

Expert Advice on Hauling Help into Your Commercial Trucking Case

Big trucks cause big accidents. The devastation that a fully loaded semi tractor-trailer can wreak, whether traveling below, above or at applicable speed limits, is horrendous—especially when considering an impact with a car or light truck.

The National Highway Traffic Safety Administration (NHTSA) reports that large truck accidents in Kentucky alone took 124 lives in 2004 and 119

in 2003.¹ The probability of maximizing a recovery for the victim of a negligent truck driver or carrier increases with the use of appropriate trucking industry consultants. Substantial trucking cases may well be served by employing multiple consulting experts to assist with various aspects of commercial transportation litigation.

Given the obvious danger represented by a behemoth tractor-trailer weighing up to 80,000 lbs, the trucking industry is

fairly well regulated. The Federal Motor Carrier Safety Administration (FMCSA) promulgates regulations applicable to the trucking industry². Those regulations are generally applicable in interstate commerce. Most, if not all, have been adopted as applicable in Kentucky via 601 KAR 1:005, pursuant to legislative authority for the promulgation of such regulations found at KRS 281.600. Government and commercial resources abound providing interpretation of and guides to applicable federal and state regulations and other law.

Both carriers and their drivers bear regulatory responsibilities in the maintenance and operation of these inherently dangerous machines. Insight



By Timothy D. Lange

into actual industry customs, practices, and the practical aspects of operating a tractor-trailer present important opportunities for an expert to make a difference in the case. Particular assistance for counsel can come in areas that follow.

The Accident Reconstructionist

Credentials of accident reconstructionists can vary greatly in degree³. Experience with the particular characteristics of tractor-trailer combinations, including multiple trailer rigs, may be an important factor in selecting this expert. In the commercial vehicle context, many major carriers have both event data recorders and global positioning satellite systems in place, providing potentially invaluable data for this expert.

Cargo Securement

Injuries can occur during the unloading or loading of cargo. The shifting of cargo during transit can also be a factor in the causation of an accident in the course of transit or at the dock. Cargo securement rules are promulgated by the FMCSA, with the general rule being that cargo must be firmly immobilized or secured on or within a vehicle by structures of adequate strength, dunnage (loose materials used to support and protect cargo) or dunnage bags (inflatable bags intended to fill space between articles of cargo or between cargo and the wall of the vehicle), shoring bars, tiedowns or a combination of these. Particular types of cargo also require particular measures for their safe transit. These regulations can be found at 49 CFR 393, et seq.

Employee Credentialing, Testing and Training

Driver qualification, training, certification (including longer combination vehicles), safety compliance, records retention, and the reporting of accidents or violations of law can be of issue in your case. Drivers are required to undergo regular medical evaluations for fitness as well.

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Drug and Alcohol Testing

49 CFR Part 382 establishes standards for drug and alcohol testing. Companies are required to retain records on their alcohol misuse prevention programs. Alcohol consumption is prohibited during safety functions, and for periods of time before and after an accident. The types of tests required are: pre-employment screening for drugs including marijuana (THC metabolite), cocaine, amphetamines, opiates (including heroin) and phencyclidine (PCP). Additional drug and alcohol testing is done based upon any reasonable suspicion, subsequent to an accident, randomly, upon return-to-duty, and in follow-up.

Driver Fatigue

An understanding of regulatory time reporting and related requirements is essential in cases involving driver fatigue, for instance. Driver logs must be maintained, and there are strict limits on permitted hours of service.

Vehicle Inspection, Repair and Maintenance

Records must be retained of driver inspections, as well as systematic fleet inspections, repairs and maintenance. 49 CFR 393 delineates necessary parts and equipment for the commercial vehicle, and the

same must be kept in working order. Records must also be retained on the vehicle for prescribed periods of time.

Hazardous Materials Issues

Comprehensive regulations exist for the handling, routing and supervision of the transportation of hazardous materials. Drivers must be equipped with emergency instructions, with documentation of their particular cargo.

As always, when engaging an expert, be advised to seek references from fellow KATA members or other counsel having previously worked with the expert. Use KATA's List-Serv to network and discover helpful information about the person under consideration. Request references and background information on any expert with whom you are interested

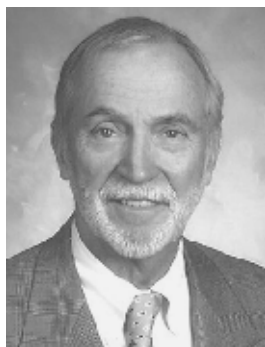
in working. Confirm the pertinent schedule of fees and document terms concerning payment and billing before engagement. Clearly convey your case timetables with respect to discovery and trial, and leave ample time for the scheduling and preparation of this expert for his or her discovery and trial depositions. Remember, experts can make or break your case. Choose wisely!

- 1 NHTSA maintains a highly valuable web presence at www.nhtsa.dot.gov.
- 2 A wealth of FMCSA materials, including applicable regulations, can be found at www.fmcsa.dot.gov.
- 3 See "Expert Advice on the Accident Reconstructionist," Lange, *The Advocate*, March/April, 2002.



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