

INVESTIGATING COMMERCIAL TRUCK CRASHES

Brian F. Davis
DAVIS LAW GROUP, P.A.
1 North Pack Square, Suite 412
Asheville, North Carolina
888-773-8388 (toll free)
828-279-7799 (direct dial)
888-454-5291 (fax)



You have just agreed to represent a catastrophically injured person in an interstate truck wreck case. This paper will address the first steps that should be taken when investigating a commercial truck case.

I. INVESTIGATION – PHASE 1: WITNESS STATEMENTS & REPORTS

ATTORNEY MENTALITY: ACT IMMEDIATELY. Analyzing liability in a trucking case is often complex and involves a multitude of factors. One factor that you have no control over is time. Often, your potential client has been out of commission for days, if not weeks and/or months, following the crash and has not been able to contact a lawyer. Since motor carriers and their insurance companies dispatch investigation teams immediately after learning of a commercial truck crash, important evidence is often long gone by the time you get involved. Therefore, once you are hired, you should move forward with all due haste. All relevant witnesses should be interviewed as soon as possible.

A. CLIENT'S STORY. If your new client is able, you should spend a considerable amount of time interviewing the client and gathering as many details regarding the accident sequence as possible. Your client will often be the only eye witness to the crash that you get to interview before the truck driver's deposition. Do not overlook this opportunity.

The client can provide you with valuable information regarding the events that occurred before, during and after the collision. I am a strong believer that this client interview should be handled by the lawyer who is going to handle the case and not by a paralegal or an associate. By pulling the details out of the client, you will gain valuable insight into exactly what happened, the various reasons for why it happened, what was going through your client's mind as the crash unfolded, and what kind of a witness your client is going to make at deposition and trial.

After meeting with the client, your next phone call should be to your accident reconstruction engineer to schedule a time to inspect the scene and all vehicles involved in the collision. Since it may take an engineer 24 to 48 hours to get to the scene, you should continue your investigation by contacting and interviewing the investigating officer and other witnesses.

B. INVESTIGATING OFFICER. The investigating officer is usually the first person on the scene to investigate and determine the cause of the collision. For this reason, he or she should be interviewed as early in the process as possible. The investigating officer is usually the first person I interview after meeting with my client.

In North Carolina, the State Highway Patrol investigates the majority of commercial truck collisions because most truck wrecks occur on U.S. Highways or Interstate Highways. State Troopers receive considerable training as cadets and in continuing education classes in the area of accident investigation and causation. For the remainder of collisions that occur within or near a city or town, a local police officer will likely investigate the collision. Even though local officers generally have less formal accident investigation training than State Troopers, you should still be able to gather valuable information from the local officer.

After obtaining the investigating officer's report, you should meet with the officer at the scene. The purpose of this meeting is to have the officer show and tell you everything that he or she did during the investigation of the collision. Understanding where the various vehicle's tires started to skid, the location of gauge marks, the point(s) of impact, and the point of rest for each vehicle will be vitally important information as your investigation moves forward. Many times tire impression marks will have faded by the time you get to meet with the officer at the scene, but often the officer will remember where the marks were or can locate a faint tire impression that might not otherwise be identifiable. Understanding why the officer interpreted certain physical evidence one way and not another is helpful to you and your accident reconstruction engineer.

Obtaining a copy of the officer's file is also warranted. In most instances, you can obtain a copy of the file by simply requesting it. In the officer's file, you should find field notes that contain the officer's first diagram of the scene, tire impression measurements, the location and size of any gauge marks, and miscellaneous notes. Within the file, you may also find written statements from drivers and witnesses, photographs, dispatch records, and 911 call records.

The North Carolina Highway Patrol has an Accident Reconstruction Unit based out of Raleigh that investigates and reconstructs most commercial truck crashes that involve multiple vehicles, major injury or death. These troopers do a huge service for the victim and plaintiff's attorney because they are usually on the scene within a short time following the crash. The reconstruction unit is excellent at documenting the physical evidence at the scene, downloading electronic evidence, surveying by use of a total station device, taking numerous photographs of the scene and vehicles, obtaining aerial photography of the area in question, and doing their best to determine what happened.

That said, these troopers are not engineers, and important evidence is sometimes overlooked or not given appropriate weight in their investigation.

In many cases, the investigating officer will contact the State Highway Patrol Motor Carrier Enforcement Unit. These officers are specially trained to conduct equipment inspections of tractors and trailers. They are also adept at identifying violations of the Federal Motor Carrier Safety Regulations, such as Hours of Service violations. These officers have the authority, depending on the violations discovered, to order the driver and/or the rig out of service.

C. TRUCK DRIVER. Many attorneys never attempt to interview the truck driver. The rationale given is that they feel it is a waste of time because the motor carrier or its insurance company has surely told the driver not to talk with anyone about the crash. While that is generally true, I have gotten lucky on more than one occasion, and the recorded interview of those truck drivers definitely increased the value of the case.

There are scenarios where you actually have a decent shot at talking with a truck driver. For instance, an owner-operator is often more willing to talk about a collision than a driver that is employed by one of the national carriers. On some occasions, if the driver was terminated as a result of the wreck, he may willingly speak to you about what occurred and may seek to bury the hatchet with his former employer. Therefore, you should always try to take a recorded statement from the truck driver. In North Carolina, you may record a telephone conversation without disclosing that it is being recorded, as long as one party to the conversation (you) knows that the conversation is being recorded. If the truck driver is located in another state, then you should research the law of that state before recording a conversation without the driver's knowledge.

D. OTHER WITNESSES. Either you or your investigator should attempt to interview everyone that was even tangentially involved prior to the wreck, during the wreck, and after the wreck. In a major crash, there may be dozens of people involved at the scene. Each person should be interviewed, and the interview should be digitally recorded and then transcribed. Most of the time, the interviews of the people at the scene after the crash are not that helpful, but they take only a few minutes each. Once in a while, however, you will find someone who has information that is critically important to your case. The following is a list of people you should attempt to interview following a truck crash:

1. Eyewitnesses
2. Law enforcement
3. Firemen
4. First Responders
5. EMS Workers
6. Ambulance Drivers
7. Life Flight Personnel
8. Emergency Room Personnel

- 9. Post Incident Lay Witnesses – bystanders
- 10. Media
 - a. Photographers
 - b. Reporters
 - c. Cameramen
- 11. Private Photographers
- 12. Tow Truck Drivers

E. COLLISION REPORT. You should obtain the police collision report (DMV-349) as soon as possible. Since these reports are often not available for several days or even weeks following a commercial truck crash, it is extremely important that the attorney contact and interview the investigating trooper and/or reconstructionist. It is always helpful to meet with the investigating police officer at the scene of the collision. The investigating trooper may be able to share information with you that will eventually be contained in the report, such as point of impact, point of rest, causation, and statements by the truck driver. I record all telephone conversations related to a crash investigation, and always request the person's permission to use a recorder. If meeting with a trooper at the scene, then you should consider videotaping the interview. Officers almost never object to being recorded. Having a video record of an interview can be helpful if the case drags on for a year or more, not to mention that you can also use clips from the video interviews at mediation.

