

COMMERCIAL MOTOR VEHICLE ACCIDENTS 101:
WHAT EVERY LAWYER NEEDS TO KNOW

By: Frank Andreano

I. INTRODUCTION

The latest statistics from the National Highway Safety Administration (NHTSA) shows a marked increase in traffic fatalities since the COVID-19 pandemic.¹ Due to their great weight and size, commercial motor vehicles (CMVs) have played a large role in such fatalities.² Practitioners often mistakenly believe that the rules which govern liability in traditional motor vehicle collisions also have application in CMV collisions. Though true to some extent, it is critical for practitioners to appreciate that commercial motor carrying is an industrial activity conducted on public property, and thus subject to pervasive safety regulation and oversight.³ Knowledge of these regulations, and the legal duties and obligations they impose, is often key to the successful prosecution or defense of any dispute following a CMV collision.

II. THE *ERIE* DOCTRINE AND COMMERCIAL MOTOR CARRIER SAFETY REGULATIONS

Understanding the nuance between federal regulations and state tort law is necessary to effectively litigate commercial motor vehicle disputes. The first step is understanding the scope and purpose of the applicable federal regulations. In the

1930's Congress began regulating the trucking industry through the Bureau of Motor Carriers, part of the Interstate Commerce Commission (ICC).⁴ Congress eventually established the Federal Motor Carrier Safety Administration (FMCSA) as a separate agency within the Department of Transportation (DOT) in order to promote the "furtherance of the highest degree of safety in motor carrier transportation."⁵ Congress required the DOT Secretary to "prescribe minimum safety standards for commercial motor vehicles"⁶ and mandated that all state regulations effecting motor carrier safety be submitted to the Secretary of Transportation for review.⁷ The DOT Secretary is vested with authority to preempt or void the application or any law or motor carrier regulation which is "less stringent" than federal regulations, or which creates an "unreasonable burden" on interstate commerce.⁸ Congress has also pushed the states to adopt lock-step regulations by granting the DOT Secretary authority to withhold federal funds from non-compliant states.⁹

The states play a critical role in the enforcement of commercial motor vehicle safety because local and state police are the ones responding to accidents and doing the on-the-ground enforcement. Pursuant to *Erie R. Co. v. Tompkins*, the states are also the one who determine the metes and bounds of tort liability.¹⁰ State law governs even if the matter is removed to federal court, as there is no federal common law¹¹ and courts sitting in diversity are bound to "apply the law of the state in which the court sits."¹² Thus, how [or whether] motor carriers and drivers are held responsible in tort is determined by the Illinois General Assembly and Illinois Supreme Court.

Illinois has adopted the Federal Motor Carrier Safety Regulations (FMCSR) into its vehicle code, a violation of which is a felony offense.¹³ The Illinois Supreme Court has recognized that these regulations were adopted “in order to make the roadways of Illinois safer.”¹⁴ The General Assembly has also enacted the Illinois Commercial Transportation Law¹⁵, whose stated purpose is “to actively supervise and regulate commercial transportation of persons and property within this state.”¹⁶ Because these regulations promote public health and safety, they set the standard of care required of drivers and motor carriers and a violation thereof constitutes *prima facie* evidence of negligence.¹⁷ From a practitioner’s point-of-view succinctly advocating for the application of state law allows for a proper analytical lens to be applied, in either state or federal court.

III. **MOTOR CARRIERS ARE RESPONSIBLE TO THE MOTORING PUBLIC FOR THEIR DRIVERS AND EQUIPMENT.**

Before the advent of the automobile Illinois held railroads and other corporations holding public licenses responsible for injury to the public, even if the company placed the job “in the hands of another.”¹⁸ This doctrine is known as the public franchise rule, which the Illinois Supreme Court has explicitly adopted and applied to commercial motor carrying.¹⁹ This adoption recognizes that commercial motor carrying is subject to significant regulation²⁰ and licensure requirements.²¹ In *Schedler v. Rowley Interstate Transp. Co.*, the defendant urged that its driver was a contractor engaged in a frolic at the time of the collision, and thus not serving its business interests. The appellate court ruled in favor of the trucking company on this basis, but the Supreme Court reversed.²²

