2014 UT Law Car Crash Seminar: From Sign-Up to Settlement

WHEN A CAR WRECK ISN'T JUST A CAR WRECK

Mike Davis Slack & Davis, L.L.P.

Auto Product Liability & Truck Crash Cases



INVESTIGATION

Need to Move Quickly



Secure the Vehicle





If possible, secure all vehicles.

If not possible, thoroughly photograph all vehicles.





Investigation: Truck Crash

Inspect truck before repairs are made.



In addition to getting accident report, talk to the investigating officer who may have:

- Additional notes, drawings or measurements
- Information re: witnesses
- Photographs of the scene



Obtain all photographs from the scene
Investigating officers
News media

Identify and talk to any witnesses.



In some instances, you may want to consider surveying the scene or obtaining aerial photographs.



Obtain Medical Records and/or Autopsy Report (including pictures) Important for analysis of causation

Photograph bruising or other seatbelt marks (if relevant).



Determine whether the vehicle had an event data recorder (black box).

Available data might include:

- Speed
- Seatbelt usage
- Airbag data





Investigation: Trucks

More extensive information than EDRs in cars



Send Preservation Letter



Gather available information from other Sources:

- Other attorneys
- Internet research
- Patents



Computer Research



USDOT Number O MC/MX Num	iber 💿 Name
Enter Value: 1276807	Company Snapshot
Search	TRI C VENTURES INC USDOT Number: 1276807
ID/Operations Inspections/Crashes In US Inspectio	ns/Crashes In Canada Safety Rating Other Information for this Carrier

SMS Results

Licensing & Insurance

Carriers: If you would like to update the following ID/Operations information, please complete and submit form MCS-150 which can be obtained <u>online</u> or from your State FMCSA office. If you would like to challenge the accuracy of your company's safety data, you can do so using FMCSA's <u>DataQs</u> system.

Carrier and other users: FMCSA provides the Company Safety Profile (CSP) to motor carriers and the general public interested in obtaining greater detail on a particular motor carrier's safety performance then what is captured in the Company Snapshot. To obtain a CSP please visit the <u>CSP order page</u> or call (800)832-5660 or (703)280-4001 (Fee Required).

For help on the explanation of individual data fields, click on any field name or for help of a general nature go to SAFER General Help.

The information below reflects the content of the FMCSA management information systems as of 08/08/2012.

Entity Type:	Carrier		
Operating Status:	REGISTERED	Out of Service Date:	None
Legal Name:	TRI C VENTURES INC		
DBA Name:			
Physical Address:	FM 339 OFF HWY 72 RUNGE, TX 78151		
Phone:	(830) 239-4617		
Mailing Address:	PO BOX 6 RUNGE, TX 78151		
USDOT Number:	1276807	<u>State Carrier ID</u> <u>Number:</u>	
<u>MC or MX</u> <u>Number:</u>	MC-702069	DUNS Number:	(S)
Power Units:	3	Drivers:	3
MCS-150 Form Date:	04/19/2011	MCS-150 Mileage (Year):	145,000 (2010)

ID/Operations | Inspections/Crashes In US | Inspections/Crashes In Canada | Safety Rating

US Inspection results for 24 months prior to: 08/08/2012

Total inspections: 12

Note: Total inspections may be less than the sum of vehicle, driver, and hazmat inspections. Go to Inspections Help for further information.

	Inspec	ctions:	
Inspection Type	Vehicle	Driver	Hazmat
Inspections	12	12	0
Out of Service	3	0	0
Out of Service %	25%	0%	%
Nat'l Average % (2009- 2010)	20.72%	5.51%	4.50%

Crashes reported to FMCSA by states for 24 months prior to: 08/08/2012

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

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Туре	Fatal	Injury	Tow	Total
Crashes	1	0	0	1

FMCSA Mot	or Carrier				
Docket Number: M	C702069				FMCSA
Legal Name:	RIC VENTORES INC				
DBA (Doing-Busine	ss-As) Name				
Addresses					
Business Address:	FM 339 OFF HWY 7 RUNGE, TX 78151	2			
Business Phone:	(830) 239-4617	Business Fax: Fax: (830) 239-461	17	
Mail Address:	PO BOX 6				
	RUNGE, TX 78151				
Mail Phone:		Mail Fax:		Undeliverable Mail:	NO
uthorities:					
Common Authority:	NONE	Application Pending:	NO		
Contract Authority:	ACTIVE	Application Pending:	NO		
Broker Authority: Property:	VES	Application Pending: December:	NO	Household Goods:	NO
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Insurance Carrier: Attn: Address: Telephone:	CAROLINA CASUA CHERIE GILLIARD P O BOX 2575 JACKSONVILLE, F (800) 874 - 8053	LTY INSURANCE CO. FL 32203 US Fax: (900) 363 - 8088	8		
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MCR Database

IMPORTANT: A motor carrier is not authorized to operate commercial motor vehicles unless both the registration status and automobile liability insurance are active.

