

## TRUCK CRASH CASES

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It has become a well-advertised axiom that trucking cases are different from simple car wreck cases. They involve federal and state safety regulations, multiple categories of documents, industry jargon, electronic data and often nationwide discovery. The cast of characters is different, the insurance coverage are different, the discovery different, the jurisdiction and venue issues different and often the potential for recovery different. If you learn what to look for and act quickly enough, you can often find evidence of corporate negligence that enhances the case value. But if you treat it like a regular car wreck, you may cut your client short.

One big difference between truck and car crash cases is physics. You don't have to be a rocket scientist to grasp the idea that an 80,000 pound truck packs a bigger punch of kinetic energy than a 4,000 car traveling the same speed. One might result in a whiplash while the other produces multiple fatalities with corpses crushed or burned to a crisp.

Trucking cases also typically involve larger insurance policies than the typical car wreck case. The minimum liability coverage for interstate freight motor carriers is \$750,000, and we seldom see a policy for less than \$1,000,000. Often there is more coverage if you know where to look.

Trucking companies and their insurers call in "rapid response teams" immediately after a catastrophic truck crash. At the head of the rapid response team, often directing the efforts of investigators at the scene, are defense lawyers specializing in trucking cases. After a case gets into litigation, you may find that the defense attorney was at the scene of the crash before the debris was removed.

While far from a comprehensive treatise on the subject, this paper is intended as an introduction for the lawyers accustomed to handling motor vehicle wreck cases but who is not experienced in trucking litigation. The following steps of case investigation and preparation often overlap and interweave, and some are not necessary in every case, but the outline may be used as a checklist.

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## A. First steps.

You arrive at your office early in the morning and have an urgent message from an old client whose family member was killed or catastrophically injured when struck by a tractor trailer the previous night. You need to jump on this immediately. While every case is a little different, here is a checklist of early actions:

### 1. First meeting.

Through the family member or friend who calls you, arrange to meet with the family members who has authority to retain counsel. Be alert to fractured family relationships. If necessary educate the folks about the need for everyone to be in the tent “spitting out” rather than vice versa. Determine the degree to which you may need to babysit the clients.

### 2. Get hired.

Secure an attorney employment agreement signed by whoever has authority. Impress upon them that the trucking company had a rapid response team on the scene, assessing (and sometimes “losing”) evidence before the debris was cleared. Thus, it is urgent to act quickly to preserve evidence in trucking cases. If a serious injury case, get a contract signed by the injured person, or sometimes by a spouse or other relative acting on the injured person’s behalf, subject to ratification by the actual client when able. If a wrongful death, it would be one of the beneficiaries listed in O.C.G.A. § 51-4-2 through 51-2-5 – spouse, parent, child, or other relative who will be representative of the estate. In addition to an employment agreement, get non-medical records authorization, HIPPA medical information authorization, insurance information affidavit, etc. Instruct clients to keep lips zipped and stay off social media.

### 3. Records preservation letter.

As soon as you are hired, obtain from the law enforcement agency the name of the company, truck driver and insurance company. If the crash report is not ready, contact the investigating officer. Send a records preservation letter to the company, the driver and the insurer. See sample at Appendix A, but modify to avoid looking like a mindless automaton.

Understand that if you request a prompt inspection of the truck and trailer, savvy defense counsel will demand the same regarding the vehicle in which your client or decedent was traveling. This can get really expensive in a hurry. In a catastrophic case, that is fine. If the truck crash only resulted in a whiplash, it may not be cost effective.

4. Download public information about trucking company.

A great deal of information about the trucking company and its safety record may be found on a Federal Motor Carrier Administration website, <http://www.safersys.org>. There is intense industry lobbying to reduce the amount of information publicly available, so download all you can while you can.

At <http://www.safersys.org/CompanySnapshot.aspx>, select the correct company from a list, and save in PDF the “company snapshot.”

Click “SMS Results” link in the upper right hand corner. Save/ print to PDF every page that you find, clicking through on every link and performing print/save to PDF for every page of information you find.

Return to the Company Snapshot, click “Licensing and Insurance” link, and print/save in PDF everything you find there. Save the Report which is already in PDF format. Print/save to PDF the page under the HTML button. Then click through to “blanket company” information linked at the bottom of that page, and print/save to PDF. This identifies an agent for service of process in each state.

5. Web search.

Do a Google and social media search regarding the company and driver. Print/save everything you find to PDF.

6. Scene investigation.

Visit the crash scene yourself right away. Have a competent photographer record all details at the scene. If the case is catastrophic, go ahead and hire a top notch accident reconstruction expert. If you can’t spring for that, associate an attorney who can commit the resources necessary to prosecute the case right.

7. Preserve the vehicles before they are driven.

It is not uncommon for a trucking company to rush to put a unit back in service after a fatal crash, even without police authorization to remove it from an impound lot, so as to record over the electronic control module. If necessary, consider moving for a temporary restraining order.

8. Open records requests.

Send to all law enforcement agencies that may have records related to the case. Remember that a major crash may have involvement of Georgia State Patrol,

county sheriff, municipality police, fire department, and even seemingly random agencies such as Department of Agriculture and Department of Natural Resources, and 911 records. Include all still photographs, video and audio recordings, dashcam, bodycam, witness statements, field notes, etc. Check agency websites for possibility of submitting requests online or by email. See sample at Appendices B and C.

#### 9. FOIA request to Federal Motor Carrier Safety Administration

Due to lag time for response, do not delay in requesting background information on trucking companies. See <https://www.fmcsa.dot.gov/foia/foia-requests>. You may submit requests by email at [foia@fmcsa.dot.gov](mailto:foia@fmcsa.dot.gov). Due to funding and staffing issues, response times have slowed. See sample at Appendix D,

#### 10. Media search.

A major truck crash may attract considerable media attention. Perform an Internet search on the crash to see what media coverage is available. Contact any TV stations, newspapers and independent “stringer” reporters and photographers that may have covered the incident.

A media monitoring or news clipping company may be helpful. Read all comments to any news stories or blogs — this can lead to identification of witnesses not included in police reports and reveal hints to public sentiment for what happened.

Get the news photographers’ names and contact them directly to get pictures and video.

Print – or save in PDF format if you have a “paperless” office setup – all documents for future use.

#### 11. Download the Google Earth “street view” of the scene.

### **B. Visit the DA or Solicitor.**

Under O.C.G.A. § 50-18-72(a)(4), law enforcement records are exempt from Open Records Act disclosure when there is a “pending investigation or prosecution of criminal or unlawful activity.” This blocks access to many details of crash investigation, such as a Georgia State Patrol SCRT (Specialized Collision Reconstruction Team) report on a fatal crash, until the District Attorney or Solicitor General authorizes release. It is helpful to establish a friendly, cooperative relationship with the prosecutor in order to get that information for use in the civil case. Some prosecutors are insecure about releasing anything while others are happy to share with a victim’s attorneys. There are many ways to work this out.

### **C. Further presuit investigation.**

1. Diary for follow up on Open Records request to obtain all police reports, investigation info and 911 logs and recordings. When responses arrive, check to make sure you have everything including all video and audio recordings. Search all reports and recordings for identification of additional witnesses. The 911 logs and recordings often show that the truck driver only called his dispatcher or supervisor and never called 911 to request assistance for the victim. Remember that video and audio recordings can be very powerful in a fatal or other catastrophic injury crash.
2. Drive the scene and make photographs from the various angles of the respective vehicles.
3. Look for any close businesses or residences with cameras or surveillance that may face the street or area of the crash.
4. If you did not have an opportunity to do so immediately after the crash, hire an accident reconstructionist with trucking and commercial vehicle experience. Personally attend your expert's inspection if humanly possible as you need a "feel" for the facts as well as a report. Your reconstruction expert with document and preserve the scene and the vehicles including:
  - a. Locate, measure, and document all scene evidence, including all marks in the roadway, median, or shoulder (skid marks, gouge marks, yaw marks, debris, etc.).
  - b. Locate and photograph all signage and mile markers, and surrounding. Locate, measure, and document all vehicle evidence, including:
    - c. The entirety of all vehicles (not just damaged areas)
    - d. All after-market add-ons (chrome, fangs on the grill, storage boxes, etc.)
    - e. All damage to any areas of the vehicles involved
    - f. All DOT or Motor Carrier numbers, company or personal names on the truck, trailer, freight container, placards, tags, and fuel permits for the trucks.
    - g. All documents that may be attached to a trailer or freight container.
    - h. Reflective materials or lights on tractors and trailers
    - i. Everything inside of the tractor, including any clues indicative of driver distraction or fatigue
    - j. Look for dangling wires or other evidence of removed telematics devices.

- k. Look and photograph / scan at all paperwork in the tractor and on the trailer / freight container.
  - l. Obtain all available electronic data from the electronic control module (ECM), event data recorder (EDR), etc.
  - m. Verify all telematics, GPS, apps, and other electronic devices or software being used by the driver or in place for the tractor, trailer, or cargo at the time of the crash.
  - n. Inspect and photograph all gauges and instruments on the dash (e.g., cruise control switch)
  - o. Look for a detachable GPS unit, and if found obtain a data download.
  - p. Locate, measure, and document all vehicle evidence, including:
    - i. The entirety of all vehicles (not just damaged areas)
    - ii. All after-market add-ons (chrome, fangs on the grill, storage boxes, etc.)
    - iii. All damage to any areas of the vehicles involved
    - iv. All DOT or Motor Carrier numbers, company or personal names on the truck, trailer, freight container, placards, tags, and fuel permits for the trucks.
    - v. All documents that may be attached to a trailer or freight container.
    - vi. Reflective materials or lights on tractors and trailers
    - vii. Everything inside of the tractor
    - viii. Look for any clues indicative of driver distraction or fatigue
    - ix. Look for dangling wires or other evidence of removed telematics devices.
    - x. Look and photograph / scan at all paperwork in the tractor and on the trailer / freight container.
    - xi. Inspect and photograph all gauges and instruments on the dash (e.g., cruise control switch)
    - xii. Look for a detachable GPS unit, and if found obtain a data download.
5. If a catastrophic crash happened at night, get a qualified night time photographer to document lighting conditions.
6. Explore options for aerial views of the scene. Sometimes Google satellite images suffice. Sometimes, in a catastrophic crash, law enforcement will have done aerial photography before clearing the scene.
7. Interview all drivers and witnesses, and take written or video statements if they are willing.
- a. Did they take photos or video on their cell phones or other devices?

- b. Remember that license plates of cars stopping at the scene are visible in video or still photos, and other witnesses not listed on the police report can be identified.
8. Talk to all public safety personnel at the scene and investigating officer(s) including fire rescue personnel and other first responders. They may have additional insights about the truck driver's conduct, the victim's suffering, etc. It is not unusual to find the best photos were made by a fireman on his cell phone.
9. Talk to the investigators from other agencies on scene (DOT, DNR, Agriculture, Environmental Protection Agency, etc.).
10. If weather is an issue, obtain meteorological records. See <https://www.ncdc.noaa.gov/data-access>.
11. Investigate the company (or companies) involved—identify owners and employers of all persons and equipment involved in the entire transportation cycle and what they were being paid
12. Investigate the driver further.
  - a. Order a background check which may provide an overview of residential, marital and work history, even though such reports may be unreliable.
  - b. Request the driving record for the driver the stated where the driver has a commercial driver's license. (This may have to wait until suit is filed so you can issue a subpoena.)
  - c. If available, check the local public records (courts, criminal records, etc.) in addition to the state records.
13. Investigate potential broker, shipper, and freight forwarder liability—depending on the information available to the broker or shipper, you can have additional defendants and coverage under various theories.

#### **D. Hire the Necessary Experts.**

There are several categories of experts you may need. You may not need all of these experts in any one wreck, but if you do need one of these experts, you will need the best and you will need him or her fast.

