters of Hazardous Substances (regardless of weight)		
	a. Hazardous substances, as defined in 49 Code of Federal Regulations (CFR) §171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles, with capacities in excess of 3,500 water gallons; or any quantity of Division 1.1, 1.2, and 1.3 materials, any quantity of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR §173.403.	\$5,000,000	
	b. Oil listed in 49 CFR §172.101: hazardous waste, hazardous materials, and hazardous substances as defined in 49 CFR §171.8 and listed in 49 CFR §172.101, but not mentioned in paragraphs (a) or (b) of this subsection and petroleum products that are lubricants or fuels	\$1,000,000	
2 - TOW	Tow Truck Carriers		
	a. Gross weight, registered weight, or gross weight rating of 26,000 pounds or less	\$300,000	
	b. Gross weight, registered weight, or gross weight rating over 26,000 pounds	\$500,000	
	c. In addition to automobile liability insurance described above, tow truck carriers that perform non-consent tows must file a Form H (Uniform Motor Carrier Cargo Certificate of Insurance) accompanied by a Form I (Uniform Motor Carrier Cargo Insurance Endorsement) with the following limits	\$50,000 per vehicle	
3 - BUS	Bus Operators		
	a. Vehicles designed or used to transport more than 15 passengers (including the driver) but less than 26 passengers (not including the driver)	\$500,000	
	b. Vehicles designed or used to transport 26 passengers or more (not including the driver)	\$5,000,000	
4 - BUS	Foreign Domiciled Bus Operators		
	a. Vehicles designed or used to transport 15 passengers or less (including the driver)	\$1,500,000	
	b. Vehicles designed or used to transport 16 passengers or more (including the driver)	\$5,000,000	
5 - HHG	Household Goods Movers		
	In addition to automobile liability insurance as described in number 7 below, cargo insurance must be filed on Form H (Uniform Motor Carrier Cargo Certificate of Insurance) accompanied by a Form I (Uniform Motor Carrier Cargo Insurance Endorsement) with the following limits	Per Shipment	\$5,000
		Aggregate	\$10,000
6	Foreign Carriers (Domiciled outside of the U.S.A.) transporting cargo other than cargo listed above		
		\$750,000	
7 - OTHER	All Others		
	Private or for-hire motor carriers with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds	\$500,000	

Note: Motor carriers whose primary business is transportation for compensation or hire, and who operate between two or more incorporated cities, towns, or villages, shall provide worker's compensation or accident insurance coverage for all employees. **(Not filed with TxDOT.)**

For more information, visit our web site at www.dot.state.tx.us (Select "Trucking & Vehicle Storage Facilities"). For complaints concerning the motor carrier application process, call (512) 465-3696, or write to: TxDOT-MCD, 125 E. 11th Street, Austin, Texas 78701.

APPENDIX C

8/05



DRIVER'S DAILY LOG

(24 HOURS)

____/____/____
(Month) (Day) (Year)

Original - File at home terminal
Duplicate - Driver retains in his/her possession for eight days

RECAP
Complete at
end of workday.

Total Miles Driving Today Total Mileage Today

Name of Carrier or Carriers _____

Main Office Address _____

Home Terminal Address _____

I certify these entries are true and correct:

Truck/Tractor and Trailer Numbers or License Plate(s) / State (show each unit) _____

Driver's Full Signature _____

Co-Driver's Name _____

	MID-NIGHT											NOON											TOTAL HOURS
	1	2	3	4	5	6	7	8	9	10	11	1	2	3	4	5	6	7	8	9	10	11	
1. OFF DUTY																							
2. SLEEPER BERTH																							
3. DRIVING																							
4. ON DUTY (NOT DRIVING)																							
REMARKS																							

BOUND EDGE

SHIPPING DOCUMENTS:

B/L or Manifest No. _____
or

Shipper & Commodity _____

Enter name of place you reported and where released from work and when and where each change of duty occurred.

From: _____ To: _____

601-LD



USE TIME STANDARD AT HOME TERMINAL

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On-duty hours today. (Total lines 3 & 4)

70 Hour/8 Day Drivers

A. Total hours on duty last 7 days, including today.

B. Total hours available tomorrow. 70 hr. minus A.*

C. Total hours on duty last 8 days, including today.

60 Hour/7 Day Drivers

A. Total hours on duty last 6 days, including today.

B. Total hours available tomorrow. 60 hr. minus A.*

C. Total hours on duty last 7 days, including today.

*If you took 34 consecutive hours off duty, you have 60/70 hours available again.

APPENDIX D

BOUND EDGE

Rev. 7/07

DRIVER'S VEHICLE INSPECTION REPORT

AS REQUIRED BY THE D.O.T. FEDERAL MOTOR CARRIER SAFETY REGULATIONS

CARRIER: _____

ADDRESS: _____

DATE: _____ TIME: _____ A.M. _____ P.M.