If a criminal investigation is pending against the truck driver, then you will need to speak with and obtain the consent of the prosecuting attorney in order to obtain a copy of the final accident/reconstruction report. The information contained in the report will be helpful in determining whether liability is going to be clear or contested.

F. INSPECTION REPORT. In most major wrecks involving CMVs, a member of the State Highway Patrol's Motor Carrier Enforcement section will be called. These officers are expert at inspecting the mechanical workings of the tractor and trailer, especially with regard to the braking systems. They make detailed reports that you can obtain by simply contacting their office. They often also speak with the driver about their findings and seek an explanation from him regarding the equipment's condition and/or mechanical failure. The driver will occasionally try to put the blame on the motor carrier by saying something like "I've asked my employer to fix those brakes a dozen times; I knew there were going to go out."

II. INVESTIGATION – PHASE 2: EXPERTS & DATA COLLECTION

In all things, success depends on preparation, and without such preparation, there is sure to be failure. – Confucius

A. TIME. It should be abundantly clear by now that a commercial truck case is very different from other motor vehicle tort cases, and you must proceed accordingly. If you fail to appreciate the differences from the start, you will probably hurt your client's case and likely commit malpractice. One of the biggest differences between a truck

case and an ordinary automobile collision case is the element of time. Time is not on your side in a truck case. Critical evidence necessary to prove the truck driver's and the motor carrier's liability can dissipate quickly. Under the federal regulations, motor carriers and their drivers are only required to retain the Driver's Daily Logs and supporting trip documents for a period of six (6) months.

B. PRESERVING EVIDENCE. Since the motor carrier and driver are only required to retain the Driver's Daily Logs and supporting documents for the very short time of six (6) months, it is very important that a spoliation letter¹ be sent immediately upon being your being retained. The spoliation letter should be mailed certified mail, return receipt to the following:

1. Truck Driver
2. Motor Carrier Officers
3. Insurance Companies
4. Lessee
5. Lessor
6. Shippers and Receivers of Goods

A sample spoliation letter is attached in the Appendix.

C. RETAIN EXPERTS EARLY. In CMV cases, it is especially important that you retain your experts early. Having someone on your team at the very beginning who can help you identify the key issues in the case regarding liability is very helpful. Identifying these issues early will allow you to develop case themes and strategies. Having your experts involved early will also decrease the chances that you will miss an important issue or piece of evidence. I generally hire the following experts as soon as possible in a CMV case: an accident reconstruction engineer, a trucking or truck safety expert, and an ECM expert.

1. Accident Reconstructionist Engineer. The accident reconstruction engineer is the person who will help you figure out how and why the crash happened. This expert will address such issues as point of impact, point of rest, speed, change in velocity, crush, braking, skidding, causation, driver's conduct, and a host of others. This expert will also document the scene with a total station or similar surveying device, photograph and video the site, inspect and document the vehicles and any other physical evidence, prepare to scale diagrams, inspect and/or test the important components of the vehicles, conduct re-enactments of the incident, and prepare video animations. It is important that you take the time to make sure that the person you retain is sufficiently trained and experienced in investigating CMV cases.

You should inquire of any potential accident reconstructionist regarding the protocol the expert plans to use during his investigation to collect the data and the source of the protocol. The expert should be able to articulate which protocols and methodologies he generally uses in CMV cases *and why*. The expert should also be able to explain the

differences between investigating a CMV case and an ordinary automobile case. If the expert is unable to do so, then it would be wise to look elsewhere for an expert.

You should visit the site of the crash with the reconstructionist engineer as soon as possible, document everything that can be documented, and then move on to inspect the vehicles. It is important for you to be actively involved in the investigation phase of the case because visiting the site, listening to the reconstructionist's initial analysis of what happened, seeing the physical evidence, and then viewing the vehicles will give you greater insight into the dynamics of the incident, the likely thought processes of the defendant as he moved toward the impact.

The plaintiff's vehicle should be retained and stored in an environment that will prevent its physical condition from deteriorating. The vehicle damage may become an important issue in the case later, and it is much easier to go to the vehicle and gather the information needed as opposed to trying to extrapolate the needed information from a photograph.

2. Trucking Expert. This expert will focus on the driver and the motor carrier. He should be completely familiar with all of the requirements of the FMCSR. The truck expert should also be particularly adept at explaining how the driver and motor carrier failed to comply with the applicable regulations and how this conduct caused or contributed to the crash. The best trucking experts, in my opinion, are those that have had actual, on the job, experience driving a tractor-trailer. The experts who have that experience bring a great deal of credibility to the table when they testify. They also tend to have a more common sense approach to what went wrong and why. One of the best trucking experts I have worked with is Mr. Mike Nappier. His contact information follows:

Email: mikenapier@truckingexpert.com
Website: www.truckingexpert.com
Snail Mail: 103 The Masters Cove
Macon, GA 31211

3. ECM Expert. The final expert that you should consider retaining early in the case is an Electronic Control Module (ECM) expert. An ECM is a device that is mounted to the engine of the tractor, and it *controls* various engine functions and records a host of data that can be critically important to proving liability and punitive damages. This data can be automatically erased if not downloaded in a timely fashion. That said, regardless of how long after a crash you are retained, you should always attempt to download the ECM data.

"ECMs . . . were first developed to meet emission standards and fuel economy needs, but today they can do everything from governing speed to recording data before, during, and after an accident. Cummins, Caterpillar, Mack, and Detroit Diesel, leading manufacturers for the heavy vehicle industry, all offer highly intelligent engine control systems. Downloading an ECM can provide such information as vehicle identification number, engine serial number, governed speed, cruise control parameters,

transmission style, “quick” or “hard” stop rate, event codes, engine diagnostic codes, and fuel efficiency parameters. An EMC can be downloaded by a trained technician. Having someone who can competently interpret the provided data is key to understanding and applying it to the case.”ⁱⁱⁱ

There are many accident reconstruction engineers who claim to be experts in the interpretation of ECM data. Upon questioning, most will admit that they have interpreted ECM data in cases involving certain engine manufacturers. I have heard accident reconstructionists indicate that interpretation of ECM data is a relatively simple task, and that one only needs to obtain the manufacturer’s guidebook on how to interpret the data in order to understand the report. Unfortunately, it is not that simple.

Depending on the type of ECM involved, the way that the data is downloaded can sometimes mean the difference between getting the data you need and not getting it at all. A qualified ECM expert will understand the subtle differences between the various ECM models produced by the manufacturer in your specific case. He will also know how to maneuver within the ECM system and locate the information you need. Therefore, it is important to have your ECM expert talk with the download technician so that everyone is on the same page regarding the information being sought - before the download is attempted.

The ECM download report contains a substantial amount of data that is counter-intuitive, and without the proper education and experience regarding ECM data interpretation, there is a reasonable chance that a general accident reconstructionist will make an error interpreting the data. In other words, the data may appear to say one thing, when in fact it says something completely different. Errors made by a designated expert can seriously damage the value of your client’s case.

