

**Target Defendants:
Protecting Trucking Companies
in Litigation**

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Foster v. Landstar Ranger

September 2011

- Driver of tractor trailer controlled and operated by Landstar ran a stop sign and collided with a pick-up truck
- Pick-up truck carried passengers in the truck bed
- Driver of pick-up died instantly, another passenger died later at a hospital, and plaintiff sustained personal injuries.

Georgia Superior Court jury awarded

\$40.2 million

Hoffman v. Crane

February 2012

- Dorlan Crane driving tractor trailer owned by himself and Illinois State Motor Service on I-80 when he rear-ended plaintiff's vehicle
- Plaintiff became paraplegic
- Illinois circuit court

Jury awarded plaintiff and her husband

\$27.7 million

Bachrach v. Covenant Transport

March 2012

- Covenant Transport driver lost control, causing plaintiffs' son's vehicle to strike the tractor trailer and roll over
- Son sustained fatal injuries
- U.S. District Court for the District of Arizona

Jury awarded over \$13 million

Cook v. GLC Transportation

June 2012

- Tractor trailer collided with rear of car stopped for road construction
- David Cook sustained fatal injuries and other family members sustained extensive, permanent injuries
- GLC lawyers argued sun's glare affected driver's ability to see roadway

GLC settled for \$26.1 million

Rivas v. J.B. Hunt

July 2012

- J.B. Hunt driver ran a red light, hit Rivas's car, and fled from the scene of the accident
- Rivas sustained severe injuries
- Los Angeles Superior Court
- J.B. Hunt offered \$2 million to settle the case during trial

Jury awarded over \$20 million

Navigating the Regulations

- Mere compliance is not enough
- Day-to-day Issues
- Accident/Post-Accident Issues
- Best Practices



Why Are Trucking Cases Different?

- Experienced litigants
- Document-intensive



The Paper Chase...

Document Retention Policy

- Develop and follow an efficient policy
- Consistency is key
 - Destruction
 - Maintenance
 - Spoliation

F.M.C.S.R. Requirements



- Driver Qualification File
- Criteria for employment
- Pre-employment investigations
- Road tests
- Physical qualifications
- Pre-employment drug and alcohol screening
- State-specific regulations

Supporting Documentation

- Retention of Driver's Record of Duty Status (RODS)

*Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt. - FMCSR 395.8(k)(1)

*The driver shall retain a copy of each record of duty status for the previous 7 consecutive days which shall be in his/her possession and available for inspection while on duty. - FMCSR 395.8(k)(1)

Supporting Documentation: Motor Carriers without EMC/TT

- Bills of Lading
- Carrier Pros
- Freight Bills
- Dispatch Records
- Gate Record Receipts
- Weight/Scale Tickets
- Fuel Receipts
- Fuel Billing Statements
- Toll Receipts/billing statements
- Port of Entry Receipts
- Delivery Receipts
- Lumper Receipts
- Interchange and Inspection Reports
- Lessor Settlement Sheets
- Over/Short and Damage Reports
- Agricultural Inspection Reports
- CVSA Reports
- Accident Reports
- Telephone Billing Statements
- Credit Card Receipts
- Electronic Mobile Communication/tracking records
- Border Crossing Reports
- Custom Declarations
- Traffic Citations
- Overweight/Oversize Reports and Citations
- Other documents directly related to the motor carrier's operation

Not Required as Supporting Documents for Motor Carriers without EMC/TT

- Driver call-in records;
- International registration plan receipts;
- International fuel tax agreement receipts;
- Trip permits;
- Cash advance receipts; and
- Driver fax reports (cover sheets)

Supporting Documentation: Motor Carriers with EMC/TT

- Bills of Lading
- Freight Bills
- Dispatch Records
- Fuel Receipts
- Fuel Billing Statements
- Lumper Receipts
- Interchange and Inspection Reports
- Lessor Settlement Sheets
- Accident Reports
- On-Board Computer Reports
- Other documents directly related to the motor carrier's operation**

*Be aware of retention requirements of 49 C.F.R. 396.11(c)(2) and 49 C.F.R. 396.9(d)(3)(ii).

**Compliance with list is not a safe harbor—if motor carrier should have been able to detect HOS violations by means of “other documents,” it is liable for HOS violations.

Not Required as Supporting Documents for Motor Carriers with EMC/TT

- Gate record receipts;
- Weigh/scale tickets;
- Port of entry receipts;
- Delivery receipts;
- Toll receipts;
- Agricultural inspection reports;
- Over/short and damage reports;
- Driver and vehicle examination reports;
- Traffic citations;
- Overweight/oversize reports and citations
- Carrier pros
- Credit card receipts
- Border Crossing Reports
- Customs declarations
- Telephone billing statements.

EMC/TT

- To Qualify – EMC/TT **REQUIRED** Characteristics
 - Position Frequency: 1 time per hour, per vehicle while in motion
 - Vehicle integration
 - Report content on demand
 - Report content:
 - Vehicle ID
 - Date
 - Time
 - Location proximity
 - Latitude/longitude for each position communication
 - Retention

Best Practices

Proactively Defending Against Lawsuits



Why Keeping Up with the Documents Matter

Spoliation of Evidence

Destruction or material alteration of evidence, or the failure to preserve property for another's use as evidence, in pending or reasonably foreseeable litigation.

-Zubulake v. UBS Warburg, LLC



BIG QUESTIONS

- When to Preserve?
- For How Long?



Accident Issues – At the Scene



- Assume everything is discoverable
- 24/7 response team
- Preservation of evidence

Post-Accident Issues

One size does not fit all



Different cases require different investigations and litigation strategies

Common Claims in Litigation

- Negligent Entrustment
- Negligent Hiring
- Negligent Retention/Supervision
- Vicarious Liability – *respondeat superior*

When to Contact an Attorney?

- Before an emergency arises
 - Think proactively
 - An ounce of prevention

Baker Donelson Motor Carrier Emergency Response Team

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Other locations: Mason Wilson 901.277.2126
*Licensed in Arkansas

MOTOR CARRIER EMERGENCY RESPONSE TEAM BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC

The Baker Donelson Emergency Response Team is ready to assist whenever and wherever you need us, whether it's across our footprint or across the nation. Our team is comprised of experienced litigators who are available 24/7 to respond to any accident scene, provide legal oversight of the investigation, evaluate risk and otherwise protect your interests. There is no substitute for having your team on the field when the lines are being drawn.

Lawyer's Role – Accident Investigation

- Fact Investigation and Preservation
 - Employee interviews
 - Witness interviews
 - Scene/vehicle data
 - Reconstruction/ECM download
 - Internal investigation
 - DQ, Personnel, RODS

Lawyer's Role – Accident Investigation

- Control/Protection of Information
 - Attorney/Client and work product privileges
 - Accident file
 - Driver accident report
 - Preventability Determination

Lawyer's Role – Accident Investigation

- Analysis/Evaluation and Advice
 - Compliance issues
- Consistent Discovery Responses

Questions?

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