CHECK ANY DEFECTIVE ITEM AND GIVE DETAILS UNDER "REMARKS"

TRACTOR/
TRUCK NO. _____ ODOMETER READING _____

- | | | |
|---|--|--|
| <input type="checkbox"/> Air Compressor | <input type="checkbox"/> Front Axle | <input type="checkbox"/> Safety Equipment |
| <input type="checkbox"/> Air Lines | <input type="checkbox"/> Fuel Tanks | <input type="checkbox"/> Fire Extinguisher |
| <input type="checkbox"/> Battery | <input type="checkbox"/> Horn | <input type="checkbox"/> Flags - Flares - Fusees |
| <input type="checkbox"/> Belts and Hoses | <input type="checkbox"/> Lights | <input type="checkbox"/> Reflective Triangles |
| <input type="checkbox"/> Body | <input type="checkbox"/> Head - Stop | <input type="checkbox"/> Spare Bulbs and Fuses |
| <input type="checkbox"/> Brake Accessories | <input type="checkbox"/> Tail - Dash | <input type="checkbox"/> Spare Seal Beam |
| <input type="checkbox"/> Brakes, Parking | <input type="checkbox"/> Turn Indicators | <input type="checkbox"/> Starter |
| <input type="checkbox"/> Brakes, Service | <input type="checkbox"/> Mirrors | <input type="checkbox"/> Steering |
| <input type="checkbox"/> Clutch | <input type="checkbox"/> Muffler | <input type="checkbox"/> Suspension System |
| <input type="checkbox"/> Coupling Devices | <input type="checkbox"/> Oil Pressure | <input type="checkbox"/> Tire Chains |
| <input type="checkbox"/> Defroster/Heater | <input type="checkbox"/> Radiator | <input type="checkbox"/> Tires |
| <input type="checkbox"/> Drive Line | <input type="checkbox"/> Rear End | <input type="checkbox"/> Transmission |
| <input type="checkbox"/> Engine | <input type="checkbox"/> Reflectors | <input type="checkbox"/> Trip Recorder |
| <input type="checkbox"/> Exhaust | | <input type="checkbox"/> Wheels and Rims |
| <input type="checkbox"/> Fifth Wheel | | <input type="checkbox"/> Windows |
| <input type="checkbox"/> Fluid Levels | | <input type="checkbox"/> Windshield Wipers |
| <input type="checkbox"/> Frame and Assembly | | <input type="checkbox"/> Other |

TRAILER(S) NO.(S) _____

- | | | |
|--|---|--|
| <input type="checkbox"/> Brake Connections | <input type="checkbox"/> Hitch | <input type="checkbox"/> Suspension System |
| <input type="checkbox"/> Brakes | <input type="checkbox"/> Landing Gear | <input type="checkbox"/> Tarpaulin |
| <input type="checkbox"/> Coupling Devices | <input type="checkbox"/> Lights - All | <input type="checkbox"/> Tires |
| <input type="checkbox"/> Coupling (King) Pin | <input type="checkbox"/> Reflectors/Reflective Tape | <input type="checkbox"/> Wheels and Rims |
| <input type="checkbox"/> Doors | <input type="checkbox"/> Roof | <input type="checkbox"/> Other |

Remarks: _____

CONDITION OF THE ABOVE VEHICLE IS SATISFACTORY

DRIVER'S SIGNATURE: _____

ABOVE DEFECTS CORRECTED

ABOVE DEFECTS NEED NOT BE CORRECTED FOR SAFE OPERATION OF VEHICLE

MECHANIC'S SIGNATURE: _____ DATE: _____

DRIVER'S SIGNATURE: _____ DATE: _____

ORIGINAL

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APPENDIX E

ANNUAL VEHICLE INSPECTION REPORT

VEHICLE HISTORY RECORD	
REPORT NUMBER	FLEET UNIT NUMBER
DATE	

MOTOR CARRIER OPERATOR	INSPECTOR'S NAME (PRINT OR TYPE)
ADDRESS	THIS INSPECTOR MEETS THE QUALIFICATION REQUIREMENTS IN SECTION 396.19. <input type="checkbox"/> YES
CITY, STATE, ZIP CODE	VEHICLE IDENTIFICATION (✓) AND COMPLETE <input type="checkbox"/> LIC. PLATE NO. <input type="checkbox"/> VIN <input type="checkbox"/> OTHER
VEHICLE TYPE <input type="checkbox"/> TRACTOR <input type="checkbox"/> TRAILER <input type="checkbox"/> TRUCK <input type="checkbox"/> (OTHER)	INSPECTION AGENCY/LOCATION (OPTIONAL)

