

Litigating Trucking Cases

By Daniel R. Volkema

The investigation of a trucking accident is much more complicated than an ordinary motor vehicle collision. In addition to understanding the regulations which apply to all motor vehicles, such as speed, the duty to yield and lane of travel, one must also understand that interstate trucks are required comply with the rules and regulations established by the Federal Motor Carrier Safety Administration (FMCSA).

The Federal Motor Carrier Safety Administration was established as a separate administrative branch within the US Department of Transportation (DOT). The Federal Motor Carrier Safety Administration has many key programs, but one of its most important is its Federal Motor Carrier Safety Regulations (FMCSRs).

The Federal Motor Carrier Safety Administration develops these regulations to increase carrier safety, improve industry productivity and to help develop advanced technologies for industry efficiency. These regulations establish mandatory safe operating requirements for commercial interstate truck drivers, the interstate trucking companies who employ them, and the trucks they drive. Unfortunately, however, as those citizens of this country who are injured in trucking accidents have learned, these truck drivers are often inadequately trained and poorly supervised. It is every attorney's responsibility when representing persons injured in trucking accidents to aggressively investigate and determine whether the FMCSRs have been followed or violated.

One of the more important responsibilities of an trucking company is the drug and alcohol testing of its personnel. The Department of Transportation's (DOT) rule, 49 CFR Part 40, describes the required procedures for conducting workplace drug and alcohol testing for the Federally regulated trucking companies.

Under subpart J, section 40.211, for instance, only screening tests technicians (STTs) and breath alcohol technicians (BATs) who meet the requirements of this subpart are authorized to conduct DOT drug and alcohol test. If the BAT or a STT-qualified technician is also the immediate supervisor of a truck driver, that person may not act as the STT or BAT when that truck driver is tested, unless no other STT or BAT is available, no other DOT agency regulation prohibits the technician from doing so.

Proper investigation of a truck accident may find that the trucking company has been delinquent in properly testing its drivers for either drugs or alcohol. Such a finding would establish that not only was the truck driver negligent for driving under the influence, but also that the trucking company was itself negligent for improperly supervising its truck drivers.

In addition to pre-accident testing and screening, trucking company must also conduct post accident testing of the truck driver. (§382.303 post-accident testing). That testing must occur " (a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce." Further, this mandatory testing is the responsibility of the trucking company and not the investigating police officers.

There are literally hundreds of regulations that govern the operation of trucks in this country. At Volkema Thomas we hire accident reconstruction experts and trucking regulation experts to assist us in evaluating the conduct of not only the negligent driver, but also the conduct of the trucking company and whether it complied with the federal regulations. This evaluation is a critical step in the legal analysis of any trucking case.

dvolkema@vt-law.com