



COMMERCIAL MOTOR VEHICLES

Big Rigs, Big Danger, and the Federal Motor Carrier Safety Administration Public Safety Net

By Chad D. Engelhardt

Trucks drive our nation's economy. Virtually all raw materials, industrial goods, and consumer products are transported at various points in their life cycles by large, powerful trucks classified as commercial motor vehicles (CMVs). Nearly all of the items we use daily—the clothes we wear, the food we eat, the furniture in our homes and offices—are available to us because of CMVs.¹ While most of the hardworking truckers on the road deliver their loads safely, the consequences of unsafe trucking practices can be catastrophic. Because the rules of the road are different for commercial trucks, attorneys handling truck crashes must be familiar with the mechanics of safe truck operation as well as statutory, regulatory, and industry standards. This article aims to give practitioners an overview of this interesting area of the law.

Hundreds of thousands of truck crashes happen each year. For example, the Federal Motor Carrier Safety Administration reported that in 2015 more than 400,000 truck crashes occurred in the United States.² Given the size, weight, and

sheer power of the forces involved in truck crashes, more than 4,000 truck crashes in 2016 included fatalities.³ Not surprisingly, when a truck collides with a passenger vehicle, the occupants of passenger vehicles are placed in extreme danger; according to the Federal Motor Carrier Safety Administration, those in passenger vehicles in 2016 were four times more likely to be killed than the truck driver.⁴ Despite advances in technology and mechanical safety devices, the number of fatal truck crashes has increased in recent years.⁵

Even though commercial trucks operate on the same roads as passenger vehicles, finding the multiple root causes of truck crashes can be more akin to investigating train or plane crashes given the size, power, and complex operation of large trucks. The root cause of a death or serious injury from a trucking crash often begins months before and miles away from the site of the crash itself. Direct experience and anecdotal evidence suggests that discovery often reveals a corporate culture where time and money take precedence over public safety. From improper hiring and training practices

to poorly planned routes and unsafe driving, truck crashes are frequently the result of trucking companies and their drivers violating the extensive federal and state laws, ordinances, regulations, and critical industry standards that are in place to keep our roads safe.

The ABCs of the noncommercial driver's license CMV

Most people associate CMVs with traditional tractor-trailers and large panel trucks, and these fit the primary definition of a CMV: a vehicle used in interstate or intrastate commerce with a gross combination weight rating of 26,001 or more pounds.⁶ But there is another classification of vehicles commonly seen on our roads and highways that qualifies as a CMV but can be operated without a commercial driver's license—trucks with an actual loaded weight (i.e., vehicle and trailer combinations) of more than 10,001 pounds, or those designed or used to carry more than eight passengers for hire.⁷ This means a standard 7,500-pound, full-size pickup truck pulling a 3,000-pound landscaping trailer must meet the requirements for a CMV, including federal motor carrier regulations, when used in interstate commerce.⁸ The safe operation requirements described below apply to the operation of both commercial driver's license and noncommercial driver's license CMVs.

At a Glance

While commercial trucks, including smaller vehicles like landscape and snow removal trucks, operate on the same roads as passenger vehicles, the skills and knowledge required for safe operation and rules of the road for commercial trucks are very different.

Michigan's severe seasonal weather conditions often affect visibility or traction and require truck drivers to exercise extreme caution, including operating at lower speeds and suspending operation until safe.

Finding the root cause of truck crashes requires knowledge of motor carrier safety regulations and industry standards, including the Federal Motor Carrier Safety Administration and state instructional manuals and training and crash prevention manuals.

A roadmap for public safety: The Federal Motor Carrier Safety Administration regulations

The Federal Motor Carrier Safety Administration regulations apply directly to the various actors putting goods into interstate commerce as well as those carrying passengers.⁹ This includes motor carriers and drivers along with brokers, dispatchers, and others involved in the trucking industry.¹⁰ The safety rules require each employer to be knowledgeable of and ensure instruction and documented compliance with the rules.¹¹ The regulations encompass all areas of the trucking industry—from registration and recordkeeping requirements to the prohibition of drug and cell phone use—along with a framework list of required skills to safely operate a CMV. Each motor carrier has a statutory duty to ensure its drivers and other employees comply with the safety rules, and that duty is non-delegable.¹² The term “employee” specifically includes an independent contractor driving for a motor carrier.¹³