VEHICLE COMPONENTS INSPECTED											
OK	NEEDS REPAIR	REPAIRED DATE	ITEM	OK	NEEDS REPAIR	REPAIRED DATE	ITEM	OK	NEEDS REPAIR	REPAIRED DATE	ITEM
			1. BRAKE SYSTEM a. Service Brakes b. Parking Brake System c. Brake Drums or Rotors d. Brake Hose e. Brake Tubing f. Low Pressure Warning Device g. Tractor Protection Valve h. Air Compressor i. Electric Brakes j. Hydraulic Brakes k. Vacuum Systems				4. FUEL SYSTEM a. Visible leak b. Fuel tank filler cap missing c. Fuel tank securely attached				9. FRAME a. Frame Members b. Tire and Wheel Clearance c. Adjustable Axle Assemblies (Sliding Subframes)
			2. COUPLING DEVICES a. Fifth Wheels b. Pintle Hooks c. Drawbar/Towbar Eye d. Drawbar/Towbar Tongue e. Safety Devices f. Saddle-Mounts				5. LIGHTING DEVICES All lighting devices and reflectors required by Section 393 shall be operable.				10. TIRES a. Tires on any steering axle of a power unit. b. All other tires.
			3. EXHAUST SYSTEM a. Any exhaust system determined to be leaking at a point forward of or directly below the driver/sleeper compartment. b. A bus exhaust system leaking or discharging to the atmosphere in violation of standards (1), (2) or (3). c. No part of the exhaust system of any motor vehicle shall be so located as would be likely to result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.				6. SAFE LOADING a. Part(s) of vehicle or condition of loading such that the spare tire or any part of the load or dunnage can fall onto the roadway. b. Protection against shifting cargo				11. WHEELS AND RIMS a. Lock or Side Ring b. Wheels and Rims c. Fasteners d. Welds
							7. STEERING MECHANISM a. Steering Wheel Free Play b. Steering Column c. Front Axle Beam and All Steering Components Other Than Steering Column d. Steering Gear Box e. Pitman Arm f. Power Steering g. Ball and Socket Joints h. Tie Rods and Drag Links i. Nuts j. Steering System				12. WINDSHIELD GLAZING Requirements and exceptions as stated pertaining to any crack, discoloration or vision reducing matter (reference 393.60 for exceptions)
							8. SUSPENSION a. Any U-bolt(s), spring hanger(s), or other axle positioning part(s) cracked, broken, loose or missing resulting in shifting of an axle from its normal position. b. Spring Assembly c. Torque, Radius or Tracking Components.				13. WINDSHIELD WIPERS Any power unit that has an inoperative wiper, or missing or damaged parts that render it ineffective. List any other condition which may prevent safe operation of this vehicle.

INSTRUCTIONS: MARK COLUMN ENTRIES TO VERIFY INSPECTION: OK, NEEDS REPAIR, NA IF ITEMS DO NOT APPLY. _____ REPAIRED DATE

CERTIFICATION: THIS VEHICLE HAS PASSED ALL THE INSPECTION ITEMS FOR THE ANNUAL VEHICLE INSPECTION REPORT IN ACCORDANCE WITH 49 CFR 396.

APPENDIX F



U.S. Department
of Transportation
Federal Motor Carrier
Safety Administration

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980

Form Approved:
OMB No.: 2126-0008

Issued to _____ of _____
Dated at _____ this _____ day of _____, 20____
Amending Policy No. _____ Effective Date _____
Name of Insurance Company _____
Countersigned by _____
Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "[X]," for the limits shown:

- This insurance is primary and the company shall not be liable for amounts in excess of \$ _____ for each accident.
- This insurance is excess and the company shall not be liable for amounts in excess of \$ _____ for each accident in excess of the underlying limit of \$ _____ for each accident.

Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: _____

Cancellation of this endorsement may be effected by the company of the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements under 49 U.S.C. 13901, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions or which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Property Damage means damage to or loss of use of tangible property.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Public Liability means liability for bodily injury, property damage, and environmental restoration

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the

limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

THE SCHEDULE OF LIMITS SHOWN ON THE REVERSE SIDE DOES NOT PROVIDE COVERAGE. The limits shown in the schedule are for information purposes only.

Form MCS-90 (4/2000)

SCHEDULE OF LIMITS—PUBLIC LIABILITY

Type of carriage	Commodity transported	Jan. 1, 1985
(1) For-hire (In interstate or foreign commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Property (nonhazardous).....	\$ 750,000
(2) For-hire and Private (In interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403	\$5,000,000
(3) For-hire and Private (In interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,000 or more pounds).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	\$1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,000 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	\$5,000,000