MOTOR CARRIER DATA VIEW

Company Information: Name: SKINNER TRANSPORTATION, INC. Owner/Officer: Steve Skinner - President Phone: 5123893311

DBA:

Carrier Type: UCR/Intrastate - Commercial Carrier - Hazardous Cargo Carrier Address Information
Mailing: POBOX 26660 AUSTIN, TX. 78755 Physical: 850 ED BLUESTEIN BLVD. AUSTIN, TX. 78721

If you need additional information or further assistance, please call our toll-free Consumer Helpline weekdays between 8 a.m. and 4:30 p.m. at 1-800-299-1700 (option 3,1,1).

PRODUCT LIABILITY CASES

Auto Product Liability Claim

- Instances of serious injury or death in a wreck that appear survivable
- No other obvious theories of liability against a defendant with sufficient financial resources
- Other available defendants have only limited financial resources available for recovery



Initial Inquiry

Did a problem with the vehicle cause the wreck (defect causing event)?
OR

Did something about the vehicle cause or contribute to plaintiff's injury (crashworthiness – defect causing injury)?



Factors to Consider

- Auto product liability or crashworthiness claims are very time consuming and expensive.
- Are there other possible avenues available for recovery of plaintiff's damages?



Factors to Consider

Plaintiff's Conduct

Involvement of Alcohol or Drugs

Seatbelt Usage



Starting Point

Design Goal: Protect the occupant inside the passenger compartment.



Basic Design Principles

- Vehicle should maintain occupants inside passenger compartment
- Nothing should intrude into the passenger compartment
- Restraints and seats should protect, not injure
- Vehicle should not catch fire
- Vehicle sliding sideways on paved surface should not rollover



Expect to hire at least 3 experts

- Reconstruction Expert
- Biomechanical Expert
- Defect Expert



Know:

1) What the vehicle(s) did (Reconstruction); and

2) How the occupant(s) movedinside the vehicle (Biomechanics orOccupant Kinematics)



Reconstruction

- Pre-event speeds
- Speed at impact (or rollover)
- Change in velocity (Delta-v)
- Primary direction of force (PDOF)
- Point of impact (POI)
- Crush values



In a rollover, you also will want to know:

- Speed at initiation of roll
- Roll rate
- Deceleration values
- Lateral forces



Delta-v

- Key component for measuring injurycausing potential of a collision
- Delta-v is the instantaneous change in velocity of the vehicle



Delta-v

Can be a sudden increase in velocity
 e.g., a standing object hit by a moving object

OR

Can be a sudden decrease in velocity
 e.g., when a moving vehicle hits an immovable frontal barrier



Vehicle speed and mass may affect the **force** in a collision.

But, the **damage-causing event** is the change in velocity (Delta-v).


Case Development

Rough rule of approximation for calculating Delta-v:

 1.5 mph of Delta-v for every 1 inch of crush



SPECIFIC AUTO PRODUCT DEFECTS

POST-COLLISION FIRE

Post-collision Fire

Basic Premise: The vehicle should not catch fire after a collision.



Post-collision Fire

Most commonly seen in vehicle designs that place the fuel tank in a vulnerable position

- Behind the rear axle
- Outside the vehicle's protective frame

Examples

- Ford Pinto
- GM CK pickups
- Ford Crown Victoria



Post-collision Fire

Other things to look for:

- Sharp edges or objects around fuel tank
- Gas tank structural failures
- Separation of filler neck
- Lack of electric fuel pump cut-off device
- Lack of anti-siphoning device
- Lack of fuel cell bladders
- Electrical fires under the hood caused by problems with the wiring harness

TREAD SEPARATION

Tread Separation



Tread Separation

Belt wedge

A design feature used to supress belt-edge cracks is the "belt wedge," a strip of rubber between the two belts. The thickness of belts used in ATX and Wilderness AT tires produced prior to May 1998 was typically less than other tires. Firestone's shoulder pocket design also caused stress at the tire's belt-edge.



Belt separation

 A defect known as socketing begins at the ends of the belts, because the cut ends of the belt wire are not brass coated. Rubber will not adhere to bare wire.

 As the belt moves, the socketing area grows.

 A fracture develops between the two belts from shear stresses, around the tire and from side to side.