Remember police reports are often *wrong*. Hire your experts and get them involved early. Often, the driver of the car is dead or so incapacitated as to be unable to give a statement, so the police generally only get one side of the

story and miss, or are deliberately not told, critical facts. These facts, if known, may very well have changed the officer's opinion as to the cause of the collision.

The potential experts may include:

1. A first-class, qualified accident reconstructionist with big truck experience (mentioned above). Accident reconstructionists who are not engineers can be used, but they should be carefully vetted. The accident reconstruction expert should have experience and the capability to download the tractor-trailer's event data recorders and telematics, and review the truck's on-board computer. This person will know how to download all of the control modules (e.g., the anti-lock brake ECM, the air bag ECM, etc.) in addition to the EDR. If you only have the event data recorder downloaded, you may be missing evidence.
2. Evidence photographer (mentioned above).
3. Human factors expert
4. Fatigue / sleep medicine expert
5. Trucking safety compliance expert
6. Truck driver operation / training expert
7. Truck investigator or mechanic expert. Often a reconstruction expert can do this, but make sure.
8. Conspicuity expert
9. Hazardous materials expert
10. Load securement or cargo expert
11. Forensic computer expert

#### **E. Legal analysis.**



1. Confirm whether defendant truck was commercial motor vehicle.

49 C.F.R. § 390.5 defines a commercial motor vehicle is defined as:

[A]ny self-propelled or towed motor vehicle 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 or used 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 under regulations prescribed by the Secretary under 49 C.F.R., subtitle B, chapter I, subchapter C.

2. Confirm whether the truck driver and commercial motor carrier were engaged in interstate or intrastate commerce.
  - a. If interstate—the carrier is governed by the FMCSRs; 49 C.F.R. parts 382, 385 and 390–397.
  - b. If intrastate, Georgia incorporates most of the FMCSRs in Georgia Department of Public Safety Transportation Rulebook, <https://dps.georgia.gov/georgia-department-public-safety-transportation-rulebook>

### 3. “Rules of the Road” analysis.

- a. See Rick Friedman & Patrick Malone, *Rules of the Road* (2d Ed., 2010). Proof of violation of rules is part of the battle but the plaintiff must also present evidence that the violation was at least a concurrent proximate cause of the crash.
- b. **Federal Motor Carrier Safety Regulations**. A few of the regulations most often referred to in crash cases are:
  - i. General applicability. 49 C.F.R. § 390.3. “(a) The rules in this chapter are applicable to all employers, employees, and commercial motor vehicles, which

transport property or passengers in interstate commerce.”

ii. Knowledge of & compliance with the regulations, 49 C.F.R. § 390.3(e):

(1) Every employer shall be knowledgeable of and comply with all regulations...

(2) Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations ...

(3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

iii. Definitions of employer and employee. 49 C.F.R. § 390.5

Employer - any person who owns or leases a CMV in connection with that business, or assigns employees to operate it (excludes USA, States, political subdivisions)

Employee - any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. (excludes USA, States, political subdivisions)

iv. Definition of Commercial Motor Vehicle, 49 C.F.R. § 390.5.

Commercial motor vehicle means any self-propelled or towed motor vehicle 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 10,001 pounds or more; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation;

- (3) Is designed or used to transport more than 15 passengers, including the driver, not for compensation; or
- (4) Is used in transporting HAZMAT

Commercial motor vehicles over 10,001 but under 26,001 pounds MUST satisfy all the regulations except: CDL, Alcohol and Drug Testing, and 150 mile radius versus 100 mile radius.

The definition of Commercial Motor Vehicle includes a towed trailer and an intermodal container chassis trailer.

- v. Motor carrier to require observance of driver regulations. 49 C.F.R. § 390.11:  
“Whenever a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition. If the motor carrier is a driver, the driver shall likewise be bound.”
- vi. Aiding or abetting violations. 49 C.F.R. § 390.13.  
“No person shall aid, abet, encourage, or require a motor carrier or its employees to violate the rules of this chapter.”
- vii. Minimum driver qualifications. 49 C.F.R. § 391.1.  
  - “(a) The rules in this part establish minimum qualifications for persons who drive commercial motor vehicles as, for, or on behalf of motor carriers. The rules in this part also establish minimum duties of motor carriers with respect to the qualifications of their drivers.
  - (b) A motor carrier who employs himself/herself as a driver must comply with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers.”
- viii. English language. 49 C.F.R. § 391.11.  
“(b)(2) Can read and speak the English language sufficiently to converse with the general public, to

understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.”

ix. Scope of rules on operation. 49 C.F.R. § 392.1.  
“Every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.”

x. Comply with state laws. 49 C.F.R. § 392.2.  
“Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the FMCSA imposes a higher standard of care than that law, ordinance or regulation, the FMCSA regulation must be complied with.”

Violating a State law is also a violation of this federal regulation.

xi. Schedules to Conform with Speed Limits.  
49 C.F.R. § 392.6. “No motor carrier shall schedule a run nor permit nor require the operation of any CMV between points in such period of time as would necessitate the CMV being operated at speeds greater than those prescribed .... “ (speed limit).

xii. Ill or fatigue operator.  
49 C.F.R. § 392.3 provides: “No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle. However, in a case of grave emergency where the hazard to occupants of the commercial motor vehicle or other users of the highway would be increased by compliance with this section, the driver may continue to operate the commercial motor

vehicle to the nearest place at which that hazard is removed.”

xiii. Hours of service.

The aim of the HOS regulations is to make our roadways safer by reducing crashes caused by driver fatigue. The link between driver fatigue and attentiveness is well recognized and has been known for many decades. “Indeed, as early as 1937, the ICC passed regulations limiting a commercial driver’s hours of service to protect the public from the danger posed by fatigued drivers.”<sup>2</sup> While beyond the scope of this paper, there is a lot of science backing up the common sense observation that a fatigued driver is a less safe driver.

Drivers of large trucks and buses (10,001 pounds truck, bus with 16+ occupants even if driver not paid, van with 9+ occupants if driver is paid, not exclusively within 100 mile short haul radius) in interstate commerce generally are required to maintain record of their hours of service.

Assuming a truck driver is operating a CMV and does not fall within any exceptions, § 395.3 of the FMCSRs sets forth the maximum working times. These rules set limits on driving based on both “on-duty time” and “driving time.” In short, there is an 11-hour driving limit and a 14-hour on-duty limit per day, and a 60- or 70-hour on-duty limit per seven- or eight-day “week.”

The 11-hour driving limit essentially provides that a trucker may not drive for more than 11 hours at a time following 10 consecutive hours of off-duty time.<sup>23</sup> Currently, this 11-hour driving time period can be 11 hours in a row or smaller time periods with breaks in between that add up to the limit. After a truck driver reaches the 11-hour limit, he or she must be off duty for another 10 consecutive hours before driving again.<sup>24</sup>

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<sup>2</sup> Carmichael v. Kellogg, Brown & Root Servs., Inc., 572 F.3d 1271, 1297 fn. 3 (11th Cir. 2009) (Kravitch, Circuit Judge, concurring in part and dissenting in part) (“There have been numerous studies on the connection between fatigue and a driver’s ability to be attentive.

The 14-hour on-duty limit basically affords a truck driver a 14-hour window within which to drive.<sup>25</sup> As with the 11-hour driving limit, the 14-hour limit is allowed after 10 consecutive hours of off-duty time. The 14-hour time period begins once a truck driver is on duty, and it continues to run even if the trucker has off-duty time within the 14-hour time period. Once the 14-hour time limit is reached, a trucker must stop driving. He or she can do other “on-duty”

Traditionally, driver have maintained paper logs subject to easy falsification. One of the arts of trucking litigation has been in cross referencing driver logs with other sources of information to prove the driver lied to drive over legal hours. Increasingly electronic logs are gaining prevalence, which raises the degree of sophistication required to cheat on logs as well as the sophistication required to prove such falsification.

xiv. Hazardous conditions, extreme caution.

49 C.F.R. § 392.14 requires: “Extreme caution in the operation of a CMV shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the CMV shall be discontinued and shall not be resumed until the CMV can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the CMV may be operated to the nearest point at which the safety of passengers is assured.”

Cross reference with detailed guidance in CDL Manual, section 2.6.4, cautioning drivers slowing speed by one-third on wet roads, by one-half on packed snow, and slowing to a crawl or pulling over on ice. The CDL manual also cautions against overdriving headlights at night.

Some courts have held violation of this section is negligence per se.<sup>3</sup> Commercial Drivers License manuals, which are uniform in all states, advise reducing speed by one-third in adverse weather conditions affecting visibility and traction. Professional drivers and safety directors must admit that this is an important safety rule on which they are trained.

- xv. Obscured lamps and reflective devices. 49 C.F.R. § 392.33.  
“No CMV shall be driven when any of the required lamps or reflective devices/material are obscured by the tailboard, or by any part of the load or its covering, by dirt or .... otherwise.”
- xvi. Alcohol and Drugs. 49 C.F.R. § 382 (very detailed)  
Post-accident testing is required if: (a) fatality, whether or not driver is cited; (b) injury with medical treatment away from scene if driver is cited; and (c) disabled vehicle towed away if driver is cited.
- xvii. 49 C.F.R. § 383: Minimum uniform commercial driver's license requirements
- xviii. 49 C.F.R. § 385: Safety fitness procedures
- xix. 49 C.F.R. § 387: Minimum levels of insurance coverage
- xx. 49 C.F.R. § 390: Trucking company minimum requirements
- xxi. 49 C.F.R. § 392: Operation of motor vehicles
- xxii. 49 C.F.R. § 393: Vehicle options necessary for safe operation
- xxiii. 49 C.F.R. § 396: Inspection, repair, and maintenance of vehicles
- xxiv. 49 C.F.R. § 397: Transportation of hazardous materials, driving requirements, and parking rules

**c. Instate trucking in Georgia.** See <https://dps.georgia.gov/georgia-department-public-safety-transportation-rulebook>

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<sup>3</sup> See, e.g., Weaver v. Chavez, 133 Cal.App.4th 1350, 35 Cal.Rptr.3d 514 (Cal.App. 2 Dist.,2005); Jurek v. Hubbs, 2004 WL 1487116 (Ky.App.,2004); Crooks v. Sammons Trucking, Inc., 2001 WL 1654986 (Cal.App. 3 Dist.,2001); Barrows v. Schneider Nat. Carriers Inc., 156 F.3d 1235 (9th Cir., 1998); But see, Dortch v. Fowler, 2008 WL 834091 (W.D.Ky.,2008); Kimberlin v. PM Transport, Inc., 264 Va. 261, 563 S.E.2d 665 (Va.,2002); Ruhland v. Smith, 1991 WL 257962 (Minn.App.,1991). See also, George v. Estate of Baker, 724 N.W.2d 1 (Minn.,2006).

- i. **Intrastate Motor Carrier Safety Regulations.** See Georgia Department of Public Safety Transportation Rulebook, Chapter One, Motor Carrier Safety Regulations. Based mostly on Federal Motor Carrier Safety Regulations, with exceptions. Cite to section numbers in this rather than Federal Motor Carrier Safety Regulations in intrastate cases.
- ii. **Georgia Forest Products Trucking Rules.** See Georgia Department of Public Safety Transportation Rulebook, Chapter Four, Georgia Forest Products Trucking Rules. This is poorly enforced, if at all.

**d. Commercial Driver’s License Manual**

49 C.F.R. § 383.131, Test Manuals, mandates: “(1) A State must provide an FMCSA pre-approved driver information manual.... The manual must be comparable to the American Association of Motor Vehicle Administrators’ (AAMVA)... Model Commercial Driver Manual.... The manual must include...” a long list of specifically required areas of knowledge and skill specified in 49 C.F.R. § 383.111 and 49 C.F.R. § 113.

In addition, 49 C.F.R. § 131(a)(1)(iv) provides that such manual must include “The substance of the knowledge and skills that drivers must have, as outlined in subpart G of this part for the different vehicle groups and endorsements ...”