An example that I encountered a few years ago involved the ECM parameter for *Engine Governor Max Speed*. That parameter appeared *disabled* on the EMC download report, indicating that the truck would have had the potential to run at speeds approaching 90 mph. My accident reconstruction expert’s calculations relied completely on his interpretation of the EMC governor being disabled. After deposing the defendant’s ECM expert, it became apparent that there was another parameter within the ECM that governed the speed of the engine in another way. The engine was actually governed at 68 mph, and the plaintiff’s expert had to admit that he had made a serious and careless mistake – thereby casting doubt on all of his conclusions, including the defendant’s negligence and the cause of the crash.

The point is that you need an EMC expert, not simply an accident reconstructionist who claims that they know, or can learn, how to interpret ECM data. I am aware of only two ECM experts in the United States who have had articles published by the Society of Automotive Engineers (SAE) regarding the interpretation of ECM data. Tim Reust is one of those experts, and his website is www.accidentscience.com. If you need an ECM expert, you must do your homework on the front end and make sure the expert is qualified to interpret the data.

D. ITEMS TO INSPECT AS SOON AS POSSIBLE

i. **Truck.** The tractor-trailer is a potential treasure trove for the plaintiff's attorney. Once you are retained, you should contact the motor carrier or their insurance carrier and request an inspection of the truck. While permission is usually required to inspect the vehicles, that permission should be readily forthcoming. If it is not, then you should either file a temporary restraining order to prevent the negligent or intentional spoliation of evidence (ECM, EOBR, etc.) or you should file suit immediately and serve a request to inspect with your complaint.

Just as your engineer surveyed the crash site using a total station device, he should also do a total station survey of the crush damage on the tractor-trailer. This data may be critically important when the engineer begins calculating the speed of the big rig. The tractor and trailer should also be documented (inside and out) using high quality digital photography.

A specific protocol should be followed in photographing the commercial truck. The following list is an example of the items that should be documented:

- Photograph all mirrors
- Photograph the ICC, DOT and tractor and trailer unit numbers
- Photograph all reflective surfaces, including but not limited to the back and sides of both the tractor and trailer, the rear guards and the trailer's apron
- Photograph all tractor and trailer tires such that you can see the manufacturer's name, the model number, the side, and any other writing located on the tire (tractor tire information is critical when calculating speed based upon ECM data)
- Photograph all trace evidence including dings, dents, scratches, rust, streaks or paint smears
- Photograph any exterior markings for weight or length
- Photograph the manufacturer's specification plates on both the tractor and trailer
- Photograph the rear guards, and place a measuring device from the bottom of the rear guards to the ground, and document their height in a photograph
- Photograph the fifth wheel
- Photograph any stickers with slogans, warnings, or company instructions printed on them
- Photograph all cargo restraints, ties, clamps, etc.
- Photograph both the tractor and the trailer from close up, from the front, the back, both sides, and from far away
- Photograph all damage to the tractor and the trailer
- Photograph all lights and reflectors
- Photograph the filaments of any damaged lights or signals

- Photograph miscellaneous information such as inspection dates, placed out of service papers, special warnings such as a sticker that says "This vehicle makes wide turns."ⁱⁱⁱ
- Photograph any large teeth or fangs found attached to the front grill of the tractor (I would have my investigator take possession of the fangs).

The interior of the tractor should also be carefully inspected, looking in each compartment, under the seats, in the overhead bins, and everywhere else for any evidence that might lend itself to proving what the driver was doing, looking at, reading, writing, or consuming in the several days prior to the crash. You should also be looking for any operator's manuals or guides regarding the use of a Qual Comm, Cadec, or other on-board satellite positioning system. The interior of the tractor should be cataloged by your investigator. Your investigator should take possession of any items deemed pertinent to your investigation for the purpose of preserving them and preventing their loss, destruction or alteration. Your investigator should be knowledgeable regarding chain of custody rules and documentation. Without a proper chain of custody, the defense may challenge the admissibility of the evidence discovered inside of the tractor.

For instance, with regard to items that are found inside of the tractor that might be relevant evidence, the investigator should first photograph the item before moving it. Then he should place all such items in a plastic container, seal the container, place a paper sticker on the container, place the date on the sticker, initial the sticker, and then place the plastic container inside of an evidence locker at the investigator's office that can be secured by lock and key. The chain of custody protocol must also be followed any time an item is removed from the evidence locker for any reason, including attending deposition or trial.

On more than one occasion, I have found incriminating evidence inside the cab of the tractor. This is one reason it is very important for you to personally inspect the interior of the truck.

Many times, unless you have an investigator that is very experienced in truck litigation, important items inside the truck may not be recognized for what they are. Items that one should look for include the following:

1. Driver's Daily Log Book(s)
2. Insurance & license documents
3. Trip documents (bills of lading, fuel receipts, etc.)
4. CB radio
5. XM radio, MP3 player, iPod
6. Radar detector
7. Cell phone
8. Cell phone adapter
9. Laptop computer
10. Blood pressure monitor

11. Blood sugar monitor
12. Pager
13. Television
14. DVD player
15. CDs or DVDs
16. Books and magazines
17. Food and/or empty wrappers
18. Drink containers
19. Alcoholic beverages or empty containers
20. Large plastic containers (pee jugs)
21. Cooler
22. Refrigerator
23. Caffeine pills and liquids
24. Diet pills
25. Over the counter medicines
26. Prescription medicines
27. Illegal substances – contact local authorities
28. Syringes
29. Any item that raises questions about the driver's conduct

ii. The Truck's Electronic Evidence. This paper has already discussed ECM data above in the ECM Expert section, but there is additional electronic data that should be obtained from the tractor / motor carrier as soon as possible. "The mobile communications and vehicle tracking systems are used to link the vehicles in the fleet to the dispatch center. Messages can be sent to drivers, drivers can send messages to the dispatch center, and vehicle location can be tracked at the dispatch center."^{iv}

1. GPS and Mobile Communications Systems. If the tractor was equipped with a mobile communications system and/or global positioning system (GPS), then you will need to either file your lawsuit immediately or obtain a temporary restraining order to preserve the GPS data. The reason for filing is that unless you can immediately obtain the electronic data, it will likely disappear or be erased by the motor carrier. The motor carrier's obligation to retain the data is limited to six months.

Documentation of where a truck driver and/or his tractor trailer were located at a particular time can be used to determine whether the truck driver is falsifying his logs. For example, if a truck driver has a wreck, and tells the investigating trooper that he left Raleigh the morning of the wreck, went to Wilmington, North Carolina and was on his return trip at the time of the accident, but then the GPS tracking data shows that the truck was actually in Atlanta, Georgia just 7 hours prior to the crash, it shows that the driver is lying to a police officer and is likely trying to cover-up his true route to conceal a violation of the hours of service regulations. Some GPS based tracking systems, like CADEC and QUALCOM, also have the ability to record vehicle data in the event of a crash, much like an event data recorder (EDR) on a passenger car's airbag system.

Mobile communications systems allow communications between the driver and the dispatcher. This data is usually typed into a touch screen computer located inside the tractor, and the data is then sent via a cellular communications device to the dispatcher. Following a wreck, the truck driver will often be communicating with the dispatcher about what happened while he is waiting on the highway patrol or emergency workers to arrive. These communications are saved on the dispatch-end and are retrievable.

