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## Personal Injury: More Than Just a Car Crash- Framework for Negligent Hiring, Qualification, And Retention Claims in Trucking Cases

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When you bring in a new tractor-trailer case, your first impulse may be to litigate it like a regular car crash. After all, a couple of the big-picture elements are the same: negligent (or worse) conduct by the driver, and a causal connection between that conduct and plaintiff's injuries.

That is generally where the similarities end, though, as federal regulations governing commercial motor vehicles impose heightened duties on the drivers of tractor-trailers, and -- importantly -- responsibilities on the motor carriers who hire, train, and supervise them.

This article explores these theories of liability against the motor carriers that (usually) do not exist in a run-of-the-mill car crash case and that can be used to expand liability beyond just the drivers: claims against the motor carrier for negligent hiring, qualification, and retention of their negligent drivers.

### A. What the Federal Regulations Require

Claims for negligent hiring, qualification, and retention generally boil down to one simple question: would a reasonably safe motor carrier have put *this* driver behind the wheel of *this* commercial motor vehicle (CMV)? For the most part, answering this question requires review of the Federal Motor Carrier Safety Regulations (FMCSR), and liability can arise in three contexts: (1) during the driver's disclosure as part of the application process; (2) during the carrier's verification of that disclosure; and (3) when the carrier -- taking all that information -- decides if the driver should be allowed (or continue to be allowed) to operate a CMV.

#### 1. Driver Disclosure

When a person applies for a position as a driver of a CMV, he/she is required to submit a truthful written application containing, *inter alia*:

- their experience operating motor vehicles;
- crashes in the last three years;
- traffic violations in the last three years;
- details of any denial, revocation, or suspension of their driver's license;
- all employers for the last three years; and
- all CMV employers for seven years prior to the last three years (so in effect, a 10-year period for all CMV employers).

49 C.F.R. § 391.21.

#### 2. Motor Carrier Verification

The motor carrier cannot simply take the driver's word that the disclosure is complete (or that the driver is qualified). Once the driver has made the initial disclosure, pursuant to the motor carrier must conduct an investigation including: (1) an inquiry into each state where the driver held a license for the preceding three years; and (2) an investigation of the driver's safety performance with Department of Transportation (DOT)-regulated employers during the previous three years. 49 C.F.R. § 391.23(a).

The carrier must document that this investigation occurred, and documentation of the investigation must be included in the driver qualification file. At a minimum, this investigation into the driver's safety performance must include inquiries about previous accidents and drug and alcohol violations. *Id.* at 391.23(d), (e). If prior employers do not respond, defendant motor carrier must document that there was no response and report that fact to the FMCSA. *Id.* at 391.23.

Defendant carrier must place a copy of: (a) the driver's motor vehicle record (MVR); and (b) the investigation itself into the Driver Qualification File within 30 days of hiring the driver. Thus, if a carrier decides to put a new driver on the road *within* 30 days of hire, and that investigation or MVR shows evidence that may have disqualified the driver from being hired, it may face liability for putting the driver on the road too quickly.

#### 3. Motor Carrier Evaluation

Finally, after the driver has made his/her disclosure and the carrier has verified that disclosure, a final question must be asked: taking all the information that has been gathered, should a driver be hired -- or in the case of a negligent retention case, should the driver remain hired -- to operate a CMV?

Pursuant to 49 C.F.R. § 391.11, "A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle." Unfortunately, the federal regulations become tautological on this point, as Section 391.11(b)(3) provides that persons are qualified if they "[c]an, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives," and Section 391.11(b)(6) provides that a person is qualified if he/she is "not disqualified to drive a commercial motor vehicle."<sup>1</sup>

However, the mere fact that a driver has not been deemed "disqualified" does not mean he/she is qualified to operate a CMV, and guidance by the FMCSA provides that a "motor carrier must consider as much information about the driver's experience as is reasonably available. This would include all known violations, whether or not they are part of an official record maintained by the state, as well as any other information that would indicate the driver has shown a lack of due regard for the safety of the public. Violations of the traffic and criminal laws, as well as the driver's involvement in motor vehicle accidents, are indications and must

be considered. A violation of size and weight laws should also be considered." 49 C.F.R. § 391.25 Interpretation Q1.

To that end, research done by the American Transportation Research Institute shows that prior crashes and traffic convictions (often significantly) increase the likelihood that a driver will be involved in future crashes.

Drivers are required to notify employers of any traffic violations within 30 days of conviction, 49 C.F.R. § 383.31(b), motor carriers must check each of their drivers' MVR at least once a year for updates, *id.* at 383.25(a), and at least once a year, carriers

must determine whether the driver meets the minimum requirements for safe driving by considering: (a) any evidence the driver has violated the FMCSR; and (b) the driver's accident record and any evidence the driver has violated the law regarding the operation of motor vehicles. These annual reviews must be documented in the driver's qualification file. *Id.* at 393.25(c).

Thus, to the extent the carrier does not conduct these reviews -- or conducts them, but fails to respond appropriately -- the carrier can face claims for negligent retention.

<sup>1</sup> Driver disqualification is a process where an individual state does not permit a driver to operate a CMV for a period of time, generally on the basis that their Commercial Driver's License has been suspended or revoked; an Out of Service order has been violated; or that the driver has been convicted of certain crimes, such as an Operating Under the Influence (OUI) conviction while operating a CMV or texting/hand-held phone use while driving a CMV.

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