The referenced subpart G mandates, “All drivers of CMVs must have the knowledge and skills necessary to operate a CMV safely as contained in this subpart. The specific types of items that a State must include in the knowledge and skills tests that it administers to CDL applicants are included in this subpart.”

The CDL Manuals of all states track precisely those areas of required knowledge and skill with greater details. While there are no published court decisions on point, one may argue that the CDL Manual has force of law under the Federal Motor Carrier Safety Regulations. At minimum, it sets an industry standard of care for operation of commercial motor vehicles. Defense lawyers may take the opposite position, that the CDL



Manual is just some random book with no direct or indirect legal implication regarding the standard of care.

Download the Georgia CDL Manual in PDF format at <http://www.eregulations.com/georgia/commercial/>. Also download in PDF the CDL manuals of states in which the truck driver is licensed and where the company is based. Take highlighted hard copies to depositions.

Some of the more frequently referenced sections of the CLD Manual are:

- i. Section 2. Driving safely.
  - ii. Section 2.4. Seeing.  
How far to look ahead.
  - iii. Section 2.6. Speed.
  - iv. Section 2.6.1. Stopping distance.  
Perception distance.  
Reaction distance.  
Braking distance.  
Effect of speed on stopping distance.  
Effect of weight on stopping distance.
  - v. Section 2.7. Managing space.
  - vi. Section 2.7.1. Space ahead.
  - vii. Section 2.7.7. Space Needed to Cross or Enter Traffic.
  - viii. Section 2.8. Seeing Hazards.
  - ix. Section 2.8.4. Always Have a Plan.
  - x. Section 2.11. Driving at Night.
- e. **Truck Driving School Manuals.** Another source of industry standard materials can be found in instructional manuals used in truck driver training schools. These include:
- i. Alice Adams, Trucking: Tractor / Trailer Driver Handbook / Workbook (3<sup>rd</sup> Ed.).  
[https://www.amazon.com/Trucking-Tractor-Trailer-Driver-Handbook-Workbook/dp/1418012629/ref=sr\\_1\\_1?ie=UTF8&qid=1488251315&sr=8-1&keywords=alice+adams+trucking](https://www.amazon.com/Trucking-Tractor-Trailer-Driver-Handbook-Workbook/dp/1418012629/ref=sr_1_1?ie=UTF8&qid=1488251315&sr=8-1&keywords=alice+adams+trucking)
  - ii. J. J. Keller's Tractor-Trailer Driver Training Manual,  
[https://www.amazon.com/Tractor-Trailer-Driving-Training-Manual/dp/1602872767/ref=sr\\_1\\_1?ie=UTF8&qid=1488251391&sr=8-1&keywords=j.+j.+keller+tractor+trailer+training](https://www.amazon.com/Tractor-Trailer-Driving-Training-Manual/dp/1602872767/ref=sr_1_1?ie=UTF8&qid=1488251391&sr=8-1&keywords=j.+j.+keller+tractor+trailer+training)

**f. Evidence of negligence vs. negligence per se?**

Plaintiffs' lawyers around the country have invested a great deal of effort persuading trial courts to treat violations of Federal Motor Carrier Safety Regulations as negligence per se. While a few courts have found specific violations are negligence per se, it is more common to find violations are evidence of negligence subject to proof of proximate cause.<sup>4</sup>

**F. Insurance.**

**1. Interstate carriers insurance requirements.**

Minimum insurance coverage for leased as well as owned commercial motor vehicles in interstate commerce are as follows pursuant to 49 U.S.C. § 13906 and 49 C.F.R. § 387.9

- (1) Property/Dry Freight ..... \$750,000
- (2) Oil/Petroleum ..... \$1,000,000
- (3) Hazardous Materials ..... \$5,000,000

Minimum levels of financial responsibility-passenger, 49 C.F.R. § 387.33

- (1) Seating for 15 or less ..... \$1,500,000
- (2) Seating for 16 or more ..... \$5,000,000

There are several exemptions from these requirements, including purely intrastate carriers, vehicles hauling a long list of exempt commodities, vehicles hauling goods and commodities within a corporate family, school buses, vehicles providing taxicab service, commuter vehicles and vehicles chartered by schools.

If the \$750,000 minimum insurance limit were adjusted for inflation from 1981 according to the Consumer Price Index, it would be about \$2 million. If adjusted at the medical inflation rate, which a lot of folks say is more relevant for personal injury claims, it would be \$4,422,000. The FMCSA proposed an inflation adjustment of minimum insurance requirements in the last administration but it was blocked in a House committee. All such efforts appear dead for the foreseeable future.

One of the most common mistakes a car wreck lawyer handling a trucking case makes is to only ask for and then settle the case for \$750,000 or \$1,000,000 in primary coverage without absolutely verifying that is all the coverage available. If the trucking company is small and apparently thinly capitalized, and there is no

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<sup>4</sup> See, e.g., *Parker v. R & L Carriers, Inc.*, 253 Ga.App. 628, 560 S.E.2d 114 (2002).

larger entity involved with potential liability, one may be satisfied with an affidavit from the CEO detailing all coverage and confirming that there is no other coverage. However, sometimes it may be prudent to file suit and do formal discovery to confirm the lack of additional coverage before accepting revealed policy limits.

The three standard Insurance Services Office (ISO) policy forms most often encountered in trucking cases are the Business Auto (Form CA 00 01), Truckers Coverage (Form CA 00 12) and Motor Carrier (Form CA 00 20) forms. A Truckers Endorsement essentially converts a Business Auto form to a Truckers Form by substituting a different definition of "insured" to include non-owned equipment. These forms use numerical codes or symbols on the declarations page in designating covered vehicles. The Business Auto form contains symbols 1 through 9, the Truckers Coverage form uses symbols 41 through 50, and the Motor Carrier form uses symbols 61 through 71. Plaintiffs' counsel may consider requesting an index to codes used in the declarations page along when requesting production of insurance policies. Some truck insurers also issue manuscript policies with primary truck coverage. Those must be examined individually.

## **2. MCS-90.**

A federally mandated endorsement known as the MCS-90 is provided under the Motor Carrier Act of 1980, which provides that commercial motor carriers engaged in interstate commerce must register with the United States Secretary of Transportation and comply with minimum financial responsibility requirements established by the Secretary of Transportation. The MCS-90 endorsement is designed to eliminate the possibility of denial of coverage by an insurer based upon an excess "other insurance" clause or other limiting provisions contained in the policy. To this end, the purpose of the statute is to ensure that a motor carrier has independent financial responsibility to pay for losses sustained by the general public arising out of its operations. All endorsements and filings are deemed public information. Registered DOT carriers must keep a copy on file at their principal place of business and produce such information to the public for inspection. The endorsement's limits apply on a per-accident basis.

"Courts that consider the applicability of an MCS-90 endorsement, a federally mandated endorsement to motor carrier insurance policies, construe its operation and effect as a matter of federal law ." However, state law governs interpretation of

the underlying insurance policy. Thus, both state and federal law may apply to the extent they do not conflict.<sup>5</sup>

In Georgia, the Court of Appeals has held that the MCS-90 endorsement does not apply to intrastate transportation of nonhazardous goods, even though the trucking company is an interstate motor carrier. Determination of whether the MCS-90 endorsement to motor carrier's liability policy provides coverage hinges upon an analysis of the trip route and the goods being transported at the time of the accident.<sup>6</sup>

### **3. Direct Action Against Insurer.**

O.C.G.A. § 40-2-140 authorizes a direct action against the insurer for a motor carrier in cases of bodily injuries to passengers and the public or for loss of household goods. It does not apply to cargo claims.<sup>7</sup> Insurers for both intrastate and interstate carriers operating in Georgia may be subject to a direct action.<sup>8</sup>

The direct action statute does not authorize a direct action against an excess insurer, only the primary insurer.<sup>9</sup> But an insurer cannot evade applicability of the direct action statute by classifying a high deductible as primary insurance.<sup>10</sup>

Venue questions often confound lawyers inexperienced in this area of litigation. In order to join the motor carrier and the insurance company in the same suit, there must be independent grounds for venue in the same court. While the joinder provision in the direct action statute permits a plaintiff to join a motor carrier's primary liability insurance company in the same action as a motor carrier, a motor carrier and its insurer are not considered joint tortfeasors or joint obligors. Therefore, proper venue as to one defendant is not necessarily proper venue as to the other, so the direct action against the insurer is an independent proceeding on the insurance contract with venue subject to an independent determination.<sup>11</sup>

Venue as to the insurance company may be in any county where the company has an agent or place of doing business or any county where such agent or place of

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<sup>5</sup> See Gregory G. Deimling, et al, THE MCS-90 BOOK: TRUCKERS VERSUS INSURERS AND THE GOVERNMENT MAKES THREE 99-102 (International Risk Management Institute, 2004); Pub.L. No. 96-296, 94 Stat. 793 (1980); 49 C.F.R. §§ 387.7, 387.15; Lynch v. Yob (2002), 95 Ohio St.3d 441, 443, citing Sections 13902(a)(l) and 31139, Title 49, U.S.Code; John Deere Ins. Co. v. Nueva, 229 F.3d 853, 855 n. 3 (9th Cir.2000), cert. denied, 534 U.S. 1127, 122 S.Ct. 1063, 151L.Ed.2d967 (2002).

<sup>6</sup> Grange Indemnity Insurance Company v. Burns, 337 Ga.App. 532, 788 S.E.2d 138 (2016).

<sup>7</sup> Scarff Brothers, Inc. v. Bullseye Dispatch, Inc., 2016 WL 3128554 (N.D. Ga. 2016)(O'Kelley, J.).

<sup>8</sup> Bramlett v. Bajric, 2012 WL 4951213 (N.D. Ga. 2012)(Thrash, J.).

<sup>9</sup> Werner Enterprises, Inc. v. Stanton, 302 Ga.App. 256, 90 S.E.2d 623 (2010).

<sup>10</sup> McGill v. American Trucking and Transportation, Ins. Co., 77 F.Supp.3d 1261 (N.D.Ga. 2015)(Pannell, J.).

<sup>11</sup> Thomas v. Bobby Stevens Hauling Contractors, Inc., 165 Ga. App. 710, 712, 302 S.E.2d 585 (1983).

doing business was located at the time the cause of action accrued or the contract was made, out of which the cause of action arose.<sup>12</sup> The contract action against the insurer of a motor carrier on the policy itself “is cognizable as an independent suit without joinder of the motor carrier.”<sup>13</sup> Therefore, the plaintiff may bring a direct action against the motor carrier's insurer alone, in any county where venue is proper as to the insurer.<sup>14</sup> To find the counties in which an insurer has agents, find the name of the insurance company at <https://www.oci.ga.gov/Insurers/CompanySearch.aspx>, click on the insurer's name, on the next page select the “Agents” tab, select “Georgia,” click on “Choose a City,” and then look for a city in a county in which there is venue as to the motor carrier or driver.

An action against a resident or nonresident motor common carrier or motor contract carrier may be brought in the county where the cause of action or some part thereof arose.<sup>15</sup> If the motor carrier or its agent is not capable of being served in that county, “a second original may issue and service be made in any other county where the service can be made upon the motor carrier or its agent.”<sup>16</sup> Unlike the venue provision for actions against railroads and electric companies, the venue prescribed by O.C.G.A. § 40-1-117 is not exclusive.<sup>17</sup> That is, “venue [as to a motor carrier] can be predicated upon any statute which is otherwise applicable.”<sup>18</sup>

Failure of a trucking company to register as a motor carrier when required to do so, and failure of its insurer to issue a Form F endorsement, does not prevent a direct action against the insurer by an innocent victim as insurers cannot insulate themselves from liability under the Act by failing to comply with its technical requirements.<sup>19</sup>

A direct action cannot be maintained against a motor carrier's insurance company where the vehicle involved in the incident is exempted from the definition

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<sup>12</sup> O.C.G.A. § 33-4-1; see *Travelers, Inc. v. Patterman*, 272 Ga. 251, 252, 527 S.E.2d 187 (2000).