2. EDRs and EOBRs. Electronic Data Recorders (EDRs) and Electronic on Board Recorders (EOBRs) were originally referred to as *trip recorders*. These devices “are used to record electronic drivers logs for driver hours of service compliance and typically also to capture miles driven within a state for fuel tax reporting. In some cases they will also store a small amount of information pertaining to speed and RPM, such as a 30-to-90 second window, that can be used for accident reconstruction.”^v The records from EDRs and EOBRs must be retained by the motor carrier for 6 months. Drivers must have the last seven days of logs with them in the system.^{vi}

iii. Victim’s motor vehicle. With regard to the inspection of the victim’s vehicle, you and your accident reconstructionist should follow the same protocol as was followed for the tractor and trailer. Total station data should be obtained regarding crush. The inside and outside of the vehicle should be documented by still photo and video. As mentioned above, the victim’s vehicle should be retained and stored if possible. If your client’s vehicle was equipped with airbags, then your accident reconstructionist should download the data from the airbag module.

1. Event Data Recorders. EDRs have been in use in passenger motor vehicles for years. These devices, however, are still not being used in heavy commercial motor vehicles. The EDR can be found inside the control module for the vehicle’s air bag system. The control module uses sensors located inside of the control module and/or placed at various locations on the vehicle to deploy the airbag. The crash data is then recorded in the event data recorder.^{vii} The information one can obtain from an EDR depends on the make, model and year of the vehicle at issue, and includes the following:

1. vehicle speed 5 seconds prior to impact
2. engine speed 5 seconds prior to impact
3. brake status 5 seconds prior to impact
4. throttle position 5 seconds prior to impact
5. delta-V (change in velocity) for up to .3 seconds after event
6. time from vehicle impact to max delta-V
7. maximum delta-V
8. ignition cycle count information
9. driver’s seat belt switch position
10. seatbelt pretensioner activation
11. airbag deployment
12. passenger’s air bag (enabled/disabled)^{viii}

Helpful data can be recovered from EDRs even if the airbag did not deploy. Therefore, you should always attempt to download the EDR data from your client's vehicle.

2. 911 Emergency Tapes. While these recordings are not part of the crash data, they can provide valuable insight into how and why the crash occurred. One should always attempt to obtain copies of any and all recordings made to a 911 operator. In one instance, I represented a pedestrian that was run over by a tractor-trailer after his car had become disabled in a travel lane of a major highway. The defendants had denied liability, arguing that the vehicle was invisible to oncoming traffic because of its position in the road and because the lights were not illuminated. We obtained 11 calls to the 911 operator during the 10 minutes prior to this crash saying that there was a disabled vehicle in the road and that someone needed to help the person who was standing near the car. This evidence helped convince the defendants at mediation that the car was in fact visible, and the case resolved.

III. INVESTIGATION – PHASE 3: RECORDS REQUESTS

A. Federal Motor Carrier Safety Administration. One source of fruitful information that should not be overlooked is the records created from information gathered by the Federal Motor Carrier Safety Administration (www.fmcsa.com). You can obtain a number of important documents **without** a Freedom of Information Act (FOIA) request. A new program is about to take off that so far has proved to increase driver and carrier safety and compliance. This new program (CSA-2010) should produce many helpful documents for the plaintiff's interstate truck lawyer.

i. Comprehensive Safety Analysis (CSA-2010) CSA-2010 is an initiative by the FMCSA to improve the effectiveness and efficiency of the Agency's motor carrier enforcement and compliance program. This program represents a significant change in the way that the FMCSA looks at the safety practices of drivers and motor carriers. Prior to CSA-2010, the FMCSA's primary way of identifying dangerous practices was to conduct on-site Compliance Reviews of motor carriers. These DOT Inspections were labor intensive and time consuming, and as a result a only about two percent (2%) of all motor carriers had an annual Compliance Review. Based on the Compliance Review findings, the FMCSA would issue a safety rating for the motor carrier – either **Satisfactory, Conditional, or Unsatisfactory**.

The CSA-2010 introduces three (3) new components to FMCSA's enforcement and compliance program. First, there will be a new Safety Measurement System (SMS) that replaces SafeStat. *(SafeStat {short for Motor Carrier Safety Status Measurement System} is an automated, data driven analysis system designed by the Federal Motor Carrier Safety Administration (FMCSA). SafeStat combines current and historical carrier-based safety performance information to measure the relative (peer-to-peer) safety fitness of interstate commercial motor carriers. This information includes Federal and State data on crashes, roadside inspections, on-site compliance review results and enforcement history. SafeStat enables FMCSA to quantify and monitor the safety*

status of individual motor carriers on a monthly basis and thereby focus enforcement resources on carriers posing the greatest potential safety risk.)

Next, FMSCA will take a new approach to intervention that strengthens Compliance Reviews. Finally, FMSCA will use a new model for making the Safety Fitness Determination (SFD).

The new Safety Measurement System calculates the safety of drivers and carriers based on seven (7) **Behavior Analysis and Safety Improvement Categories (BASICS)**. These categories include: **unsafe driving, fatigued driving, driver fitness, drugs/alcohol, vehicle maintenance, improper loading/cargo issues, and crash indicator**. From now on, each time a driver undergoes a roadside inspection, he will be evaluated on this BASIC system. All driver violations will go toward the carrier's Safety Fitness Determination, and the SFD will be updated on a monthly basis. The new categories regarding a motor carrier's safety will be

The bottom line for plaintiff's interstate truck lawyers is that this new CSM-2010 system is going to be a ripe area for discovery. FMSCA has been conducting pilot programs in several over the last few years. In late 2010, FMSCA plans for the system to be in full effect nationwide. The Safety Fitness Determination will likely go into effect in 2011. There are some new Interrogatories and Requests for Production of Documents regarding CSM-2010 in the Appendix.^{ix}

The FMCSA will also be issuing **warning letters** to motor carriers that are identified as having safety deficiencies during roadside inspections. You should add this warning letter to your standard set of Request for Production of Documents in trucking cases. I have attached a sample warning letter in the Appendix.

ii. Pre-employment Screening Process (PSP). There is also a new Pre-employment Screening Program (PSP) that allows carriers to review a potential driver's inspection and crash data prior to hiring. This information is not available to the public, but if a motor carrier hires a new driver without checking his PSP records, and the driver turns out to have a history of safety violations, then the driver's next crash would certainly give rise to a claim for negligent hiring.

iii. Motor Carrier Safety Ratings. Each motor carrier receives a safety fitness rating based upon the carrier's compliance with the federal motor carrier safety regulations. You can request a rating by calling 1-800-832-5660.

iv. Carrier Snapshots. These snapshots include a record of the carrier's identification, size, commodity data, safety record and rating, out of service records, and insurance information. This data can be found at the Safety and Fitness Records Electronic System (SAFER) at www.safer.fmcsa.dot.gov.

v. Licensing and Insurance. The Federal Motor Carrier Safety Administration provides licensing and insurance information for all authorized motor carriers, freight forwarders, and property brokers. This site is found at: www.li-public.fmsca.dot.gov/.

vi. Freedom Of Information Act (FOIA) Request Additional documents regarding a motor carrier can be found if you will make a Freedom of Information Act (FOIA) request. These requests must be made in writing. The written request can be send by email or regular mail. The records that you can obtain include the following:

1. State accident reports
2. Roadside inspection reports (MCS-63s)
3. Enforcement reports
4. Compliance reviews
5. General correspondence
6. Final orders of the agency regarding the motor carrier
7. Final opinions and orders following adjudication

A FOIA request can be made by email to: www.foia.@fmcsa.dot.gov.