Because independent contractors, including owner-operators, are statutory agents, the motor carrier is responsible for compliance with the regulations.¹⁴ Before allowing a driver to operate on a public roadway, an employer must give each driver a road test in the type of CMV the driver will operate.¹⁵ Each driver operating a CMV has a duty to conduct a proper pre-trip inspection and verify that the load is properly secured and all equipment is in place and in good working order.¹⁶ A motor carrier cannot encourage a driver to violate the regulations nor impose conditions that would do so, such as planning a trip for which the distance or time would require speeds higher than the posted limits or a route for which truck traffic is not designated, or that would require hours of service violations.¹⁷

Statutory “extreme” driving conditions are often a daily occurrence in Michigan

Given Michigan's weather, perhaps the most important regulation concerns operating a truck in hazardous conditions and the requirement for a truck driver to exercise extreme caution, including lowered speed and pulling off the road when safety dictates. The regulations expressly provide that “hazardous conditions” include those often encountered many months of the year in Michigan, when “snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction.”¹⁸

The hazard of fatigued truck drivers

The Federal Motor Carrier Safety Administration regulations provide detailed hours of service and logging requirements, which from personal experience have been known to be breached by dangerous drivers. The administration promulgated new federal regulations which went into effect July 1, 2013, that were designed to improve public safety by reducing the dangers posed by truck driver fatigue.¹⁹ Although the



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As to noncommercial driver's license CMVs operating only intrastate, Michigan law specifically adopts the driver qualification files and medical examiner certificates of 49 CFR 391 along with the safe driving and operation requirements of 49 CFR 392 and 49 CFR 393, including the prohibition of cell phones and other hand-held electronics, requirements for inspection, and equipment and cargo securement requirements.²³

new rules maintained the traditional 11-hour daily driving and 14-hour workday limits, the administration has imposed new safety rules, including:

- Limiting the maximum average work week for truck drivers to 70 hours, a decrease from the prior maximum of 82 hours;
- Allowing truck drivers who reached the maximum 70 hours of driving within a week to resume driving only if they rest for 34 consecutive hours, including at least two nights when their body clock demands sleep the most, from 1 a.m. to 5 a.m.; and
- Requiring truck drivers to take a 30-minute break during the first eight hours of a shift.²⁰

With a few exceptions for recordkeeping and drug testing, the regulations apply to both commercial driver's license and noncommercial driver's license CMVs, including prohibition of radar detectors, cell phones, or other electronic use and the safe operation requirements previously discussed.²¹

What about intrastate-only drivers?

Drivers and companies operating solely within Michigan are not immune from the carrier safety rules. As with virtually every other state, Michigan has adopted substantial portions of the Federal Motor Carrier Safety Administration regulations into its motor vehicle code by adopting the Motor Carrier Safety Act of 1963.²²

Michigan's treatment of statutory and ordinance violations

Given the multiplicity of bad actors and acts that contribute to truck crashes, a number of venues may be appropriate for a party to bring an action. In exercising their professional judgment in selecting a venue in which to file an action, counsel may wish to consider how the forum state treats violations of statutes and ordinances. In most jurisdictions, the violation of an applicable statute constitutes negligence per se. In contrast, Michigan has adopted the minority rule that the violation of a statute creates a rebuttable presumption of negligence.²⁴ As well, under Michigan law, violations of ordinances and administrative regulations are evidence of negligence and are weighed by the jury against any exculpatory evidence proffered by the defense.²⁵ On the other hand, a defendant's mere compliance with a statute does not establish due care. Common law aspects of negligence evaluating the reasonableness of a defendant's actions under the circumstances is still required.²⁶

Fleshing out safety rules: The importance of the *Commercial Driver License Manual* and other sources of industry standards

While the Federal Motor Carrier Safety Administration regulations provide a skeletal framework of the required areas of knowledge for the safe operation of a CMV, this required body of knowledge is fleshed out by instructional materials and corresponding skills testing. More detail regarding the

required skills and knowledge is provided in industry training and crash preventability review materials.²⁷

Federal authority requires each state to perform skills testing and publish a manual describing “the substance of the knowledge that drivers must have” as outlined in sections 49 CFR 383.110, 49 CFR 383.111 (knowledge), and 49 CFR 383.113 (skills). Based on work supported by the Federal Motor Carrier Safety Administration, the American Association of Motor Vehicle Administrators publishes a model *Commercial Driver License Manual*, which is reliable source material used in professional driver training courses nationwide.²⁸ In addition to being reliable authorities under federal and Michigan rules of evidence,²⁹ manuals like the *Commercial Driver License Manual* should be considered admissible under MRE 902(1), MRE 803(8), and MRE 803(9) as they are compiled and published under statutory and regulatory mandate.