<sup>13</sup> *Bartja v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 218 Ga. App. 815, 463 S.E.2d 358 (1995).

<sup>14</sup> *Jackson v. Sluder*, 256 Ga. App. 812, 569 S.E.2d 893 (2002).

<sup>15</sup> O.C.G.A. § 40-1-117. See also *Westport Trucking Co. v. Griffin*, 254 Ga. 361, 329 S.E.2d 487 (1985); *Southern Drayage, Inc. v. Williams*, 216 Ga. App. 721, 455 S.E.2d 418 (1995); *Gault v. National Union Fire Ins. Co. of Pittsburgh*, 208 Ga. App. 134, 430 S.E.2d 63 (1993); *Georgia Cas. & Sur. Co. v. Jernigan*, 166 Ga. App. 872, 305 S.E.2d 611 (1983); *Thomas v. Bobby Stevens Hauling Contractors, Inc.*, 165 Ga. App. 710, 302 S.E.2d 585 (1983); *Parker v. Ryder Truck Lines, Inc.*, 150 Ga. App. 163, 257 S.E.2d 18 (1979); *Rock v. Ready Trucking, Inc.*, 218 Ga. App. 774, 463 S.E.2d 355 (1995).

<sup>16</sup> O.C.G.A. § 40-1-117. See also *Rock v. Ready Trucking, Inc.*, 218 Ga. App. 774, 463 S.E.2d 355 (1995).

<sup>17</sup> O.C.G.A. § 40-1-117. See also *Southern Drayage, Inc. v. Williams*, 216 Ga. App. 721, 455 S.E.2d 418 (1995); *Gault v. National Union Fire Ins. Co. of Pittsburgh*, 208 Ga. App. 134, 430 S.E.2d 63 (1993); *Thomas v. Bobby Stevens Hauling Contractors, Inc.*, 165 Ga. App. 710, 302 S.E.2d 585 (1983); *Parker v. Ryder Truck Lines, Inc.*, 150 Ga. App. 163, 257 S.E.2d 18 (1979).

<sup>18</sup> *Thomas v. Bobby Stevens Hauling Contractors, Inc.*, 165 Ga. App. 710, 302 S.E.2d 585, 588 (1983) (emphasis by the court).

<sup>19</sup> *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011)

of a “motor carrier.”<sup>20</sup> However, a vehicle that hauls both non-exempt and exempt loads is not an exempt vehicle; the insurer bears the burden to prove that a vehicle was used solely for exempt purposes.<sup>21</sup>

#### **4. Intrastate trucking insurance in Georgia.**

For intrastate motor carriers hauling property cargo, the minimum coverage for bodily injury to or death of one person is \$100,000; for all persons injured or killed in any one accident is \$300,000 (subject to a maximum of \$100,000 for bodily injury to or death of one person); and the limit for loss or damage in any one accident to property of others (excluding cargo) is \$50,000.<sup>22</sup>

For intrastate carriers carrying passengers, the minimum coverage is \$100,000 per person. For those carrying 12 passengers or less, the minimum required per accident is \$300,000, and for those carrying more than 12 passengers, the minimum coverage per accident is \$500,000.<sup>23</sup>

The minimum coverages for intrastate carriers are obviously inadequate for any serious injury or death case. However, it is common for intrastate motor carriers to carry \$1,000,000 or more in liability insurance coverage, often due to contractual requirements of companies for which they haul.

#### **5. Search for more coverage.**

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<sup>20</sup> *Mornay v. National Union Fire Ins. Co. of Pittsburgh, P.A.*, 331 Ga.App. 112, 769 S.E.2d 807 (2015)(medical transit van). See also, *Morgan Driveaway, Inc. v. Canal Ins. Co.*, 266 Ga.App. 765, 598 S.E.2d 38 (2004).

<sup>21</sup> *Occidental Fire and Cas. Co. of North Carolina, Inc. v. Johnson*, 302 Ga.App. 677, 691 S.E.2d 589 (2010)(

<sup>22</sup> Rule 515-16-11-.03(5) of the Transportation Rules of the Georgia Public Service Commission; see *Progressive Preferred Ins. Co. v. Ramirez*, 277 Ga. 392, 393(1), 588 S.E.2d 751 (2003). Former Rule 7-2.1 of the Transportation Rules of the Georgia Public Service Commission referred to 49 C.F.R. § 387.9 for the schedule of required coverages for motor carriers transporting hazardous materials, hazardous substances, or hazardous waste in interstate, intrastate, or foreign commerce. Effective July 1, 2011, O.C.G.A. § 40-1-1(18.1) defines “hazardous material” as a substance or material as designated pursuant to the Federal Hazardous Materials Law, 49 U.S.C.A. § 5103(a). In addition, cargo insurance is governed by Rule 515-16-11-.04 of the Transportation Rules of the Georgia Public Service Commission.

<sup>23</sup> See *Ross v. Stephens*, 269 Ga. 266, 267, 496 S.E.2d 705 (1998); *Driskell v. Empire Fire & Marine Ins. Co.*, 249 Ga.App. 56, 59(1), 547 S.E.2d 360 (2001). Former O.C.G.A. § 46-7-27 authorized the Georgia Public Service Commission to adopt such rules and orders as it may deem necessary to enforce the statutory scheme. Effective July 1, 2001, this rule and other existing Transportation Rules of the Georgia Public Service Commission remained of full force and effect as rules of the Department of Motor Vehicle Safety. Effective July 1, 2005, the transportation rules were transferred back to the Georgia Public Service Commission from the Department of Motor Vehicle Safety. And, effective July 1, 2012 (along with revisions effective April 24, 2013), “rules, orders, and regulations previously adopted which relate to functions performed by the Public Service Commission which were transferred ... to the Department of Public Safety shall remain of full force and effect as rules, orders, and regulations of the Department of Public Safety.” O.C.G.A. § 40-1-57. Rule 515-16-11-.03(5) of the Transportation Rules of the Georgia Public Service Commission; see *Progressive Preferred Ins. Co. v. Ramirez*, 277 Ga. 392, 393(1), 588 S.E.2d 751 (2003).

In handling a catastrophic truck crash case, start with the coverage disclosed at [safersys.org](http://safersys.org), but do not stop there. Determine all of the insurance coverage for the motor carrier, driver, and all entities involved in the transportation cycle. Insist on getting information on all layers of primary and excess insurance coverage available for all entities involved. Occasionally, that may involve production of an insurance broker's business records in search of excess coverage.

Some of the other sources of coverage to consider separate coverages and liability on:

- a. The trailer, which is within the definition of commercial motor vehicle.
- b. A company that improperly loads a trailer.
- c. A company for which the trucker may be in an imputed agency relationship.
- d. A broker, logistics company or shipper that negligently selects an unsafe motor carrier.
- e. An intermodal equipment provider pursuant to fitting together provisions in the Federal Motor Carrier Safety Regulations
- f. An ocean carrier under an ocean bill of lading for intermodal container freight

Bear in mind that all these are challenging theories that may necessitate intense discovery and motion practice.

## **G. Punitive damages & attorney fees**

For attorneys representing plaintiffs in trucking accident cases in Georgia, the claim for punitive damages is an important but not always crucial part of the case. Punitive damages under Georgia law are designed to "penalize, punish or deter" conduct that shows "willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences." Proof must be by "clear and convincing evidence." O.C.G.A. § 51-12-5.1.

The Federal Motor Carrier Safety Regulations are a starting point for the use of corporate conduct as a foundation for punitive damages. However, such violation are not sufficient in themselves. In the recent case of *Vannes v. Smith*,<sup>24</sup> Judge Ashley Royal summarized Georgia law on punitive damages in trucking cases:

Under Georgia law, "[p]unitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that

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<sup>24</sup> 2016 WL 1260703 (M.D. Ga. – Athens Div., decided March 29, 2016).

the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.”<sup>25</sup> “Negligence, even gross negligence, is inadequate to support a punitive damages award.”<sup>26</sup> “[S]omething more than the mere commission of a tort is always required for punitive damages. There must be circumstances of aggravation or outrage.”<sup>27</sup>

In automobile collision cases, “punitive damages are not recoverable where the driver at fault simply violated a rule of the road.”<sup>28</sup> For example, in *Coker v. Culter*,<sup>29</sup> the court rejected the plaintiff's claim for punitive damages where the defendant driver had been speeding, there was standing water on the road and visibility was poor, drug paraphernalia was found in the back of the driver's car, and the driver's blood alcohol level one hour after the accident was 0.03 percent. The court found that while this might be evidence of gross negligence, such evidence was not sufficient to meet the level required for punitive damages. Likewise, in *Bradford v. Xerox Corp.*,<sup>30</sup> the court affirmed summary judgment to the defendant on the plaintiff's claim for punitive damages where the evidence showed the defendant driver was speeding while reporting to his job, the road was wet, and he crossed the highway median, striking plaintiff's vehicle and causing his injuries.<sup>31</sup> Georgia courts have not allowed plaintiffs to recover punitive damages for traffic violations unless the circumstances involving “aggravation and outrage.”<sup>32</sup>

By contrast, to justify punitive damages, Georgia law requires “the collision result 'from a pattern or policy of dangerous driving, such as driving while intoxicated or speeding excessively.’”<sup>33</sup> For example, in *Langlois v. Wolford*, the court authorized punitive damages where the defendant driver left the scene of the accident, was intoxicated, and

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<sup>25</sup> O.C.G.A. § 51-12-5.1(b).

<sup>26</sup> *Brooks v. Gray*, 262 Ga. App. 232, 232 (2003) (citations omitted).

<sup>27</sup> *Id.* (citations omitted).

<sup>28</sup> *Miller v. Crumbley*, 249 Ga. App. 403, 405 (2001) (citations omitted).

<sup>29</sup> 208 Ga. App. 651 (1993).

<sup>30</sup> 216 Ga. App. 83 (1995).

<sup>31</sup> See also *Lindsey v. Clinch County Glass, Inc.*, 312 Ga. App. 534, 535-36 (2011) (no evidence driver, who was using his cell phone at the time of the collision, had a history of distraction-related accidents or other evidence that would show a pattern of dangerous driving or other aggravating circumstances so as to authorize punitive damages); *Brooks*, 262 Ga. App. at 233-34 (crossing the centerline and operating a vehicle without a proper license did not warrant imposition of punitive damages); *Miller*, 249 Ga. App. at 405 (no evidence of pattern or policy of dangerous driving where driver failed to keep a proper lookout and pled guilty to following too closely)

<sup>32</sup> *Mastec North Am. V. Wilson*, 325 Ga. App. 863, 866 (2014); see also *Currie v. Haney*, 183 Ga. App. 506, 506 (1987) (no punitive damages “in the absence of aggravating circumstances.”).

<sup>33</sup> *Brooks*, 262 Ga. App. at 233 (quoting *Miller*, 249 Ga. App. at 405 and citing *Carter v. Spells*, 229 Ga. App. 441, 442 (1997)).



had a history of prior DUIs and traffic violations.<sup>34</sup> In *J.B. Hunt Transport, Inc. v. Bentley*,<sup>35</sup> the court found the jury was authorized to award punitive damages against both the defendant truck driver and defendant trucking company where the evidence showed the truck had been taken in for maintenance shortly before the accident; several witnesses testified the truck was driving very erratically and swinging from lane to lane for at least ten to twenty miles before the accident; a Georgia Public Service Commission inspection found one-third of the logbook violations related to excessive hours driving; the defendant trucking company had destroyed the driver's log book, as well as pre-trip and post-trip inspection reports on the vehicle after it had initiated its own investigation; and the trucking company failed to produce the driver as a witness.