The Detroit News

Tread Separation

Separation is related to:
Heat
Speed
Weather
Inflation of tire

Age of tire



CHILD SAFETY SEATS

Child Safety Seats

Common Issues:

- Compatibility of seat to vehicle
- Positioning and tightness of shoulder straps
- Padding of plastic shell
- Prevention of head excursion
- Prevention of lateral movement of seat



FORGOTTEN CHILD

Forgotten Child



ROOF CRUSH

Roof Crush



SEAT BACKS

Seat Back Failure



WINDOW GLAZING

Window Glazing



Window Glazing



NEW AREAS OF INQUIRY

ELECTRONIC DEFECTS

Electronic Defects



SIDE IMPACT & STRUCTURAL STRENGTH

Side Impact Protection



Side Impact Protection





Side Impact Protection



Structural Support



Volvo XC-90 Rollover



TRUCK CRASHES

Trucks in the U.S.

Commercial trucks present major public safety risk



2012 U.S. Truck Crash Data

- 333,000 trucks involved in crashes
- Result: 3,921
 deaths and
 104,000
 injuries
- 3,410 fatal crashes



Not Just a Big Car Wreck



Federal Motor Carrier Safety Regulations (FMCSR)

Federal Motor Carrier SAFETY Regulations

Handbook

as prescribed by: U.S. DEPARTMENT OF TRANSPORTATION FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION PARTS 40, 303, 325, 350-399

UPDATED QUARTERLY



Federal Motor Carrier Safety Regulations (FMCSR)

Federal Motor Carrier Safety Regulations (FMCSR) are codified in Title 49 of the Code of Federal Regulations.

Texas has adopted most of the FMCSR in 37 TEX. ADMIN. CODE §4.11
Discovery



Employment Application Requirements

- 1) the applicant's name, address, date of birth and social security number
- 2) the applicant's residences for the past 3 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 3 years
- 7) a list of all motor vehicle violations in the past 3 years
- 8) the circumstances of any denial, revocation or suspension of a driver's license and
- 9) identification of all employers for the previous 3 years or 10 years, depending upon the type of vehicle to be operated, along with dates of employment and the reason for leaving such employment

Driver Qualification File §391.51

- 1) Employment application (§391.21)
- Driving record for the 3 years preceding time of employment (§391.23(a)(1))
- 3) Certificate of driver's road test (§391.31(e) or §391.33)
- 4) Responses to annual driving record inquiries (§391.25(a))
- 5) Note identifying the person annually reviewing the driving record (§391.25(c)(2))
- Annual list provided by driver of all motor vehicle citations (§391.27)
- 7) Driver's medical certificate (§391.43(f))
- 8) Any waivers of physical disqualifications (§391.49)

Driver Investigation History File §391.53

- Contains responses to inquiries to prior employers as required by §391.23
 - §391.23 requires prior employers to provide:
 - verification of driver identity and prior employment
 - data relating to any accidents in the preceding 3 years
 - violation of any drug or alcohol prohibitions in the preceding 3 years
- Prior employers are required to respond to a prospective employer's request
- Employer must maintain Driver Investigation History File for length of driver's employment and for 3 years thereafter

Braking Distance



Six Second Rule

- Tailgating is responsible for one-third of rear-end collisions each year
- Weight and speed play significant role in determining ability to stop
- Truck driver needs to make sure there are six seconds between truck and car ahead

Six Second Rule



No Zone



No Zone



Underride Guards



Driver Fatigue



Driver Fatigue

- 30 percent of all fatal truck accidents are caused by driver fatigue. (NTSB, 1995)
- 28 percent of surveyed truck drivers admitted falling asleep at the wheel during the previous month. (FHWA, 1997)
- 75 percent of 1,249 truck drivers polled violated hours of service regulations. (IIHS, 1992)

Truck Driver's Log Book



Crosscheck Logs

- Trip receipts
 GPS or tracking data
- Bills of lading
 Checkpoint records
- Weight tickets
 Pay records
- Toll records
 EDR data

Driver Distraction



Types of Driver Distraction

Visual – taking your eyes off the road

- Manual taking your hands off the wheel
- Cognitive taking your mind off what you're doing

Distractions (Cell Phone)



DUI vs. Cell Phone vs. Texting

- Talking on cell phone \rightarrow Accident 4X more likely (equivalent to driving with BAC .08 percent)*
- Truck driver dialing cell phone → Accident 5.9X more likely**
- Truck driver reaching for electronic device → Accident 6.7X more likely**
- Truck driver texting \rightarrow Accident 23X more likely**

*Source: University of Utah, Salt Lake City, Utah, 2006 **Source: Virginia Tech Transportation Institute, 2009

Distractions (Entertainment)



Safety Improvements





Braking: New Technology



Collision Prevention: Safety Improvements



Lane Departure Prevention: Safety Improvements



Contact Information

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