The Supreme Court in *Schedler* examined the impact of the adoption of motor carrier safety regulations upon tort liability and held that motor carrier safety regulations did not replace the public franchise rule, but instead eliminated traditional scope of agency defenses.²³ The Supreme Court later reaffirmed this position in *Kreider Truck Serv., Inc. v. Augustine*, holding that “[T]he public franchise doctrine, as stated in section 428 of the Restatement (Second) of Torts (1965) applies to motor carriers”.²⁴ The Illinois General Assembly has likewise declared “[T]he policy of the State of Illinois to actively supervise and regulate commercial transportation of persons and property within this state.”²⁵ As part of this policy the General Assembly has mandated that motor carriers “[E]xercise full direction and control of all equipment and personnel used in its operations.”²⁶ This type of liability is often called “logo liability”²⁷ because the outside of trucks must be marked with the operating carrier’s name and USDOT identification number.²⁸ But it is neither federal law nor the affixing of a name or logo on the side of a truck which makes a carrier liable for negligent operation or maintenance, but rather it is Illinois law which holds motor carriers responsible in tort to members of the general public.

IV. OVERSIGHT OF DRIVERS, SCHEDULES, AND FATIGUE.

Oversight and safety are the cornerstones of the FMCSR. The regulations apply to all employees, employers, and commercial motor vehicles²⁹, which terms are broadly defined.³⁰ Carriers and drivers are required to have knowledge of, and to comply with, these regulations.³¹ It is also prohibited for any “person” to aid, abet, or encourage a violation³², and it is specifically prohibited for a broker³³, freight

forwarder³⁴, shipper, receiver, or transportation intermediary to engage in “the coercion of drivers” to violate safety regulations.³⁵ Carriers must also prohibit texting and the use of handheld and electronic devices by drivers³⁶, assure that drivers are properly qualified,³⁷ and not impaired through fatigue or illness.³⁸ All schedules must conform with speed limits³⁹ and trips of certain length are presumed incapable of accomplishment within speed limit and hours of service limitations.⁴⁰ All of the foregoing is an attempt to militate against the pressure attendant to meeting tight delivery schedules. Though laudatory, the FMCSR’s “safety first” regime is often at odds with business reality.

Because of the long hours spent on the road, and driving at odd hours in order to avoid traffic and meet delivery deadlines, fatigue is one of the leading causes of commercial motor vehicle collisions.⁴¹ Medical studies have confirmed sleep-related fatigue to the impairment of driving skills including poor judgment, slowed reaction times, decreased awareness and increased distractibility.⁴² To mitigate the effects of fatigue the FMCSA has promulgated maximum hours of service regulations⁴³ which regulations limit the number of hours a commercial driver may drive, or be on duty, on both a daily and weekly basis.⁴⁴ To track compliance, motor carriers are required under most circumstances to equip commercial motor vehicles with electronic logging devices (ELD).⁴⁵ For those who fall within an exception to ELD requirements, the driver must maintain a contemporaneous manual grid record⁴⁶ which the driver must keep for at least 7 days, and which the motor carrier must retain for at least 6

months.⁴⁷ The FMCSR sets forth with particularity how the logging of duty status records are to be completed and maintained.⁴⁸

Like any other business, the accuracy of safety records sometimes does not match reality and reconstructing driving time from I-Pass records, weight records, receiver and shipper records, and from other sources is often necessary to obtain a true picture of hours-of-service compliance. Most commercial vehicles are also equipped with “electronic control modules” (ECMs) or “event data recorders” (EDRs), which can be downloaded after a collision, and which can provide a wealth of operational data. But even in situations where compliance with hours of service regulations can be shown, the issue of fatigue remains. The FMCSRs are the minimum standards and companies are free to adopt more stringent standards.⁴⁹ Operating at the maximum allowable hours can lead to significant fatigue and the FMCSR specifically provides that “No driver shall . . . and a motor carrier shall not require or permit a driver to operate . . . while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle.”⁵⁰ Conducting a post-accident investigation of hours-of-service compliance, routes assigned, distances travelled, phone records, and toll records sometimes supports driver fatigue or distraction as being a significant factor in trucking accidents.⁵¹

