

# Maximizing Recovery in Mid-Size Trucking Cases

Andy Goldner

Law Offices of Andrew E. Goldner, LLC  
[www.andrewgoldner.com](http://www.andrewgoldner.com)

3355 Lenox Road, NE  
Suite 850  
Atlanta, GA 30326

404-869-1580 (o)

[andrew@andrewgoldner.com](mailto:andrew@andrewgoldner.com)

- *Purpose of the Paper* – A resource to get you started. Hopefully, this paper will serve as a starting point to help you find particular pieces of information to help maximize value in your trucking cases. Obviously, a case can turn on any fact, regulation, or both. It is beyond the scope of this paper to explore, in depth, any particular liability issue and any specific regulation.

## **I. What is a TRUCKING case and Where Do I Find The Applicable Regulations?**

- A. Ford F-150 v. 10,001 pound (GVWR – “loaded”) truck - Weight issues
  - i. FMCSA – “Commercial Motor Vehicle” – 49 CFR § 390.5
    1. Passenger-carrier regulations ( 8 for profit vs. 15 – no profit)
  - ii. GPSC – “Lightweight Commercial Motor Vehicle” – self-propelled or towed vehicle 10,000 pounds or less GVWR.
- B. Federal Motor Carrier Safety Administration (FMCSA) – *Inter vs. Intra* – State Trucking
- C. Georgia Public Service Commission – Most FMCSA regulations adopted.
- D. Georgia Public Safety Commission
- E. Don’t forget about internal company rules (when a governmental entity regulates *and* even when there is no such oversight). Almost all companies have driving “rules”.
- F. Not all “big trucks” are common carrier/commercial motor vehicles (i.e., government buses).

**II. What is a small to mid-size trucking case and why does it matter**  
**how you classify the claim?**

- A. Under \$25,000 – Be mindful of your time, effort, and expense relative to expected return (Be careful with client’s dollars).
  - i. Focus on driver and trucking company, perhaps not injuries to client. (Trucking companies and nursing homes = bad Defendants).
- B. \$25,000 and up
  - i. May justify more time and resources. (Friendly physician? Any injury permanent?)
- C. \$100,000 and up
  - i. Many of the strategies in this paper can really make a difference with these cases.
- D. If you have “large” trucking cases, the below information may still help, but case value is usually already there.

**III. Know the Lingo / Speak with Confidence to the Insurance Adjuster/Opposing Counsel**  
**Types of Truck Wrecks**

- A. Left Turn Wrecks – When a tractor-trailer makes a left turn in front of another vehicle. (The driver often attempts to “beat” oncoming traffic). Tie-in with expected time of delivery and hours of service.
- B. Under-ride Collisions – Vehicles following the tractor-trailer travel under the trailer after an abrupt stop or as a result of the truck and trailer being stopped in an inappropriate place. Trailers are required to have conspicuity markings (reflective markings that are intended to alert drivers to the presence of the vehicle) and under-ride guards (the metal bar which sits low under the trailer).
- C. Stopped Tractor-Trailers – Tractor-trailers frequently stop, or become disabled, on the roadway or the shoulder of the roadway. This is a very dangerous situation for motorists. Federal law requires that commercial drivers place warning markers (usually reflective triangles) at various distances behind the stopped truck in order to alert oncoming drivers that they are approaching a large, stopped commercial vehicle. Marking distance will vary based on a number of factors, including hills, commercial areas, etc. Check for compliance.
- D. Rear - End Accidents – This type of collision seems to be the most common. Commercial drivers are often speeding, in a hurry, inattentive, talking on a cell phone, or otherwise distracted. These conditions result in the truck driver failing to stop the tractor-trailer in time and causing a rear-end collision with the vehicle in front of it.

- E. Improper Lane Change – Tractor-trailer drivers often operate their trucks negligently by changing lanes when it is not safe to do so. The most frequently-seen collision in this category is when a commercial driver moves his truck into a lane and space already occupied by another vehicle. Not surprisingly, this action usually causes a severe collision, frequently sending the passenger car off of the roadway.

#### IV. Governing Authorities You Need to Know When Litigating Truck Cases

- A. Federal Motor Carrier Safety Administration (FMCSA) - The federal agency which is vested with the authority to govern the actions of drivers and trucking companies operating across state lines. This agency has set forth many rules and regulations designed to safeguard the motoring public from the actions of drivers in control of tractor-trailers which weigh many tons. Importantly, many states (Georgia included) have adopted most of the FMCSA regulations as “local” governing rules (Georgia Public Service Commission).