Similarly, in *Glenn McClendon Trucking Co. v. Williams*,<sup>36</sup> the court found the jury was authorized to consider punitive damages where the evidence revealed the trucking company ordered mechanics to make repairs on the trucks without giving them the appropriate tools to perform the task; while the truck was on the road its wheels began to smoke; although another truck driver alerted the defendant driver of the smoke, the defendant driver did not stop and continued to drive; the driver was told his brake drum was falling on his brake line, but before he could stop, the wheels separated from the truck and crashed into another car injuring a passenger.

Likewise, in *Fowler v. Smith*,<sup>37</sup> the Georgia Court of Appeals allowed the jury to consider punitive damages where the truck driver stopped his tractor trailer behind a disabled vehicle in the center lane of I-285 for 35 minutes; the driver did not place any warning devices in the highway; and although it was getting dark, the driver never activated the trailer's lights. In addition to the lack of lights and warning devices, the appellate court pointed out the truck driver had the opportunity to move the vehicle out of the center of the highway in the 35 minutes prior to the collision, but failed to do so.<sup>38</sup>

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<sup>34</sup> 246 Ga. App. 209, 210 (2000).

<sup>35</sup> 207 Ga. App. 250 (1993).

<sup>36</sup> 183 Ga. App. 508 (1987).

<sup>37</sup> 237 Ga. App. 841, 843 (1999).

<sup>38</sup> Compare *Highsmith v. Tractor Trailer Serv.*, Case No. 2:04-CV-164, 2005 WL 6032882, at \*2 (N.D. Ga. Nov. 21, 2005) (no punitive damages where defendants stopped truck on side of highway when truck started overheating, exited truck, walked to front of truck and opened the hood to check for cause of the problem, and five minutes later plaintiffs' vehicle struck the rear corner of the trailer which remained partially in the roadway. The court determined these circumstances "far less egregious than those in *Fowler*.").

In *Ricker v. Southwind Trucking, Inc.*,<sup>39</sup> the driver had destroyed log pages and replaced them with pages showing himself off duty when in fact he had been driving from Ohio to Georgia and back, began the trip in question after a one hour nap at a shipper's terminal, "pushed times back" by about five hours on the trip log to make himself look legal the next day, and at the time of the crash had been driving 20 of the previous 24 hours. The trucking company failed to have any management system for effectively monitoring drivers' hours and relied solely upon drivers to inform management that they could not take a load due to hours. There was no effort to cross-check dispatch records against driver logs. The court concluded a jury could conclude the company "turned a blind eye" to its drivers' hours of service compliance, and "was consciously indifferent" to compliance.

#### H. Attorney fees.

The same evidence that might be developed in support of a claim for punitive damages may be used in a claim for attorney fees for "bad faith in the transaction under O.C.G.A. § 13-6-11, which is presented in the case in chief, with a preponderance of evidence standard, and with no statutory cap. In some cases, this may be worth more than a punitive damages claim.

First enacted with the Code of 1863, O.C.G.A. § 13-6-11 provides, "The expenses of litigation generally shall not be allowed as a part of the damages; but where the plaintiff has specially pleaded and has made prayer therefor and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them."

Willful rather than merely negligent violation of mandatory safety laws may support a jury finding of "bad faith" under O.C.G.A. § 13-16-11.<sup>40</sup> [Q]uestions concerning bad faith, stubborn litigiousness, and unnecessary trouble and expense under OCGA § 13-6-11 are generally questions for the jury to decide."<sup>41</sup> "However,

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<sup>39</sup> C.A. NO. 4:05-CV-0223-HLM, N.D. Ga. – Rome Div., decided March 15, 2007.

<sup>40</sup> See, e.g., *Windermere, Ltd. v. Bettes*, 211 Ga.App. 177, 179, 438 S.E.2d 406, 409 (1993) (landlord's failure to comply with safety features for isolating exits from fire as mandated by applicable building exit and fire codes evinced conscious indifference to consequences); *Pickett v. Ga., Ala., & Fla. R.R. Co.*, 98 Ga.App. 709, 106 S.E.2d 285, 287 (1958) (railroad's suit to condemn property without complying with statutory requirement that it first obtain permission of the Public Service Commission amounted to attempt to take property without due process of law); *Lewis v. D. Hayes Trucking, Inc.*, 701 F.Supp.2d 1300, 1313 (defendant drove his tractor-trailer despite being told by physician he did not pass Department of Transportation physical because of his diabetic condition); *Meyer v. Trux Transp., Inc.*, No. 1:05-CV-02686-GET, 2006 WL 3246685, at \*6 (N.D. Ga. Nov. 8, 2006) (defendant truck driver violated federal regulations and Georgia law by driving while marijuana metabolites were in his system); *Knobeloch v. Mustascio*, 640 F. Supp. 124, 125-26 (N.D. Ga. 1986) (defendant violated Georgia law by driving while intoxicated). *Contra*, *Coleman v. Arvey*, 2015 WL 1285 1557 (N.D. Ga - Atlanta Div., decided May 7, 2015(Shoob, J.)(mere ignorance of rules not enough for "bad faith").

<sup>41</sup> *Atlanta Emergency Servs., LLC v. Clark*, 328 Ga.App. 9761 S.E.2d 437 (2014).

if there is no evidence of bad faith or stubborn litigiousness, a trial court should grant a defendant's motion for summary judgment on a claim for attorney fees.”<sup>42</sup>

## **I. Filing suit.**

A prime consideration in filing suit is choice of forum based upon jurisdiction and venue rules. While a full discussion of these topics is beyond the scope of this paper, counsel for the plaintiff in a truck crash case must become intimately familiar with:

- a. O.C.G.A. § 9-10-91. Personal jurisdiction over nonresidents of state
- b. O.C.G.A. §§ 9-10-93. Venue of actions
- c. O.C.G.A. § 40-12-1 through 40-12-8. Nonresident Motorists.
- d. Removal of Civil Action. 28 U.S.C.A. § 1441
- e. Procedure for removal of civil actions. 28 U.S.C. § 1446

Interstate trucking cases are generally subject to being removed to federal court on diversity grounds if there is not a Georgia resident defendant. Occasionally, defense counsel may even seek removal on federal question grounds, perhaps just to slow down the case, though that is less likely to be successful. See, e.g., *14C Fed. Prac. & Proc. Juris.* § 3739 Remand (4th ed.).

While federal court is widely perceived to be less plaintiff-friendly than state courts, there are exceptional circumstances when plaintiffs’ counsel may choose a federal court over the home county of a defendant trucking company or driver if the plaintiff has moved to another state.

## **J. Document Discovery**

Trucking cases can be document intensive. As requests for production of documents often result in lackluster responses, counsel may consider serving a notice for a records custodian deposition in order to press for full production. Some of the significant categories of documents that must be gathered and analyzed are listed below.

- Driver logs
- Co-driver log
- Driver qualification file

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<sup>42</sup> Rigby v. Flue-Cured Tobacco Co-op., 327 Ga.App. 29, 755 S.E.2d 915, 926 (Ga.Ct.App.2014).

- Driver personnel file
- Driver application file
- All incident reports on driver
- Hours of service audits
- Trip receipts
- Weight tickets
- Bills of lading
- Operations documents
- Satellite tracking for 6 months
- Onboard data records
- Bills and statements from Comdata, etc
- All info from onboard data record
- Email and other driver/dispatcher/carrier communications
- Maintenance and inspection records (pre, post and annual inspections)
- Tractor / trailer / equipment inspection records

## **K. Depositions**

Critical depositions of the defense include the following, though some may not be needed in every case.

- 30(b)(6) deposition of corporation. Note that corporation has obligation to prepare witness(es) on topics plaintiff designates. Do NOT give notice for “person most knowledgeable” as that is NOT the rule. See sample notice at Appendix E.
- 30(b)(5) [30(b)(2) in federal court] records custodian deposition. Consider whether to take this 30 days before driver, 30(b)(6) of corporate representative, dispatcher, etc., to allow time to comb through the records and prepare. See sample notice at Appendix F.
- Truck driver.
- Safety director (in some cases combined with 30(b)(6))
- Dispatcher (use your judgment)

## **L. Trial considerations**

A seasoned trial lawyer once said, “When a trial lawyer dies and goes to heaven, he gets to try nothing but tractor trailer cases.” Indeed, while few cases are slam dunks, jury dynamics are more favorable to the plaintiff in cases involving an 80,000 pound vehicle governed by frequently violated safety rules, with an often remote corporate defendant and often with an insurance company named as an additional defendants.

Rather than lay out in detail how to try one of these cases in a paper that the author's next adversary might read, I will simply commend to the read the training programs of Trial Lawyers College based in Wyoming, and a reading list in no particular order:

- Rick Friedman & Patrick Malone, *Rules of the Road* (2d Ed, 2010, TrialGuides.com)
- Rick Friedman, *Polarizing the Case: Exposing & Defeating the Malingering Myth* (2007, TrialGuides.com)
- Rick Friedman & Bill Cummings, *The Elements of Trial* (2013, TrialGuides.com)
- Rick Friedman & Roger Dodd, *Trial Tactics* (DVD, 2014, TrialGuides.com)
- Patrick Malone, *The Fearless Cross Examiner* (2016, TrialGuides.com)
- Michael Leizerman, *Litigating Truck Accident Cases* (2016-17 Ed, AAJ Press)
- Joe Fried, *Handling Truck Cases* (DVD, TrialGuides.com)
- Mark Mandell, *Case Framing* (2015, TrialGuides.com)
- Eric Oliver, *Delivering the Goods* (DVD, 2011, TrialGuides.com)

## APPENDICES

### A. Records preservation letter.

#### Send ASAP when hired.

[CEO OF TRUCKING COMPANY].  
[TRUCK DRIVER]  
[INSURANCE COMPANY]

Re: Date of Accident: [DATE OF CRASH]  
Your Driver: [TRUCK DRIVER]  
Our Client: [CLIENT]

Dear \_\_, \_\_ & \_\_:

This firm has been retained by [CLIENT] in connection with personal injuries [DEATH OF DECEDENT] suffered in a [DATE OF CRASH] accident with your driver, [TRUCK DRIVER].

I request that the following pieces of evidence are preserved:

- 1) Any and all 11 and 14 hour compliance audits of Mr. [TRUCK DRIVER]'s log books/time cards;
- 2) Any and all e-mail and other communications between Mr. [TRUCK DRIVER] and his dispatcher, safety director or anyone else at [TRUCKING COMPANY], such as, but not limited to OmniTRACS messages and any messages sent from any similar service or vendor;
- 3) Any and all of Mr. [TRUCK DRIVER]' cell phone records and bills whether sent to Mr. [TRUCK DRIVER] or [TRUCKING COMPANY];
- 4) Mr. [TRUCK DRIVER]' cell phone;
- 5) Any and all fuel receipts or fuel summaries in any form whatsoever, including but not limited to such documents as sent by supplier and/or vendors to [TRUCKING COMPANY] or any other entity or which were hand delivered to [TRUCK DRIVER];

- 6) Any and all dated or timed documents whatsoever, such as but not limited to fueling documents, gate receipts, dispatch records and or bills of lading;
- 7) Any and all satellite tracking information for Mr. [TRUCK DRIVER]'s vehicle for the six (6) month period prior to the crash, such as, but not limited to Qualcomm, JTRACS and any like service or vendor;
- 8) Notes of any interviews with Mr. [TRUCK DRIVER], dispatchers, or any other person including but not limited to counsel with regard to the occurrence on [DATE OF CRASH];
- 9) Any and all documents which were contained or could have been contained in any "trip envelope" or "trip package" relating to the load Mr. [TRUCK DRIVER] was hauling on [DATE OF CRASH] and any other trip Mr. [TRUCK DRIVER] may have taken for the six (6) months prior to the collision, including but not limited to any toll receipts, fuel receipts and any other documents whatsoever;
- 10) Any and all Transflo or Comdata records and records of any other system by which Mr. [TRUCK DRIVER] electronically sent any documents relating to the subject trip and any other trips of Mr. [TRUCK DRIVER] s for the six (6) month period prior to the occurrence, including but not limited to fuel records, bills of lading or the like. This request includes documents Mr. [TRUCK DRIVER] took to any truck stop or other vendor for transmission to [TRUCKING COMPANY] or any other entity;
- 11) All records from any other vendor or service that reviewed any of [TRUCK DRIVER]s' logs for the trip in question or the six (6) month period before the occurrence;
- 12) Personnel records of the dispatcher(s) involved with the subject trip, including but not limited to any training records;
- 13) Any and all QTRACS messages;
- 14) All documents from any vendor or supplier showing tractor movement and position history by date and time for the sixty (60) days prior to the occurrence;
- 15) Any and all documents showing when the tractor's ignition was off during that time;

- 16) Invoices for [TRUCKING COMPANY]'s services for the load on the subject trip;
- 17) The bill of sale for load that Mr. [TRUCK DRIVER] was hauling on [DATE OF CRASH].
- 18) Any all weigh tickets for the load Mr. [TRUCK DRIVER] was hauling on [DATE OF CRASH].
- 19) Any and all maintenance records for the truck and trailer Mr. [TRUCK DRIVER] was using on [DATE OF CRASH].