V. FAULTY EQUIPMENT AND MAINTENANCE

Safe equipment and regular maintenance are important cornerstones of the FMCSR.⁵² Motor carriers are required to have employees “knowledgeable” of and to “comply with”⁵³ all maintenance regulations, and to have in place procedures to “systematically inspect, repair, and maintain” all commercial motor vehicles and equipment used in its operations.⁵⁴ Carriers are further prohibited from allowing the operation of vehicles in an unsafe condition, which includes “a condition as to likely cause an accident or a breakdown of the vehicle.”⁵⁵ Before driving a vehicle⁵⁶ and at the end of each day a driver must submit a report to the carrier as to any defect or deficiency in the equipment, which the carrier must then correct before operation is allowed if the defect would “likely” affect safe operation.⁵⁷ Carriers must also have vehicles inspected periodically⁵⁸ and annually by qualified inspectors⁵⁹, and must also keep records of compliance.⁶⁰ It is not unusual for a post-accident review to find serious equipment and maintenance violations. Whether such violations played a role in the accident is, of course, subject to a case-by-case analysis.

VI. QUALIFICATION RECORDS, CDLIS, ACCIDENT REGISTRY, AND THE FMCSR’S ‘SAFER’ SYSTEM.

The FMCSR sets the “minimum” qualifications for CMV operators and the “minimum” duties of carriers with respect to the qualifications of their drivers.⁶¹ Carriers must keep a comprehensive driver qualification file for each driver it employs⁶², must have potential drivers complete an application which meets minimum informational standards,⁶³ and must also conduct a pre-employment background check.⁶⁴ The background check covers skills, licensure, medical

qualifications, and accident records.⁶⁵ All motor carriers are required to respond to employment inquiries and provide information to other carriers⁶⁶, and as of January 6, 2023, must use the Drug and Alcohol Clearinghouse to vet the driver's drug and alcohol compliance records.⁶⁷ As part of this flow of information, carriers are granted wide immunity from suit for defamation and invasion of privacy lawsuits.⁶⁸

One of the major ways that the safety of drivers is scrutinized is the Commercial Drivers License Information System (CDLIS), a nationwide database which enables state driver licensing agencies (SDLAs) to ensure that CMV operators have only one driver license and record.⁶⁹ The State of Illinois has adopted the CDLIS into its Vehicle Code⁷⁰ and Illinois reports all violations by CDL operators to the CDLIS system.⁷¹ The FMCSA uses this information to judge driver safety using a methodology, the Behavior Analysis Improvement Category (BASIC)⁷², which BASIC system generates a safety score using roadside inspections, traffic infractions, crash data, and other information.⁷³ One of the hot button subjects in this area is known as masking.⁷⁴ In short, masking regulations prohibit CDL holders from the use of normal traffic deferral programs which allow passenger car drivers to avoid convictions or points by attending a traffic school or being granted court supervision.⁷⁵ As part of keeping its federal highway funding, Illinois requires all traffic court dispositions be reported to the CDLIS system, except parking offenses, regardless of "the type of vehicle in which the violation occurred".⁷⁶ Post-collision comparison of a driver's CDLIS record against the actual traffic infractions often

reveals that changes or alternations to citations obscured violations which would otherwise would have disqualified the driver.⁷⁷

Trucking companies are also monitored through the FMCSA's Safety and Fitness Electronic Records (SAFER) System.⁷⁸ The SAFER system offers company safety information and ratings over the Internet⁷⁹, and by compiling data about the safety of owners and operators, including accident and safety inspection data, the Secretary is authorized to make fitness determinations about drivers and companies.⁸⁰ The SAFER system also allows shippers and other industry participants to make safety judgments about fitness of the companies and carriers with whom they do business.

Because safety is the FMCSA's duty and highest priority any attempt to use "common ownership, common management, common control, or common familial relationship" to evade or avoid these regulations is prohibited.⁸¹ The foregoing recognizes and directly addresses the practice of companies and owner reconstituting after suspension or license revocation, known as "reincarnated carriers"⁸², which practice Congress has specifically prohibited.⁸³ Congress has also required "common ownership" or familial "relationship" be disclosed on registration applications⁸⁴ and has provided for civil and criminal penalties for violators, including revocation of operating authority.⁸⁵ Thus, looking at the background of newly formed carriers is particularly important to see whether it is an alter ego or "reincarnated" carrier.

CONCLUSION

Commercial motor carrying is a regulated industrial endeavor and a good working knowledge of applicable industry regulations is important. It is equally important to remember that courts handle many types of cases and, as an advocate, the attorney must educate the judge on the applicable legal principles. The most important predicate is that the FMCSRs are safety regulations which have been adopted into state law by the General Assembly, and which set the applicable standard of care demanded of carriers and commercial drivers. With this foundation in place comprehensible litigation can be devised and executed.