IV. CONCLUSION

Too many plaintiff's attorneys tend to approach CMV crashes like any other motor vehicle wreck case. Not only are the vehicles different, but the laws and regulations governing commercial trucks and their drivers are very specific and include a multitude of issues for the victim's attorney. Many of the FMCSR were designed to protect the motoring public from the careless and reckless conduct of truck drivers and their motor carriers. "Understanding the finer details of CMV law is essential to handling a tractor-trailer case. You must investigate the driver, his qualifications, his character, his experience, and how he got behind the wheel."^x Many of these driver safety issues can only be investigated after you file suit and can conduct formal discovery.

In order to successfully handle a CMV case, it is imperative that you become an expert with regard to the FMCSR and that you also review the safety records of both the motor carrier and the driver. To maximize the potential recovery in a truck case, you must go to the scene in order to understand the crash, participate in the vehicle inspections and electronic evidence retrieval, conduct extensive written discovery followed-up by extensive motion practice, and follow-up with depositions of the driver, the safety department personnel, the human resources personnel, the dispatchers, the log auditors, and various company managers and executives. This is true even in clear liability cases where the truck driver's conduct is so clearly negligent that the insurance company only wants to talk about settlement. If you go ahead and settle the case without doing the above things, you will never know the underlying cause – and the complicity of the truck company – of the crash.^{xi} The

SPOLIATION LETTER

August 22, 2010

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

Mr. John Q. Attorney
Rippem and Squeezum, PA
1 North Main Street
Anywhere, NC

Re: Our Client:
Your Client:
Date of Collision:
Policy No.:

Dear John:

I hope this letter finds you doing well. As you know, I represent Mr. _____ with respect to the above-referenced collision. Please allow this letter to confirm our telephone conversation from today, wherein you acknowledged your clients' and their agents' duty to preserve evidence in this case. Since you are involved at this early stage of the case prior to the filing of a lawsuit, I will abide by your desire that I communicate only with you regarding matters involving this case. In that regard, you agreed to forward copies of this letter, which I would normally mail directly to each individual and/or entity, to the various individuals and entities involved in this case for the purpose of communicating their duty to preserve information and data that may be evidence with regard to liability and/or damages in this case. I would request that you forward this letter to the following individuals:

1. Mr. _____, Dangerous Truck Company Truck Driver;
2. Mr. _____, Dangerous Truck Company President and CEO;
3. Mr. _____, Dangerous Truck Company Vice President & Chief Safety Officer;
4. Mr. _____, Dangerous Truck Company Co-Chief Operating Officer;
5. Mr. _____, Dangerous Truck Company Co-Chief Operating Officer;
6. Mr. _____, Dangerous Truck Company Vice President & Chief Information Officer; and
7. Mr. _____, Executive Vice President at Massively Rich Ins. Co.

As I mentioned above, the purpose of this letter is to give formal notice to the above individuals of their **legal duty under North Carolina law** to preserve evidence which will be pertinent to our allegations of liability and damages in connection with this collision. Please be advised that any loss, alteration, destruction, or other spoliation of the following evidence is prohibited by North Carolina law and may subject you and/or your client(s) to judicially imposed sanctions.

1. **Electronic Control Module Data** - All electronic control module (ECM) data and/or documents which were downloaded from the tractor operated by (insert defendant driver's name) in this incident. It is my understanding that one of your agents (Delta V) has already removed the ECM from the tractor, and that it is being preserved for future inspection. **The data contained on this module may be important in proving how and why this collision occurred. Unless the data is downloaded by a qualified technician, some important data may be lost.**
2. **Photographs** - All photographs of the scene, including, but not limited to, all photographs of the markings on or off the roadway and/or any debris or other matters depicted at the scene;
3. **Photographs** - All photographs of any vehicles in any way involved in the incident;
4. **Statements** - Statements (recorded and/or written) given by (insert truck driver's name) and/or any other witness to the subject incident;
5. **Driver Qualification File** - The entire driver qualification file of (insert truck driver's name);
6. **Personnel File** - The entire personnel file of (insert truck driver's name), including, but not limited to all records of a disciplinary or corrective nature, reports, summaries or notes of performance reviews, records of violations of company policies and records of accidents of any kind;
7. **Driver's Daily Logs** - All driver's daily logs of (insert truck driver's name) for the six months preceding the date of the collision in question;
8. **Vehicle Inspection Reports** - All vehicle inspection reports prepared by (insert truck driver's name) on all vehicles driven by him on behalf of (insert truck company name) in the six months preceding the subject incident;
9. **Maintenance Records** - All maintenance records on the subject tractor and trailer driven by (insert truck driver's name) at the time of the incident in question within one year prior to the incident;

10. **Dispatch Records** - All dispatch records concerning (insert truck driver's name) driving for (insert truck company's name) within the six months preceding the date of the incident.
11. **Trip Records** - All fuel receipts, toll receipts, DOT inspection tickets or receipts, com-check records, and shipping documents for all driving by (insert truck driver's name) on behalf of (insert truck company's name) within the six months preceding the date of the incident;
12. **Violation Records** - All records of DOT, CSA, DMVS, or PUC violations, citations, charges, or tickets issued to (insert truck driver's name) within the twelve months preceding the date of the incident;
13. **Drug & Alcohol Records** - Copies of all records of any drug and/or alcohol test results or reports of such tests given to (insert truck driver's name) at any time before or after the subject incident;
14. **Electronic On-Board Data** - All documents for six months preceding the date of the subject incident from any on-board recording devices, on-board computers, tachographs, trip monitors, trip recorders, trip masters, qualcom device, CADEC device, or any other device by any other name which records information concerning the operation of the subject tractor operated by (insert truck driver's name);
15. **US DOT Inspection/Audit Reports** - All documents sent to and/or received from the US Department of Transportation regarding any inspection(s) and/or audit(s) of (insert truck company's name) for the three (3) year period preceding the collision at issue in this case; and
16. **Electronically Stored Information (ESI)** - All electronically stored information concerning the collision at issue. This would include but not be limited to any communications during the 24 hours prior to the collision, such as emails, text messages, (insert truck driver's name)'s cell telephone records, and all recordings of any radio, cell telephone and/or any other communications between (insert truck driver's name) and any (insert truck company's name) dispatcher and/or other (insert truck company's name) personnel. This would also include but not be limited to any communications occurring after the collision.

In the event that you intend to disregard this request in any way, you are requested to advise us in advance so that we may take appropriate steps within the Judicial System to compel the preservation of such records, as they are significant to potential claims presented by our client.