Training texts used nationwide are also reliable authorities and include Alice Adams’s *Tractor-Trailer Driver Training, 5th Ed* (Delmar Cengage Learning, 2012), *Tractor-Trailer Driver Training Manual, 3rd Ed* (J. J. Keller & Associates, 2015), and Smith System’s *Driver Improvement and Defensive Driving Course*. The American Trucking Association, the National Safety Council, and the Federal Highway Authority also publish commonly used preventability manuals.³⁰

Conclusion

Truck crashes are not simply car crashes. Commercial trucks operate on the same roads as passenger vehicles, but the mechanics of safe operation and rules of the road for trucks are disparate. Given the danger that trucks pose, a safety network of federal and state regulations along with well-established industry standards keep the public safe. The civil justice system and juries ultimately enforce these rules by holding dangerous trucking companies accountable. Practitioners handling truck wreck cases should be familiar with these rules and how they apply in different circumstances. ■



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ENDNOTES

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2. US Dept of Transportation, Federal Motor Carrier Safety Admin, *Large Truck and Bus Crash Facts 2015: Crashes* <<http://www.fmcsa.dot.gov/safety/data-and-statistics/large-truck-and-bus-crash-facts>>.
3. US Dept of Transportation, National Highway Traffic Safety Admin, *Traffic Safety Facts, 2016 Data: Large Trucks* (February 2018) <<https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812497>>.
4. *Id.*
5. *Id.* at Table 4. Despite the recent upswing in fatalities, we have seen improvements since 2000, when there were more than 5,600 fatalities. US Dept of Transportation, Federal Motor Carrier Safety Admin, *Fiscal Year 2015 Budget Estimates: Statement of the Administrator* <<https://www.fmcsa.dot.gov/mission/budget/fiscal-year-2015-budget-estimates>>.
6. 49 CFR 383.5.
7. 49 CFR 390.5.
8. See, e.g., Fried, *Small Trucks, Big Regulations*, Trial (February 2013). Along with Fried’s article, outstanding white papers and video presentations are available through the Academy of Truck Accident Attorneys <<https://www.academyoftruckaccidentattorneys.org/resources.php>>.
9. 49 CFR 300 through 49 CFR 399. For a comprehensive review of the Federal Motor Carrier Safety Administration regulations, see Leizerman, *Litigating Truck Accident Cases, 2017–2018 Ed* (Thomson West, 2018).
10. 49 CFR 390.3(a).
11. 49 CFR 390.3(e) and 49 CFR 390.11.
12. *Id.*
13. 49 CFR 390.5.
14. *Id.*
15. 49 CFR 391.31(a).
16. 49 CFR 392.7, 49 CFR 392.8, and 49 CFR 392.9.
17. 49 CFR 392.6.
18. 49 CFR 392.14.
19. Dept of Transportation, *Hours of Service of Drivers*, 76 Fed Reg 81134 (December 27, 2011).
20. *Id.* at 81135–81137.
21. 49 CFR 392.71, 49 CFR 392.80, and 49 CFR 392.82.
22. MCL 480.11 *et seq.*
23. MCL 480.11a.
24. *Zeni v Anderson*, 397 Mich 117, 129; 243 NW2d 270 (1976) and M Civ JI 12.01.
25. *Id.*; *Rotter v Detroit United Ry*, 205 Mich 212, 231; 171 NW 514 (1919); *Cassibo v Bodwin*, 149 Mich App 474, 477; 386 NW2d 559 (1986). See also M Civ JI 12.03 and M Civ JI 12.04.
26. *Hill v Husky Briquetting, Inc*, 54 Mich App 17; 220 NW2d 137 (1974).
27. Fried, *Layering Trucking Regulations and Industry Standards for Maximum Effect*, Trial (February 2016).
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29. FRE 707 and MRE 707.
30. See Fried, *Layering Trucking Regulations*; Safety Management Council, *Trucking Industry Guidelines for Recording Fleet Vehicle Accidents and Determining Preventability* (American Trucking Ass’n 1998); National Safety Council, *A Guide to Determine Motor Vehicle Accident Preventability* (2011); Uzgiris, Hales & Dilich, *Commercial Vehicle Preventable Accident Manual: A Guide to Countermeasures*, 3rd Ed (US Dept of Transportation, 1997).