¹ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813337>

² *Id.*

³ 49 U.S. Code § 113 *et. seq.* ; 49 CFR §390 *et. seq.*

⁴ *Trucking Ass'ns v. United States*, 344 U.S. 298, 306, (1953); *see also Midwest Crane & Rigging vs. F.M.C.S.A.*, 603 F. 3rd 837 (10th Cir., 2010)

⁵ 49 U.S. Code § 113(b)

⁶ 49 U.S. Code § 31136(a)

⁷ 49 U.S. Code § 31141(b)

⁸ 49 U.S. Code § 31141(c)

⁹ 49 U.S. Code § 31102(k)(2)

¹⁰ *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78, (1938).

¹¹ *Id.*, *see also W. v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236, 61 S. Ct. 179, 183, (1940).

¹² *Allstate Insurance Co. v. Menards, Inc.*, 285 F.3d 630 (7th Cir. 2002)

¹³ 625 ILCS 5/18b-105(b).

¹⁴ *People v. Blackorby*, 146 Ill. 2d 307, 319 (Ill. 1992)

¹⁵ 625 Ill. Comp. Stat. Ann. § 5/18c-1101

¹⁶ 625 Ill. Comp. Stat. Ann. § 5/18c-1103

¹⁷ *French v. City of Springfield*, 65 Ill.2d 74, (1976)

¹⁸ *Ohio & M.R. Co. v. Dunbar*, 20 Ill. 623, 623 (1858)[Railroad held responsible for death of hogs, even though it had leased those parts of its operation and rails to another company]; *Pittsburgh, C. & St. L. Ry. Co. v. Campbell*, 86 Ill. 443, 443 (1877)[Farmer whose crops were destroyed by fire entitled to recover against railroad, even though fire caused by one of the railroad's lessees]; *see also Chicago Econ. Fuel Gas Co. v. Myers*, 168 Ill. 139, 146, 48 N.E. 66, 68 (1897)[A corporation hired to accomplish a task which involves risk of harm to the public cannot exempt itself from liability by placing the job in the hands of another].

¹⁹ *Schedler v. Rowley Interstate Transp. Co.*, 68 Ill. 2d 7, 368 N.E.2d 1287 (1977); *See also Kreider Truck Serv., Inc. v. Augustine*, 76 Ill. 2d 535, 539, 394 N.E.2d 1179, 1181 (1979)

²⁰ *Midwest Crane & Rigging vs. F.M.C.S.A.*, 603 F. 3rd 837 (10th Cir., 2010)

²¹ 49 U.S. Code § 504 ; 49 CFR § 392.9a

²² *Schedler v. Rowley Interstate Transportation*, 37 Ill. App. 3d 433, 434 (Ill. App. Ct. 1976) rev'd 68 Ill. 2d 7, 11 (Ill. 1977)

²³ *Schedler v. Rowley Interstate Transp. Co.*, 68 Ill. 2d at 12.

²⁴ *Kreider Truck Serv., Inc. v. Augustine*, 76 Ill. 2d 535, 539, 394 N.E.2d 1179, 1181 (1979); see also *see also Roberson v. Indus. Comm'n (P.I. & I. Motor Exp., Inc.)*, 225 Ill. 2d 159, 177, 866 N.E.2d 191, 201 (2007) (“These regulations, and the statute pursuant to which they were promulgated, were created in order to correct widespread abuses by authorized interstate carriers who would immunize themselves from liability to the public by leasing trucks from third parties”); *see also Fulton v. Terra Cotta Truck Service, Inc.*, 266 Ill.App.3d 609 (1994)

²⁵ 625 Ill. Comp. Stat. Ann. 5/18c-1103

²⁶ 625 Ill. Comp. Stat. Ann. 5/18c-4103(3)(b) ; see also 49 U.S. Code §14102(a)(4);”The Secretary may require a motor carrier...that uses motor vehicles not owned by it to transport property under an arrangement with another party to .. (4) have control of and be responsible for operating those motor vehicles ... as if the motor vehicles were owned by the motor carrier.”