Letter to Mr. John Q. Attorney
August 22, 2010
Page 4

With kindest regards, I am

Very truly yours,

DAVIS LAW GROUP, P.A.

Brian F. Davis

NEW TRACTOR TRAILER CASE CHECKLIST

CLIENT _____

DATE _____

ATTY _____

DOL: _____

SOL: _____

Class: A B C D E Expected Resolution Date: _____ Referral Source _____ Thank You needed? _____

INITIAL LETTERS and ADMINISTRATIVE:

COMPLETED

DATE

☒ Open new file (Contract signed); _____ Open New file ONLY (no contract signed)

☒ SOL entered on wall calendar and in TrialWorks

_____ Spoilation letters sent: _____ President _____ Safety Dir _____ Risk Manager _____ HR _____ Driver

☒ FOIA Letter (See: S:\Documents\Forms\Tractor Trailer\Letters\Standard FOIA letter)
<http://www.fmcsa.dot.gov/foia/foia-request.htm>

☒ SaferSys Report (See: www.safersys.org/CSP_order.asp) (CSA2010 Report)

_____ Surveillance and Dr Appointment letters to client

_____ Initial client letter (if contract signed) _____ with intake sheet

_____ Initial insurance letters: _____ Liability carrier _____ UM carrier _____ Df to Contact Ins Co.

_____ Request insurance policies (GA)

_____ Obtain photographs from: _____ client _____ store video _____ Carson _____ News _____ Scene

☒ Letters to TnCare and Medicare/Medicaid re: Subrogation Interest

_____ Letter to client requesting insurance declaration page and policy

_____ Police report requested _____ city _____ county _____ Hwy Patrol _____ Commercial

_____ Fire Department _____ Dept of Agriculture _____ Other _____

☒ Request 911 tapes and police car video with crime scene log

_____ Employment records requested

_____ Witness Interviews

_____ TRO/Preliminary injunction to preserve evidence

_____ Ante Litem Notice if Govt involved

☒ Confirm CDL Manuals in file for state of wreck, Drivers state, & Trucking Co. state

BACKGROUND CHECK:

_____ Tag registration (county clerk in TN)

_____ Driver history & financial responsibility

_____ Accurant search: _____ Plaintiff _____ Defendant _____ Company _____ Hoovers.com

_____ Secretary of State records for company

_____ Computer criminal docket check: _____ Plaintiff _____ Defendant

_____ Google Alert on Defendant company

_____ Defendant company website (print all pages)

_____ Search Plaintiff/Defendant: _____ Facebook _____ MySpace _____ LinkedIn _____ Twitter

MEDICAL RECORDS:

_____ **Death Cases:** Always get coroner's report, autopsy, and funeral home file

_____ Emergency Room: _____

_____ Emergency room doctors: _____

_____ X-rays, MRIs, or other diagnostic tests _____

_____ Ambulance: _____

_____ Family doctor: _____

_____ Physical therapy: _____

_____ Other doctors: _____

_____ A. _____

_____ B. _____

CSA 2010

HTTP://CSA2010.FMCSA.DOT.GOV/

WHAT YOU NEED TO KNOW

>> Coming Soon...

COMPREHENSIVE SAFETY ANALYSIS 2010 (CSA 2010) is a Federal Motor Carrier Safety Administration (FMCSA) initiative to improve large truck and bus safety and ultimately reduce crashes, injuries, and fatalities.

INSPECTION REPORTS, DATA, AND MEASUREMENT

When CSA 2010 rolls out, the Safety Measurement System (SMS) will replace SafeStat. Every month, SMS will measure the previous two years of roadside violation and crash data and calculate a score in seven safety behavior areas, called BASICs (Behavioral Analysis and Safety Improvement Categories). Recent roadside violations and violations that correlate most with crashes will be weighted more heavily than others. SMS will then rank carriers' scores relative to their peers to determine which entities have specific safety problems.

CSA 2010 ENFORCEMENT PROCESS

MEASUREMENT

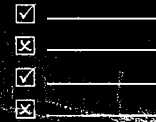
A. On-Road Safety Performance (BASICS)

- Unsafe Driving
- Fatigued Driving (HOS)
- Driver Fitness
- Controlled Substances/Alcohol
- Vehicle Maintenance
- Cargo-Related
- Crash Indicator

B. Intervention Findings

- Essential safety management and fundamental violations

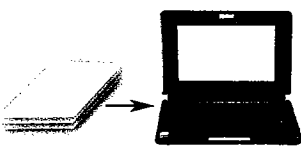
SAFETY EVALUATION



SAFETY FITNESS DETERMINATION

FMCSA is developing a Safety Fitness Determination (SFD) methodology to replace the current system, which is solely dependent on onsite compliance review results. The SFD will expand the use of on-road performance as calculated in the Safety Measurement System and include results of all investigations. It will allow fitness to be determined on a larger segment of the industry.

SAFETY DATA



INSPECTION AND CRASH REPORTS

INTERVENTION

Early Contact:

- Warning letter
- Carrier access to measurement
- Targeted roadside inspection

Investigation:

- Offsite
- Onsite (focused/comprehensive)

Follow-on:

- Cooperative safety plan
- Notice of violation
- Notice of claim
- Operations out-of-service order

SUSPEND OPERATIONS

SAFETY EVALUATION AND INTERVENTION

FMCSA and State Partners will use measurement results to identify carriers for CSA 2010 interventions. CSA 2010 interventions will offer an expanded suite of tools ranging from comprehensive on-site investigations to warning letters that supplement the labor-intensive compliance review to surgically address the specific safety problems identified. CSA 2010 investigators will be equipped to systematically evaluate why safety problems are occurring, to recommend remedies, to encourage corrective action, and where corrective action is inadequate, to invoke strong penalties. These interventions will provide the information necessary for carriers to understand their safety problems and change unsafe behavior early on.

START



U.S. Department of Transportation
Federal Motor Carrier Safety Administration



CSA 2010: JUST THE FACTS

Carriers will not inherit any of a newly hired driver's past violations. Only those inspections that a driver receives while driving under a carrier's authority can be applied to a carrier's Safety Measurement System Assessment.

All inspections and crashes that a commercial motor vehicle driver receives while under the authority of a carrier will remain part of the carrier's Safety Measurement System data for two years unless overturned through the DataQs system (<https://dataqs.fmcsa.dot.gov>), even if the carrier terminates the driver.

Similar to today's SafeStat, tickets or warnings that commercial motor vehicle drivers receive while operating their personal vehicles do not count in the new Safety Measurement System.

If a carrier or commercial motor vehicle driver finds any violations in his or her crash or roadside inspection reports that are not listed in the Safety Measurement System (SMS) Methodology severity tables, then they do not count towards the carrier's or driver's SMS data.

The Federal Motor Carrier Safety Administration (FMCSA) regulates all carriers that are over 10,000 pounds and travel interstate. FMCSA also regulates carriers that haul hazardous materials intrastate. These are the carriers that are affected by Comprehensive Safety Analysis 2010 (CSA 2010).