**B. Open Records Act request to Georgia Department of Public Safety**

Georgia Department of Public Safety  
Motor Carrier Compliance Division  
959 E Confederate Avenue  
Atlanta, GA 30316

Re: Open Records Act Request  
Company : [TRUCKING COMPANY]  
US DOT No. : [DOT#]  
DOL : [DATE], [TIME]

Dear Sir or Madam:

This firm represents the [CLIENT] in litigation as a result of crash involving [TRUCKING COMPANY] on [DATE] at approximately [TIME]. Under the Georgia Open Records Act, O.C.G.A. Section 50-18-70, et seq., I request the documents described below as maintained by Georgia Department of Public Safety Motor Carrier Compliance Division (MCCD) or any predecessor agency of the State of Georgia regarding [TRUCKING COMPANY].

Production in electronic format would be good. You may send electronic production to [PARALEGAL] at [PARALEGAL EMAIL].

1. Any accident report submitted by [TRUCKING COMPANY]. In reference to the crash in question which occurred on on [DATE] at approximately [TIME] at [LOCATION] in [CITY], [COUNTY] County, Georgia, involving [TRUCK DRIVER NAME] as the driver of a truck operating under authority of [TRUCKING COMPANY].

2. Copies of the initial notice of applicable Georgia Transportation Rules sent to [TRUCKING COMPANY] by MCCD or any predecessor agency of the State of Georgia.

3. Copies of all correspondence of records received from or sent to the [TRUCKING COMPANY].

4. All "driver equipment and compliance checks" completed on standard MCCD or any predecessor agency of the State of Georgia with regard to equipment and roadside check forms along with copies of any such reports on [TRUCKING COMPANY].

5. All case reports prepared by MCCD or any predecessor agency of the State of Georgia agent on [TRUCKING COMPANY].
6. All safety compliance surveys conducted by MCCD or any predecessor agency of the State of Georgia agent on [TRUCKING COMPANY].
7. All notices of civil forfeiture claims or court action documents sent to the [TRUCKING COMPANY], by MCCD or any predecessor agency of the State of Georgia, along with any enclosures attached thereto and answers received from [TRUCKING COMPANY].
8. All memoranda and/or reviews maintained in [TRUCKING COMPANY] files created by MCCD or any predecessor agency of the State of Georgia.
9. All settlement agreements, consent orders, or court action documents in reference to actions taken against [TRUCKING COMPANY]. If your files also contain any news releases, we request copies.
10. Any safety rating as maintained by MCCD or any predecessor agency of the State of Georgia on [TRUCKING COMPANY] on the date of the crash [DATE]. We further request the present safety rating.
11. All vehicular crash reports as submitted by RCR Hauling, Inc. for the period from January 1, four year prior to [DATE] and up until the date of the crash, [DATE].
12. And other related documents concerning [TRUCKING COMPANY]'s past and present state of compliance with the motor carrier safety regulations.
13. Any available printout or reports available for "Safety Net" as reported into by state and federal inspection officials.
14. The insurance filings (Form E, Form F, and MCS 90 forms) on file for [TRUCKING COMPANY].

Thank you for your timely attention to this request. Please bill this office directly, if there are any charges for this information. PLEASE LET US KNOW IN ADVANCE IF FEES EXCEED \$100.00.

Thank you for your attention to the above matters, your prompt attention to this matter is appreciated.

## C. Open Records Request to law enforcement

*[NAME OF POLICE DEPARTMENT]*

*[POLICE ADDRESS]*

RE: Georgia Open Records Act Request  
Date of Accident: [DATE OF ACCIDENT]  
Accident Location: [DESCRIPTION OF LOCATION]  
Our Client: [CLIENT NAME]  
Accident Report No.: [CRASHREPORT#]

Dear Sir/Madame:

This law firm represents *[CLIENT NAME]* in a claim arising from an automobile collision that occurred at *[DESCRIPTION OF LOCATION]* on *[DATE]*. A copy of the Georgia Motor Vehicle Accident Report is enclosed. Pursuant to O.C.G.A. § 50-18-70, the Georgia Open Records Act, we hereby request your entire investigative file including the following:

1. 911 recordings, logs and CAD reports;
2. photographs;
3. audio and video recordings, including but not limited to dashcam and bodycam video;
4. witness statements;
5. inspection reports;
6. drawings and diagrams;
7. total station survey;
8. test results;
9. computer data;
10. witness information;
11. any documents generated or obtained relating to this incident.

As you know, O.C.G.A. § 50-18-70(f) requires individuals in control of public records to respond to requests for documents within three business days, or provide a written description of all available records and documents together with a timetable for their inspection and copying.

We understand that this may take longer, so please just let us know if there will be a substantial delay. We will promptly pay your normal, reasonable charges for copying of these records. If electronic production is more convenient for you, you may email copies of the records to [PARALEGAL] at [PARALEGAL EMAIL].

Thank you for your assistance.

D. FOIA request to FMCSA

<https://www.fmcsa.dot.gov/foia/foia-requests>

May submit by email to: [foia@fmcsa.dot.gov](mailto:foia@fmcsa.dot.gov)

Or by fax to: (202) 385-2335 - Attn: FOIA Team

1st transmittal via Certified Mail: \_\_\_\_\_

2nd transmittal via US mail

date>

Federal Motor Carrier Safety Administration

Attn: FOIA Team

1200 New Jersey Avenue SE

Washington, DC 20590

**Re:**

***Freedom of Information***

***Request***

***US DOT # \_\_\_\_\_***

***Carrier # \_\_\_\_\_***

***Date of Accident:***

\_\_\_\_\_

Dear Sir or Madam:

Pursuant to the rights granted under 5 U.S.C.A. §552, I am submitting this Freedom of Information Act (FOIA) request to gather safety information relative to the motor carrier above identified. Specifically, I am seeking the release of:

1. All files, documents, photographs, video tapes, and all information relative to a motor carrier collision at <location> on <date of accident>.
2. All public documents concerning <trucking company>, US DOT Number \_\_\_\_\_, including:
  - a. Enforcement reports;
  - b. Compliance reviews;
  - c. A copy of each OP-1 filed by the motor carrier;
  - d. A copy of each MCS-150A filed by the motor carrier;

- e. A copy of each MCS-150 filed by the motor carrier;
- f. All roadside driver vehicle inspection reports to include, but not be limited to MCS-63s, along with copies of any such reports returned to the DOT;
- g. State accident reports;
- h. General correspondence;
- i. Copies of final orders of the agency, including negotiated settlement agreements, notices of a claim (to which a motor carrier has replied and/or failed to reply), and out of service orders;
- j. Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Federal Motor Carrier Safety Administration;
- k. Administrative rulings adopted by the Federal Motor Carrier Safety Administration;
- l. Final Opinions issued by an Administrative Law Judge in the adjudication of motor carrier enforcement cases;
- m. Decisions of the Chief Safety Officer;
- n. Copies of the initial notice of the applicable D.O.T.-OMCS rules sent to the motor carrier by the FOMCS, DOT;
- o. All driver equipment and compliance checks completed on standard D.O.T.-OMCS equipment and roadside check forms along with copies of any such reports returned to the D.O.T.;
- p. All case reports prepared by any D.O.T.-OMCS agent on this carrier;
- q. All safety compliance surveys conducted by any D.O.T.-OMCS agent on the above carrier.
- r. All notices of civil forfeiture claims or federal court action documents sent to the above mentioned company by D.O.T., along with any enclosures attached thereto and answers received from the above carrier;
- s. The safety rating by the D.O.T.-OMCS on the above listed company on the date of the accident, <date of accident>;

- t. The present safety rating by the D.O.T.-OMCS;
- u. Any available printout or reports available for “Safety Net” as reported into by state and federal inspection officials;
- v. All memoranda and/or reviews maintained in the carrier’s files created by any state or federal agent, regional director, OMCS national director, or counsel for the U.S. Department of Transportation;
  
- w. All settlement agreements, consent orders, or federal court action documents in reference to actions taken against the above-listed company, and any related news releases.
- x. All correspondence and documents regarding any safety issue for the company and the driver to include but not be limited to the initiation, investigation and final conclusion of any:
  - (1) warning letters,
  - (2) targeted roadside inspections,
  - (3) any off-site investigation,
  - (4) any on-site investigation,
  - (5) any cooperative safety plan,
  - (6) any notice of violation,
  - (7) any notice of claim/settlement agreement, and
  - (8) any document that stated the company or the driver were unfit.
  
- y. Any document that found the driver or the company deficient in any BASIC (Behavior Analysis and Safety Improvement Categories) category.
- z. The BASIC measurements for the trucking company or driver for three year prior to the collision.
  
- aa. Any correspondence regarding the company or the driver objecting to, or

asking for a correction of, any BASIC measurement or FMCSA intervention.

- bb. The Pre-Employment Screening Program (PSP) report on the driver for each month for the three years prior to the collision.
- cc. Any documents showing inquiry by the trucking company for any PSP reports of the driver for the three years prior to the collision
- dd. Copy of the carrier profile maintained by MCMIS (Motor Carrier Management Information System) for the three years prior to the collision.

If you are unable to provide copies or reproductions of certain information, please provide the original for inspection. **To the extent information is stored electronically, including computer files, you are requested to provide both a hard copy and an electronic copy of the information.**

Please forward copies of the information to me at the above address with an invoice for any amounts due. If payment is required in advance, please contact me at the above telephone number and I will forward the appropriate funds. Should you request an Attorney General's opinion on any part of the requested information, I ask that you not withhold any of the information not subject to an opinion, but that you forward that portion of the information to me as soon as possible.

Kind regards,

**E. 30(b)(6) deposition notice (Georgia state courts version)**

**PLAINTIFF'S NOTICE TO TAKE DEPOSITION OF DEFENDANT  
@COMPANY**

PLEASE TAKE NOTICE that the undersigned attorney will take the deposition(s) of the below-named corporations, pursuant to the provisions of O.C.G.A § 9-11-30(b)(6) at the location, time and date indicated below:

NAME: @COMPANY

[COMPANY OFFICE UNLESS  
OTHERWISE AGREED]

DATE:

TIME:

**NOTE: COUNSEL FOR PLAINTIFF WILL SEEK TO COOPERATE WITH  
DEFENSE COUNSEL WITH REGARD TO MUTUALLY CONVENIENT  
SCHEDULING.**

Pursuant to O.C.G.A. § 9-11-30(b)(6), @COMPANY is required to designate and fully prepare one or more officers, directors, managing agents or other persons with the most knowledge concerning the following designated matters, or other persons who consent to testify on its behalf, and whom Defendant will fully prepare to testify regarding the following designated matters and as to such information that is known or reasonably available to the organization. The deposition is being taken for the purpose of discovery, for use at trial, or both of the foregoing, or for such other purposes as are permitted under the applicable and governing rules, and will be recorded by stenographic and videographic means. Pursuant to O.C.G.A. § 9-11-34, @COMPANY shall produce at the deposition the originals of all documents previously produced in this case. @COMPANY shall designate one or more persons to testify on behalf of the corporation on the following matters:

1. The acts, events, or occurrences of the collision on @DOL which forms the basis of Plaintiff's Complaint in the above-captioned cause.
2. The identity, title or position, and job description, of all persons managing, supervising, or in any other way directly involved with truck driver name, the driver of the truck involved in the matter which forms the basis of Plaintiff's Complaint in the above-captioned cause.
3. The investigation done into the collision on @DATE which forms the basis of Plaintiff's Complaint in the above-captioned cause.
4. All rules, regulations, policies, procedures and standards applicable to your operations as a motor carrier.