²⁷ *R. Clay Porter & Elenore Cotter Klingler, The Mythology Of Logo Liability: An Analysis of Competing Paradigms of Lease Liability for Motor Carriers*, 33 TRANSP. L.J. 1-11 (2005)

²⁸ 49 CFR § 390.21 : 49 CFR §376.11(c)

²⁹ 49 CFR § 390.3

³⁰ 49 CFR § 390.5

³¹ 49 CFR § 390.3 (a) & (e) ; *see also* 49 CFR § 390.9

³² 49 CFR § 390.11

³³ 49 CFR § 390.1(i)(4)

³⁴ 49 CFR § 390.1(j)(3)

³⁵ 49 CFR § 390.3 (l) ; *see also* 49 CFR § 390.6

³⁶ 49 CFR § 392.82

³⁷ 49 CFR § 391.11

³⁸ 49 CFR § 392.3

³⁹ 49 CFR § 392.6

⁴⁰ FMCSA Reg. Guidance, available at <https://www.fmcsa.dot.gov/regulations/how-many-miles-may-driver-record-hisher-daily-record-duty-status-and-still-be-presumed>

⁴¹ National Transportation Safety Board: Safety Study: *Fatigue, Alcohol, Other Drugs, and Medical Factors in Fatal-to-the-Driver Heavy Truck Crashes* (Volume 1). In., vol. NTSB/SS-90/01.

Washington, DC: National Transportation Safety Board; 1990: 1-181 ; *see also*

National Transportation Safety Board: *Factors that affect fatigue in heavy truck accidents*.

Volume 1: Analysis. In., vol. NTSB/SS-95/01. Washington, D.C.; 1995.

⁴² *Id.*, see also *Johnke v. Espinal-Quiroz*, No. 14-CV-6992, Dckt. # 379-3 (N.D. Ill.) (Expert Report, Dr. Charles Czeisler, Ph.D., M.D.)

⁴³ 49 CFR § 395.1 *et. seq.*

⁴⁴ *Id.*

⁴⁵ 49 CFR § 395.8

⁴⁶ 49 CFR § 395.8(a)(iii)(A) & (B)

⁴⁷ 49 CFR § 395.8 (k)

⁴⁸ 49 CFR § 395.8 (g); 49 CFR § 395.26

⁴⁹ 49 CFR § 390.3 (d)

⁵⁰ 49 CFR § 392.3

⁵¹ *Supra*, Nt. 38.

⁵² 49 CFR § 396 *et. seq.*

⁵³ 49 CFR § 396.1 (a)

⁵⁴ 49 CFR § 396.3

⁵⁵ 49 CFR § 396.7

⁵⁶ 49 CFR § 396.13

⁵⁷ 49 CFR § 396.11

⁵⁸ 49 CFR § 396, Appendix A

⁵⁹ 49 CFR § 396.17 ; 49 CFR § 396.19

⁶⁰ 49 CFR § 396.21

⁶¹ 49 CFR § 391.1(a)

62 49 CFR § 391.51
63 49 CFR § 391.21
64 49 CFR § 391.23
65 49 CFR § 391.21 ; *see also* 49 CFR § 391.43
66 49 CFR § 391.23(g)
67 49 CFR § 391.23(e)(4)
68 49 CFR § 391.23(l)
69 49 U.S. Code § 31309(4)(A)(ii); *see also* <https://www.aamva.org/technology/systems/driver-licensing-systems/cdlis>
70 625 Ill Comp. Stat. Ann § 5/6-500 *et. seq.*
71 *Id.*, *see also* 625 Ill Comp. Stat. Ann § 5/6-204
72 https://csa.fmcsa.dot.gov/Documents/Driver_SMSMethodology.pdf
73 *Id.* *See also* 49 CFR § 383.51
74 49 CFR § 384.226
75 *Id.*
76 625 Ill Comp. Stat. Ann § 5/6-204(a)(2)
77 *See* 49 CFR § 383.51 (Tables 1-4)
78 <https://safer.fmcsa.dot.gov/about.aspx>
79 *Id.*
80 49 U.S. Code § 31144
81 49 U.S. Code § 31135(b)
82 49 CFR § 385.1007(b)
83 49 U.S. Code § 32102 (a)(2)(D) ; *see also* 49 U.S. Code § 31134 (b)
84 *Id.* ; *see also* 49 CFR § 385.1007(b)
85 49 U.S. Code § 521(b)