While research was recently released stating that a driver's body mass index (BMI) is a risk factor for identifying sleep apnea, neither the Federal Motor Carrier Safety Administration (FMCSA) nor the Comprehensive Safety Analysis 2010 (CSA 2010) program currently has any rules that restrict who can be a commercial motor vehicle driver based on BMI or weight.

Carriers and commercial motor vehicle drivers do not need to register for Comprehensive Safety Analysis 2010 (CSA 2010) nor is there any kind of mandatory training requirement. However, it is in carriers' and drivers' best interests to be informed about CSA 2010 and what it will mean for them. CSA 2010 is primarily focused on helping FMCSA improve its enforcement operations.

Comprehensive Safety Analysis 2010 (CSA 2010) has not changed any of the Federal Motor Carrier Safety Administration (FMCSA) regulations. There is one rule that FMCSA is trying to change as part of CSA 2010. The carrier safety rating process that determines whether FMCSA will deem a carrier Unfit is currently in rulemaking to potentially change to a new process called Safety Fitness Determination.

The data kept by a State (i.e. tickets, citations, written warnings, convictions) and the data that is kept in the Safety Measurement System (SMS) (i.e. violations from roadside inspection and crash reports) are separate. This data must be assessed and, if necessary, corrected under separate processes. All data in the SMS can be verified in the DataQs system (<https://dataqs.fmcsa.dot.gov>).



CSA 2010: JUST THE FACTS

Comprehensive Safety Analysis 2010 (CSA 2010) does not give the Federal Motor Carrier Safety Administration (FMCSA) the authority to remove 175,000 drivers from their jobs and cannot be used to rate drivers or to revoke a Commercial Driver's License (CDL). FMCSA does not have the authority to take those actions. Only State agencies responsible for issuing licenses, CDL or otherwise, have the authority to suspend them.

Comprehensive Safety Analysis 2010 (CSA 2010) does introduce a driver safety assessment tool to help enforcement staff evaluate drivers' safety as part of motor carrier investigations. Using the new Safety Measurement System (SMS), the Federal Motor Carrier Safety Administration (FMCSA) continues to hold motor carriers responsible for the job performance of those who work for them. Therefore, motor carriers are held accountable for their drivers' errors such as speeding. This is a longstanding FMCSA position and is not unique to CSA 2010 or the new SMS.

Carriers who are considering hiring drivers can review "Driver Profiles" if the drivers have authorized the release of their information. These profiles are compiled from the Federal Motor Carrier Safety Administration's (FMCSA) Driver Information Resource (DIR) and will be available to carriers through FMCSA's new Pre-Employment Screening Program (PSP). Drivers can view their own profiles. PSP is only available as a pre-screening tool and not for use in evaluating current drivers. PSP was mandated by Congress and is not a part of Comprehensive Safety Analysis 2010 (CSA 2010).

Potentially erroneous violations on carrier/driver records can be submitted for review. The DataQs system (<https://dataqs.fmcsa.dot.gov>), which does not change under Comprehensive Safety Analysis 2010 (CSA 2010), allows motor carriers and drivers to make a Request for Data Review (RDR) of information that resides in Federal Motor Carrier Safety Administration (FMCSA) databases such as crash and inspection reports.

While some third party vendors are developing and marketing Comprehensive Safety Analysis 2010 (CSA 2010) driver scorecards, consumers should know that these companies do not have access to the driver violation histories in the Federal Motor Carrier Safety Administration (FMCSA) databases despite some claims that they do. FMCSA has not and will not validate any vendors' scorecards or data. Also, keep in mind that the Safety Measurement System (SMS) is subject to change prior to its launch in response to the test results.

The Safety Measurement System (SMS) assesses a carrier's safety performance on the basis of its roadside violations and crashes. SMS uses a subset of these violations and crashes to evaluate an individual driver's safety performance across employers. Appendix A of the SMS Methodology (<http://csa2010.fmcsa.dot.gov/Documents/SMSMethodology.pdf#nameddest=T1>) shows a complete table of the violations used and indicates whether a given violation is used in the Driver SMS. Drivers and carriers authorized by a driver to conduct pre-employment screening can view three years of inspection data and five years of crash data through the Pre-employment Screening Program (PSP) <http://www.psp.fmcsa.dot.gov/Pages/FAQ.aspx>.



Motor Carrier Early Intervention: The Warning Letter

This SAMPLE warning letter is the version being mailed to motor carriers during the CSA 2010 Operational Model Test as of January 1, 2010. The language in the warning letter may be revised in the future.



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Month, date, year

In reply, refer to:

USDOT Number: **[DOT NUMBER]**

PIN: **[Carrier PIN]**

[Carrier Name]

[Carrier Address]

[Carrier Address]

Dear Motor Carrier:

A review of your company's motor carrier safety data suggests the performance of **[Carrier Name]** to be unacceptable in the area(s) of **[Failed BASICS List]**. Your company's safety data record shows a lack of compliance with motor carrier safety rules and regulations. The purpose of this letter is to inform you of your company's current safety deficiencies, explain how you can view your safety record, correct if it contains erroneous data and describe what actions may be taken in the future if your safety performance does not improve.

This review was based on the roadside inspection and crash performance of **[Carrier Name]**. Based upon this review, the Federal Motor Carrier Safety Administration (FMCSA) has opened a case file regarding your company and will continue to assess the regulatory compliance of **[Carrier Name]**. Your performance will also be evaluated via roadside inspections that focus on the deficient area(s). Failure to improve your company's safety performance will result in further investigation of your safety management practices, which may include requests for additional data through offsite or onsite investigations.

You are encouraged to review your company's record at the following website: TBD. This website also contains instructions for requesting corrections to information that you believe to be incorrect. If you have difficulties accessing the web site, please call (XXX) XXX-XXXX.

We urge you to take seriously this warning letter, and we are confident that you will take appropriate steps to improve your safety record. However, if we see continued poor safety performance by your company, there may be future enforcement actions taken against your company.

You can find information about motor carrier safety rules and regulations on the FMCSA website: <http://www.fmcsa.dot.gov/>. If you have additional questions regarding this matter, please call our division office for your state of domicile at **[Division Office Phone number]**.

Sincerely,

John Van Steenburg
Director, Office of Enforcement and Compliance

Warning Letter Frequently Asked Questions

Warning letters are an important part of the Comprehensive Safety Analysis 2010 (CSA 2010) interventions process. They provide early contact with carriers who have identifiable, but not yet severe, safety problems. A motor carrier representative of one company that received a warning letter in the Operational Model (Op-Model) Test advises other carriers to gain a strong understanding of CSA 2010 now "so they can talk to their office staff; talk to their drivers; lay down the consequences for driver performance; and work to be compliant." The following are some of the most frequently asked questions about warning letters.

Q. What is CSA 2010?

- A.** CSA 2010 is a Federal Motor Carrier Safety Administration (FMCSA) initiative to improve large truck and bus safety and ultimately reduce commercial motor vehicle (CMV)-related crashes, injuries, and fatalities.

this first level of intervention will receive a warning letter. Warning letters will be deployed beginning in late 2010.