5. Loading procedures and load inspection procedures at @COMPANY, and the loading and inspection of any freight or container that was being hauled by @DRIVER when he was involved in the collision on crash date which forms the basis of Plaintiff's Complaint in the above-captioned cause, was secured.
6. The procedure(s) for the custody and maintenance of records for the drivers and vehicles at @COMPANY, including, but not limited to, those procedures applicable to @DRIVER and the vehicle he was operating on @DATE.
7. The qualifications @COMPANY requires for any of its drivers, and the procedure(s) by which drivers are recruited, hired, supervised, managed by @COMPANY, including but not limited to @DRIVER.
8. The process of dispatching drivers, and the operation of any computer or communications systems used in dispatching and communicating with drivers for @COMPANY, including but not limited to @DRIVER.
9. The policies and procedures of @COMPANY related to the monitoring, supervision and management of its drivers, including, but not limited to, dispatching drivers, auditing hours of service logs, the locations of their vehicles, ensuring that they file correct logs, and discouraging speeding or the violation of any other laws, ordinances, or regulations.
10. Any and all complaints, grievances, or other similar correspondence received by @COMPANY, within the five (5) years prior to the incident described in Plaintiff's Complaint, including but not limited to any such complaints, grievances, or similar correspondence involving @DRIVER.
11. All responses to interrogatories and requests for production to date in this case, and all documents requested in, or produced in response to, any request for production of documents or records custodian deposition in this case.
12. Internal records retention policies of @COMPANY.
13. Organization of records and filing system of @COMPANY.
14. Corporate structure of @COMPANY.
15. MC-50 B or T report(s) prepared as a result of this wreck
16. Every insuring agreement, policy, contract, bond, MCS-90 endorsement, Form E certificate, Form F certificate, or reinsurance agreement, along with all declarations pages, amendments, endorsements, riders and changes to the policies that may provide any liability, surety, indemnity or other financial responsibility coverage for you with regard to the incident which is the subject of this litigation, including primary, excess, supplemental or umbrella coverage.
17. All contracts, lease, rental and/or other agreements regarding the truck, trailer and/or the driver involved in the present collision which may have been applicable at the time of the present collision.

18. @DRIVER's complete application for employment, including but not limited to the application required under Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, Part 391.21.
19. All personnel, DOT, training, human resource, risk management, safety and all other records and files concerning @DRIVER.
20. @DRIVER's qualification file, including but not limited to the file required under Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, Part 391.51.
21. All daily vehicle inspection reports concerning the subject tractor and trailer involved in the wreck for the 60 days prior to the wreck, through and including the 10 days after the wreck.
22. All driver logs and auditing of logs of @DRIVER.
23. All dispatch records for the period from thirty (30) days prior to the incident complained of until five (5) days after said incident..
24. any data or records transmitted from your truck to any service (either in-house or third-party) that supplies products or services including but not limited to: on-board computers, on-board communications systems, automation of driver logs, recording of events, recording of state line crossings, ETA reporting, monitoring of vehicle location, or dispatch data.
25. All driver's manuals, company manuals, and other materials pertaining to company, federal, or state rules, in effect at the time of the wreck described in Plaintiff's Complaint.
26. All electronic equipment located on your truck at the time it was involved in the incident described in the Plaintiff's Complaint: satellite communications system; geositional satellite (GPS) data system, Qualcomm system; cellular telephone; e-mail or text messaging system; CB (Citizens' Band) radio and antennas; radar detector; on-board fax machine; on-board telephone; on-board beeper; automatic on-board recording device; electronic control module; electronic engine data recorder; on-board tachometer; and on-board computer recorder.
27. All original raw data and copies of any and all printouts of any on-board recording device, on-board computer, satellite communications system; geositional satellite (GPS) data system, Qualcomm system; macrograph, trip monitor, trip recorder, trip master, or device known by any other name which records information concerning the operation of the truck for the period commencing thirty (30) days before the wreck, through and including ten (10) days after the wreck.
28. All "com-checks," checks, drafts, settlement sheets, fuel tax receipts, toll receipts, DOT inspection tickets or receipts, lodging receipts, food and beverage receipts, and records of mileage and expenses, and all date and time entries on such records, for all driving by @DRIVER within six months preceding the wreck, up to and including the day of the wreck.

29. All driver's manuals, company manuals, and other materials pertaining to company, federal, or state rules, in effect at the time of the wreck described in Plaintiff's Complaint.

**F. Records custodian deposition notice**  
**[Consider taking this 30 days before driver and 30(b)(6) depositions.]**

**PLAINTIFF'S NOTICE TO TAKE DEPOSITION OF RECORDS  
CUSTODIAN OF DEFENDANT @COMPANY**

PLEASE TAKE NOTICE that the undersigned attorney will take the deposition(s) of the below-named corporations, pursuant to the provisions of O.C.G.A. § 9-11-30(b)(5) and O.C.G.A. § 9-11-34, at the location, time and date indicated below:

**NAME: @COMPANY**

**DATE:**

**TIME:**

Pursuant to O.C.G.A. § 9-11-30(b)(6), @COMPANY is **required** to designate and fully prepare one or more officers, directors, managing agents or other persons with the most knowledge concerning the following designated matters, or other persons who consent to testify on its behalf, and whom Defendant will fully prepare to testify regarding the following designated matters and as to such information that is known or reasonably available to the organization:

1. The existence of the documents requested below pursuant to O.C.G.A. § 9-11-34;
2. The electronic creation, duplication and/or storage of the documents requested below pursuant to O.C.G.A. § 9-11-34;
3. Any and all document retention/destruction policies that would relate to any of the documents requested below pursuant to O.C.G.A. § 9-11-34;
4. The location of the documents requested below pursuant to O.C.G.A. § 9-11-34;
5. The organization, indexing and/or filing of the documents requested below pursuant to O.C.G.A. § 9-11-34;
6. The method of search for the documents requested below pursuant to O.C.G.A. § 9-11-34;
7. The completeness of the documents produced pursuant to O.C.G.A. § 9-11-34; and
8. The authenticity of the documents produced pursuant to O.C.G.A. § 9-11-34.

Pursuant to O.C.G.A. § 9-11-35 and O.C.G.A. § 9-11-34, Plaintiff requests that @COMPANY produce the following documents and tangible things, as well as permit Plaintiff's counsel to inspect and copy the originals of each of the following documents and tangible items in the possession, custody or control of, its attorneys or other representatives or agents:

**SCHEDULE OF DOCUMENTS:**

Defendant shall bring the following **ORIGINAL** documents to the deposition:

1. Originals of all documents and materials responsive to all discovery served on this defendant in this case, whether produced previously or not, including but not limited to color photos, original logs, original qualifications file, original reports, and accident review board documents.
2. A duplicate original of every photograph (negative, positive, video, digital, and/or other) in your (including your attorney's) possession, custody and/or control that depicts in any way either of the vehicles (including trailer) or persons involved in the subject incident, the location of the collision, and/or any other item, person, vehicle, or other matter relevant to this lawsuit, together with repair and replacement estimates and invoices. This specifically includes any DriveCam video.
3. A copy of every photograph and other document in your (or your attorney's) possession, custody, and/or control that relates, refers, illustrates, and/or discusses in any way the **[Plaintiff and/or Plaintiff's decedent]**.
4. Any and all photos, video, or other images of any type, whether electronic or film, of the vehicle taken after the occurrence, together with repair and replacement estimates and invoices therefore.
5. A copy of each and every document that reflects any statements made by the Plaintiffs and/or that purports to contain the signature(s) of the Plaintiffs.
6. A copy of each document evidencing and/or pertaining in any way to driving by **@DRIVER** for six (6) months preceding the collision at issue, to specifically include the day of the collision, including, without limitation:
  - a. Driver's trip envelopes and/or trip reports, daily logs (including "driver's daily logs," "MC-139," "MC-a," or "driver's multi-day logs"), work reports, fuel purchase reports, time reports, distance reports, or any other reports made by Defendant **@DRIVER** (reports should be given broad definition and includes statements, summaries, and other paperwork along with all supporting documentation);
  - b. Receipts for any trip-related expenses or purchases regardless of type (e.g., fuel, food, lodging, maintenance or repair, special permits, bridge or toll road, loading or unloading, or other receipts);
  - c. Cargo pickup or delivery orders (regardless of who prepared orders);
  - d. Bills of lading and manifests (regardless of who prepared them) (including copies signed by sender and receiver of cargo);
  - e. Any other documents evidencing pickup and delivery dates and times or detention of equipment or cargo;
  - f. Freight bills, inclusive of cargo pickup and delivery copies;

- g. Written instructions, directives, orders, or advice given to Defendant @DRIVER in reference to cargo, routes of travel, pickup or delivery by you, shippers, receivers, or other persons or organizations;
  - h. Dispatch records evidencing assignment of @DRIVER for any trip;
  - i. Any driver call-in records or other written records indicating communications between @DRIVER and @COMPANY in reference to the movement of cargo, or the day-to-day operations of the equipment and/or driver;
  - j. Documents (including both sides of checks) evidencing billing and payment for cargo transportation;
  - k. Initial rough driver's trip check and settlement sheets along with all final accounting documents and computer printouts showing payment to @DRIVER (for expenses, salary, time, mileage, and/or any other purpose);
  - l. Any and all motor carrier or driver created fuel, mileage, and purchase reports, records, and like documents;
  - m. Copies of original ComChek, ComData, Cash Control, or similar service records and copies of front and back of all checks received or disbursed in reference to the transportation performed regardless of disbursement reason, inclusive of all checks to @DRIVER;
  - n. Any and all computer printouts provided to you by others, including but not limited to ComChek, ComData, or Cash Control Corp., listed by driver name/number or truck number, showing the location and time of fuel purchases and mileage for the dates indicated;
  - o. Any and all special or oversize permits and related documents/requests issued to or by any state agency to transport cargo over their territories regardless of the form of the permit; and
  - p. Any and all other trip-related documents created by @DRIVER or any other persons or entities.
- 7. A copy of each traffic citation, terminal or road equipment and driver compliance inspection, warning, and/or citation issued to @DRIVER by any city, county, state, or federal agency or law enforcement official.
  - 8. All log summaries and violation reports, whether prepared in-house or through an outside log scanning service pertaining to @DRIVER.
  - 9. Copies of all claim forms submitted to @DRIVER or @COMPANY or any of its insurers by the owner(s) of the cargo being hauled by @DRIVER at the time of the subject incident, and copies of all correspondence concerning the collision and/or the cargo in question between @COMPANY and the owner(s)