- B. Georgia Public Service Commission

[www.psc.state.ga.us/transportation/pdf/trans-rules.pdf](http://www.psc.state.ga.us/transportation/pdf/trans-rules.pdf)

- \* 515-16-4-.01 – Incorporates 49 C.FR. 350, 382, 383, 390 – 397.

- C. Georgia Public Safety Commission

[www.dps.georgia.gov/vgn/images/portal/cit\\_1210/34/47/52465205Chapter%201%20DP%20S%20Transportation%20Rules%20FINAL.pdf](http://www.dps.georgia.gov/vgn/images/portal/cit_1210/34/47/52465205Chapter%201%20DP%20S%20Transportation%20Rules%20FINAL.pdf)

- D. Defendant Trucking Company’s Internal Policies and Procedures

#### V. Hot Topics to Maximize Case Value

- A. Some of these documents may be accessed pre-suit, while others may only be turned over during discovery. It never hurts to ask—sometimes, the simple act of asking for the documents shows the adjuster (pre-suit) that you know what you are doing.

- B. Shipping Documents

- Truck drivers are required to have and maintain a Bill of Lading regarding the goods being transported. Why is this document important? The Bill of Lading contains all relevant shipment information – What is being hauled, by whom, where are the goods being delivered? This information may be vital if it is necessary to determine where a driver was, at what time, and whether the type of cargo he was carrying might have contributed to the accident (load shift). We have used Bills of Lading to show when a driver picked up a load of goods and prove that, relative to the time of the wreck, he was speeding throughout his route. § 373.101

C. Commercial Driver's License (CDL)

- Commercial drivers need a special license in order to operate large trucks. The license is, not surprisingly, called a Commercial Driver's License (CDL). In order to get a CDL, a driver needs to pass certain tests and otherwise undergo more rigorous training than one who simply drives a regular passenger car. During litigation, it is important to investigate the truck driver's CDL and determine whether there are, or have ever been, any suspensions or revocations on the license. Often, drivers have had CDLs in multiple states, so a thorough investigation is important.  
§ 384.204; § 398.3 – Other qualifications for motor carrier drivers.

D. Records and Record Retention for Trucking Companies

- The trucking company which employs the truck driver is required to maintain detailed records about the driver, his application for employment, his employment, his performance, and much more. § 379, App. A - Schedule of records and periods of retention.

E. Alcohol Use by Truck Drivers

- The use of alcohol before and during driving is, of course, regulated regardless of whether one is operating a car or tractor-trailer. However, the use of alcohol is strongly monitored and regulated in connection with the operation of commercial vehicles. In fact, the FMCSA precludes the use of alcohol for a number of hours before operation of a big truck. § 392.5 Alcohol prohibition.

F. Post-Accident Drug/Alcohol Testing (Often Mandatory)

\*Alcohol testing of truck drivers is mandatory in many post-accident scenarios, regardless of whether the responding police officer believes that alcohol played a role in the wreck

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers:

(a)(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or [*note NO issue regarding citation/fault*]

(a)(2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(a)(2)(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(a)(2)(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. § 382.303. (emphasis added)

G. Hours of Service for Commercial Drivers

\*Truck drivers are limited by the FMCSA with regard to how many hours they are allowed to operate a truck in a particular amount of time. These regulations are known as ‘hours of service rules’. Drivers are required to keep logs which document when they come on duty, when they rest, and when they return to duty. Not surprisingly, the purpose of these rules is to keep tired drivers off of the roads. Unfortunately, many trucking companies urge their drivers to make deliveries as quickly as possible in an effort to drive up profit margins. We have seen numerous cases of drivers exceeding the allowable hours of service and, sometimes, even forging log documents. § 392.3: Fatigued or ill operator; § 395: Hours of Service.

H. § 395.8 – Logs

- i. § 395.11 – documents required when trucking company uses Electronic On-Board Recording (EOBR).
- ii. § 395.16 – Requirements for EOBR.

I. Stopped or disabled commercial vehicles

- The FMCSA has set forth numerous rules which a driver must follow if his truck becomes disabled in or around the roadway. We have seen many cases of motorists colliding with stopped or disabled trucks which were not appropriately marked and did not have the necessary reflective triangles deployed. § 392.22: Emergency signals; stopped commercial motor vehicles.

J. Inspection of the Commercial Vehicle

- \* The FMCSA mandates that trucking companies and truck drivers inspect their vehicles frequently. The purpose of these inspections is to ensure that the trucks on the road are as free of mechanical defects as possible. Often, human error or mechanical defect is the cause of a wreck (sometimes, it is both). The FMCSA seeks to minimize the mechanical issues which may lead to a wreck, with these rules. The FMCSA takes these regulations seriously. In fact, truck drivers are required to inspect the truck before each trip. § 396.3: Inspection, repair and maintenance.

K. Driver’s Physical Ability to Operate Truck

- \* § 391.41 – physical qualifications for drivers.
- \* Pay particular attention to diabetes (particularly requiring insulin for control).

L. Driver’s Qualification

- \* § 391.51 – General Requirements for Driver Qualification Files (driver’s application for employment, copy of the motor vehicle record from CDL states,

annual review of driving record, etc.) A claim or case may turn on what is contained within these vital records. A lawyer handling a truck wreck case should investigate the driver's employment file in order to determine whether he should have been hired by the trucking company and in order to evaluate whether the driver's performance merited continued employment. For example, if a driver had repeated wrecks while operating a tractor-trailer, one should investigate what sort of re-training, if any, the company gave to the driver. We have had numerous cases where the employee files of the truck driver dramatically increased the value of the case because we were able to show that the trucking company was employing an unsafe, and sometimes reckless, driver.

M. Driver disqualification after certain violations. Should the driver have been driving?

\* § 383.51

N. Negligent Hiring, Retention, & Entrustment

\* Georgia law will not allow a plaintiff to bring a negligent hiring and retention claim when the trucking company admits the agency relationship. Why? If the trucking company admits the agency relationship with the driver, they are on the hook for his negligent actions. Therefore, proof of negligent hiring and retention is not necessary.

\* Big Exception – Punitive Damages – If the Plaintiff asserts a claim for punitive damages (which presumably survives summary judgment) based upon negligent hiring and retention, evidence of the company's negligence in hiring and retaining is admissible. Durben v. American Materials, Inc., 232 Ga. App. 750 (1998) (“where a plaintiff has a valid claim for punitive damages against the employer based on its independent negligence in hiring and retaining the employee or entrusting a vehicle to such employee...it cannot be said that the negligence claims against the employer are merely duplicative of the respondeat superior claim. Under these circumstances, the employer is not entitled to summary judgment on the negligent entrustment, hiring, and retention claims.”); “[P]unitive damages are not recoverable where the driver at fault simply violated a rule of the road.... On the other hand, punitive damages are recoverable under the statute [O.C.G.A. § 51-12-5.1] where the collision resulted from a pattern or policy of dangerous driving.” Carter v. Spells, 229 Ga. App. 441(1997).

O. Employer's Annual Inquiry and Review of Driving Record

\* § 391.25

\* Review every 12 months

\* (b)(2) The motor carrier *must* consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and *must give great weight* to violations, such as *speeding*, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public. (emphasis added)

\* Smith v. Tommy Roberts Trucking Co., 209 Ga. App. 826 (1993). (Employer's liability for failing to conduct an inappropriate background check on an employee driver).

\* J.B. Hunt Transport, Inc. v. Bentley, 207 Ga. App. 250 (1992) (affirming punitive damages jury award against trucking company based on evidence of conscious indifference by driver and trucking company)

P. Cell Phones, Texting

\* Texting Ban by FMCSA – <http://www.dot.gov/affairs/2010/dot1410.htm>

\* Proposed Handheld Cell Phone Ban by FMCSA  
<http://www.fmcsa.dot.gov/about/news/news-releases/2010/Rule-to-Ban-Hand-Held-Cell-Phone.aspx>

\* Pre-Suit – Witnesses who saw the driver on the cell phone, police report?

\* Post-Suit – Get the records, ideally before the driver's deposition.

**VI. Resources for a Modest Budget for Small or Mid-Size Trucking Cases**

A. You – Camera, video, witness statements, affidavits.

B. Safersys.org – website with information on trucking companies.

C. Google, Google Earth.

D. Open records requests.

E. Go heavy on the regulations.

F. Spoliation letters.

G. Listserves.



Classic Under-ride Collision



Rear-end collision