- of the cargo.
10. Copies of all documents, correspondence, and reports sent by or on behalf of @DRIVER or @COMPANY and/or received by @DRIVER or @COMPANY from any federal, state, or local regulatory agency pertaining to the subject incident.
  11. All reports from any and all in-cab monitoring device, satellite (Qualcomm and the like), wireless, accident avoidance (Eaton Vorad and the like), engine control module, anti lock brake control module, and any other electronic control module. All reports from any and all in-cab monitoring device, satellite (OmniTRAC, Qualcomm, NVPc, QTRACS, OmniExpress, TruckMail, TrailerTRACS, SensorTRACS, JTRACS), wireless, accident avoidance (Eaton Vorad and the like), engine control module, anti lock brake control module, and any other electronic control module, and other similar systems data for the six (6) months prior to the collision for this driver and truck. Include both electronic and screen print formats for all data, including all sections, screens and subscreens. Where applicable, you should have the system available live on site at the deposition.
  12. Complete copies of all contract, lease and rental agreements involving the vehicle driven by @DRIVER at the time of the subject incident that were in effect on the date of the collision.
  13. The first report of injury for any claim for workers' compensation benefits arising from this collision.
  14. Any and all contracts, agreements, and memoranda of understanding between @COMPANY and @DRIVER.
  15. Any and all electronic, radio, telephone, or other recorded trip transmissions to and from the vehicle and driver thereof for the trip during which the occurrence happened, including, without limitation, those made on the date of the occurrence by telephone, mobile phone, radio, wireless, satellite or otherwise.
  16. Original prescription bottles for all medications for which you had prescriptions, or were taking, the day of the collision.
  17. Itemized cell phone bills for the month of the collision for any and all cell phones in your possession on the day of the collision.
  18. Any and all rules, regulations, manuals, handbooks, policies and procedures, furnished by the defendant @COMPANY to its drivers that were in force on the day of the collision.
  19. Any and all warning letters from any government agency regarding your driving or the Federal Motor Carrier Safety Regulations for three (3) years

- prior to the collision and one (1) year after the collision.
20. Each insurance agreement, policy, contract or endorsement arguably covering the truck and trailer involved in the accident of @DOL, even if the vehicles are not specifically designated therein, including MCS-90 and all other endorsements, riders, amendments and application documents referred to therein, and all excess or umbrella liability insurance policies covering @COMPANY, which cover incidents occurring on @DOL
  21. All safety management policies and procedures that were in force in 2009.
  22. All driver training policies and procedures that were in force from the time @DRIVER became an employee through @DOL
  23. All driver logs for @DRIVER one month preceding the collision of @DOL, and one week afterward.
  24. All dispatching records regarding @DRIVER for the period of one month before and including @DOL and one week afterward. If any electronic system or program was used, include both complete electronic records and screen prints for each and every linked screen. You should have the system available live on site at the deposition.
  25. All user's or operator's manuals for any electronic system used in dispatching drivers in the time period that includes @DOL
  26. With regard to the tractor and trailer operated by Defendant @DRIVER at the time of the subject collision, produce(in both electronic and complete screen print formats) all records of cell phones, on-board communications, dispatch or fleet management system; cellular telephone; e-mail or text messaging system; CB (Citizens' Band) radio and antennas; radar detector; on-board fax machine; on-board telephone; on-board beeper; automatic on-board recording device; electronic control module; electronic engine data recorder; on-board tachograph; and on-board computer recorder. For any electronic system, include both complete electronic records without alteration and complete prints of all downloads and complete screen prints of all screens of any program or system. You should have any computer based system available live on site at the deposition.
  27. All operator manuals and user manuals for any electronic communications system or record keeping system that was installed in the tractor and trailer operated by Defendant @DRIVER at the time of the subject collision.
  28. Any and all written materials, handouts, pamphlets, flyers, or documents distributed to @DRIVER at safety seminars or meetings prior to the collision.
  29. Any and all written communication of any type from, or to, the company regarding driver safety.



30. Any and all diaries kept by to @DRIVER from the day before the collision to three (3) months after the collision in question.
31. Any and all documents, or recorded statements, given to anyone other than your attorney, about this collision.
32. Any documents, including a driver rating by any government agency for three (3) years prior to the collision and one (1) year after the collision.
33. Printouts of your online Federal Motor Carrier Safety Administration Comprehensive Safety Information (CSI) to include:
  - a. Performance (basic) evaluations for each area;
  - b. Operation history for driver;
  - c. Driver Measurement summary;
  - d. Violation history;
  - e. Unsafe Driving Inspection results.
34. All transcripts of any traffic court hearing, workers compensation hearing, disciplinary proceeding, trial, deposition, or any other judicial or quasi-judicial hearing related to any proceeding arising from the incident complained of in this lawsuit.
35. All records relating to the maintenance, maintenance, repair and work orders regarding the vehicle Defendant @DRIVER operated at the time and place of the collision referred to in the Plaintiff's Complaint, including but not limited, including but not limited to the following:
  - a. All driver/vehicle **inspection** reports required under 49 C.F.R.396.11 for the tractor and trailer involved in the collision.
  - b. All maintenance, **inspection** and repair records or work orders on the tractor and trailer involved in the collision.
  - c. All annual **inspection** reports for the tractor and trailer involved in the above collision covering the date of the collision.
  - d. All records of **inspections**, maintenance, repairs and repair estimates for both the tractor and the trailer involved in the collision of July 13, 2009, for the period of six months prior to the collision and one month after the collision
  - e. All records of maintenance, repair, and **inspection**, invoices and work orders with regard to any parts, tires, brakes, steering, suspension or any other mechanical component of said vehicle;
  - f. Any pre-trip **inspection** report completed by the driver for the trip involved in this collision.
  - g. Any post-collision maintenance, **inspection**, or repair records or invoiced in regard to the tractor and trailer involved in the above

collision.

36. All records documenting the recording of time, speed and distance of operation of the vehicle on the date of the incident complained of in the Plaintiff's Complaint.
37. All supporting documents related to your driver's record of duty status maintained in the ordinary course of business, including but not limited to:
  - a. bills of lading,
  - b. carrier pros,
  - c. freight bills,
  - d. dispatch records,
  - e. driver call-in records,
  - f. gate record receipts,
  - g. weight/scale tickets,
  - h. fuel receipts,
  - i. fuel billing statements,
  - j. toll receipts,
  - k. international registration plan receipts,
  - l. international fuel tax agreement receipts,
  - m. trip permits,
  - n. port of entry receipts,
  - o. cash advance receipts,
  - p. delivery receipts,
  - q. lumper receipts,
  - r. interchange and inspection reports,
  - s. lessor settlement sheets,
  - t. over/short and damage reports,
  - u. agricultural inspection reports,
  - v. CVSA reports,
  - w. accident reports,
  - x. telephone billing statements,
  - y. credit card receipts,
  - z. driver fax reports,
  - aa. on-board computer reports,
  - bb. border crossing reports,
  - cc. custom declarations,
  - dd. traffic citations,
  - ee. overweight/oversize reports and citations, and
  - ff. other documents directly related to the motor carrier's operation,

which are retained by the motor carrier in connection with the operation of its transportation business and/or can be used to verify information on the driver's records of duty status.

38. Your complete personnel and payroll files and records on Defendant @DRIVER, including but not limited to all file jackets, memoranda, correspondence, phone messages.
39. Your complete driver qualification and driver investigation history files regarding Defendant @DRIVER, as required by 49 C.F.R. § 391.51 and 391.53, including but not limited to:
  - a. Application for employment, including all documents and records required by 49 C.F.R. § 391.21 .
  - b. Every the motor vehicle record received from each State pursuant to §391.23(a)(1).
  - c. Every certificate of driver's road test issued to the driver pursuant to §391.31(e).
  - d. A copy of every license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to §391.33.
  - e. The motor vehicle record received from each State driver licensing agency to the annual driver record inquiry required by §391.25(a), including pre-employment and annual records.
  - f. Every document relating to the annual review of the driver's driving record as required by §391.25(c)(2).
  - g. A list or certificate relating to violations of motor vehicle laws and ordinances required by §391.27.
  - h. Driver's Certification of Prior Collisions.
  - i. Driver's employment history.
  - j. All documents and records regarding inquiries into driver's employment history.
  - k. Pre-employment MVR.
  - l. Annual MVR for last two years.
  - m. Annual review of driver history pursuant to 49 C.F.R. § 391.25
  - n. Certification of road test.
  - o. Medical examiner's certificates for last two years, and all other documents and records pursuant to 49 C.F.R. § 391.41 and 49 C.F.R. § 391.43 through 391.47 .
  - p. All pre-employment, random, and post-collision alcohol and drug testing results regarding Defendant @DRIVER.
  - q. HAZMAT or other training documents.

40. All documents, records, video recordings, and other materials used with regard to training and instruction of Defendant @DRIVER pursuant to 49 C.F.R. § 390.5(e) and 49 C.F.R. § 392.1.
41. All photographs, videos, computer generated media, or other recordings of the interior and exterior of the vehicles involved in this collision, the collision scene, the occurrence, or relating to any equipment or things originally located at or near the site of the occurrence.
42. Any lease contracts or agreements covering the driver or the tractor or trailer involved in this collision.
43. Any interchange agreements regarding the tractor or trailer involved in this collision.
44. Any data and/or printout from on-board recording devices, including, but not limited to, the ECM (electronic control module), or any on-board computer, tachograph, trip monitor, trip recorder, trip master or other recording or tracking device for the day of the collision and the six-month period preceding the collision for the equipment involved in the collision.
45. Any e-mails, electronic messages, letters, memos, or other documents concerning this collision.
46. The collision register maintained by the motor carrier as required by federal law for the one (1) year period preceding this collision.
47. Any drivers' manuals, guidelines, rules or regulations given to drivers such as the one involved in this collision.
48. Any reports, memos, notes, logs or other documents evidencing complaints about @DRIVER.
49. Any DOT reports, memos, notes or correspondence concerning @DRIVER or the tractor or trailer involved in this collision.
50. All settlement sheets and expense sheets for @DRIVER pertaining to trips taken for the day of the collision and thirty (30) days prior to the collision.
51. Cargo pickup or deliver orders prepared by motor carriers, brokers, shippers, receivers, driver, or other persons, or organizations for thirty (30) days prior to the date of the collision as well as the day of the collision.
52. All documents pertaining to the ownership of the tractor and the trailer involved in this crash, including but not limited to title and registration documents.
53. Accounting records, cargo transportation bills and subsequent payments or other records indicating billings for transportation or subsequent payment for the transportation of cargo, with both the front and back of cancelled checks for cargo transported by the driver and/or truck involved in the collision for

thirty (30) days prior to the date of the collision, as well as the day of the collision.

54. Any other items associated in any way with the wreck, documents, database, or other piece of evidence concerning or reflecting upon the driver, the collision, the tractor, trailer, or the truck.
55. If not previously listed, any and all communications via CB radio, mobile or satellite communication systems, e-mail, cellular phone, pager or other cab communication device to include the bills for the devices for the seven (7) days before, the day of, and the two (2) days after the collision.
56. If not previously listed, any and all computer, electronic, or e-mail messages of any type created in the seven (7) days prior to the collision and the first forty-eight (48) hours immediately after the collision, by and between the defendant and any agents or third parties, as well as any computer message, which relate to this particular incident, whether generated or received by you or your agents. We require you to put any vendor which hosts or stores this data for you on notice of the need to preserve this data.
57. If not previously listed, all documents required by Federal Motor Carrier Safety Regulation 395.8, specifically those items identified in the Department of Transportation's interpretation of the regulation.
58. All documents identifying the insurer of the trailer involved in the crash, including but not limited to all documents naming the insurance company and policy number on such trailer.
59. All documents identifying any freight broker that was involved in making arrangements for transportation of the freight that was in the trailer at the time of the crash.
60. All records regarding the tractor trailer and driver involved in this incident which you maintain with regard to requirements of the International Fuel Tax Agreement (IFTA).
61. Everything you provided to any expert referred to in your responses to Interrogatories.
62. All log book audits of Defendant @DRIVER from the time he became your employee (or an independent contractor deemed to be an employee for purposes of the Federal Motor Carrier Safety Regulations) to the present.
63. Your safety and training budgets for the two calendar years up to and including the date of the collision referred to in the plaintiff's complaint.

PLEASE TAKE NOTICE that this Request is deemed continuing to and through trial of this case.

Should you in the future discover any items relating to any of the above matters of this Request, you are required to notify Plaintiff's counsel of said information by way of

Supplemental Answers to this Request, or an objection will be made at trial for the use of information not revealed.