Q. Will FMCSA send warning letters to drivers or only to carriers?

- A.** At present, only carriers receive warning letters if their SMS score becomes deficient in any Behavior Analysis and Safety Improvement Category (BASIC). FMCSA does not have plans at this time to directly contact drivers.

Q. What are warning letters?

- A.** Warning letters are an important element of the CSA 2010 interventions process, which also includes Offsite, Onsite Focused, and Onsite Comprehensive Investigations. CSA 2010's suite of tools will enable Federal and State enforcement staff to select carrier interventions according to the nature and severity of a carrier's safety problems. CSA 2010's array of interventions starts with the warning letter, the earliest contact designed to address the least severe safety problems. The warning letter is designed to make carriers aware of their safety performance issues so they can address these early, before they become habitual and more difficult to correct.

CSA 2010 INTERVENTIONS

Early Contact

- **Warning Letter**
- **Carrier Access to Safety Data and Measurement**
- **Targeted Roadside Inspection**

Investigation

- **Offsite Investigation**
- **Onsite Investigation – Focused**
- **Onsite Investigation – Comprehensive**

Follow-on

- **Cooperative Safety Plan**
- **Notice of Violation**
- **Notice of Claim**
- **Operations Out-of-Service Order**

Q. What will warning letters say?

- A.** Warning letters will notify carriers of their safety issues, provide instruction on how to view their safety information online, and warn them that failure to correct safety problems will result in future contact by FMCSA. Warning letters will provide motor carriers with an opportunity to examine their data for accuracy and to file any appropriate requests for data review.

Q. Who will get a warning letter and when?

- A.** Motor carriers that are identified through the new CSA 2010 Safety Measurement System (SMS) as requiring

Q. Will all carriers with safety deficiencies receive a warning letter?

- A.** No. Motor carriers who are identified as having significant safety problems in the SMS will receive an Offsite or Onsite Investigation depending on the deficient BASICs. They will not necessarily receive a warning letter beforehand.

Q. How are warning letters working in the Op-Model Test States?

- A.** Between February 2008 and June 30, 2010, more than 6,500 warning letters were sent in the nine Op-Model Test States. Over one-half of those carriers logged into the website to view their safety-performance information. Moreover, several carriers sent letters detailing their corrective actions or sought guidance from Division Office personnel in

response to the warning letters. A motor carrier representative in the Op-Model Test observed, "Getting the warning letter was quite shocking; we immediately sent messages out to our drivers explaining the changes and did one-on-one training to make them aware of the deficiencies and how to become compliant. This has been good — everyone has stepped up to the plate and we are already seeing safety improvements."



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

CMV Driver Frequently Asked Questions

Under CSA 2010, CMV carrier and driver safety performance records will be more important than ever and all safety-based violations from roadside inspections will count, not just OOS violations. Drivers should know what CSA 2010 will mean for them and how they can prepare for this important, new safety program.

Q. Why does FMCSA's new CSA 2010 program emphasize driver safety enforcement?

A. Studies have shown that unsafe driver behavior, both on the part of CMV drivers and other drivers, is a major contributor to CMV-related crashes. Some studies indicate that a small segment of the CMV driver population is involved in a disproportionately large number of crashes. As a result, during the CSA 2010 Operational Model Test, FMCSA expanded its approach to identifying and addressing unsafe drivers during interventions with motor carriers.

Q. Can you describe the CSA 2010 driver safety enforcement process?

A. The driver safety enforcement process provides FMCSA with the tools to identify CMV drivers with safety performance problems and to verify and address the issues. The new tools enable Safety Investigators (SIs) to identify drivers with poor safety histories who work for carriers that have been identified as requiring a CSA 2010 investigation. If the investigation results verify the driver violation(s), FMCSA takes an enforcement action against that driver, such as a Notice of Violation (NOV) or a Notice of Claim (NOC).

Q. What kinds of driver safety performance data is CSA 2010 looking at?

A. The new program focuses on driver enforcement for serious rule violations, such as:

- Driving while disqualified
- Driving without a valid commercial driver's license
- Making a false entry on a medical certificate
- Committing numerous Hours-of-Service violations

Q. Do tickets or warnings that drivers receive while operating their personal vehicles impact the new SMS?

A. No. Tickets or warnings that drivers receive while operating their personal cars are State citations and do not count in the new measurement system. SMS only uses violations of FMCSA's regulations, and those regulations only apply to people driving large CMVs. In measuring on-road safety performance, SMS uses all safety-based violations documented at roadside inspections as well as State-reported crashes.

Q. Will CSA 2010 assign safety ratings to individual CMV drivers? I heard that CSA 2010 is designed to rate CMV drivers and to put many of them out of work this summer.

A. No. Under CSA 2010, individual CMV drivers will not be assigned safety ratings or Safety Fitness Determinations (SFDs). Consistent with the current safety rating regulations (49 CFR part 385), individual drivers who operate independently as a "motor carrier" (i.e. have their own USDOT number, operating authority, and insurance) will continue to be rated as a motor carrier, as they are today, following an onsite investigation at their place of business. CSA 2010 is designed to meet one overriding objective: to increase safety on the Nation's roads. Therefore, it is, by design, a positive program for drivers and carriers with strong safety performance records. CSA 2010 sends a strong message that drivers and carriers with poor safety performance histories need to improve.

Q. What is the Pre-Employment Screening Program (PSP) and when does it start?


A. PSP is a new FMCSA program mandated by Congress that is designed to assist the motor carrier industry in assessing individual operators' crash and serious safety violation history as a pre-employment condition. The program is voluntary. It is not part of CSA 2010. For more information about PSP, visit FMCSA's PSP website at <http://www.psp.fmcsa.dot.gov>.

Q. What is the detailed process for drivers to contest information contained in their FMCSA driver records?

A. Drivers should use FMCSA's DataQs system to make a Request for Data Review (RDR) in FMCSA databases. To do this, drivers can go to the DataQs registration page at <https://dataqs.fmcsa.dot.gov/login.asp>, select "Register Online" as a general public user, and create a DataQs account profile. Once registered, drivers can request a review of their data by following detailed instructions in the help menu. The Agency is in the process of improving the DataQs Website to make the process of requesting a data review more apparent to drivers.



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

 U.S. Department of Transportation Federal Motor Carrier Safety Administration			<h2 style="text-align: center;">Safety Certification for Application</h2> <p style="text-align: center;">(Safety Certification for Application for U.S. DOT Number)</p>					
1. NAME OF MOTOR CARRIER				2. TRADE OR D.B.A. (DOING BUSINESS AS) NAME				
3. PRINCIPAL STREET ADDRESS/ROUTE NUMBER				4. MAILING ADDRESS (P O BOX)				
5. CITY	6. STATE/PROVINCE	7. ZIP CODE+4	8. MAILING CITY	9. STATE/PROVINCE	10. ZIP CODE+4			
11. PRINCIPAL PHONE NUMBER			12. PRINCIPAL FAX NUMBER					
13. USDOT NO.	14. MC OR MX NO.	15. DUN & BRADSTREET NO.	16. IRS/TAX ID NO. EIN# SSN#		17. INTERNET E-MAIL ADDRESS			
18. SAFETY CERTIFICATIONS (Applicants subject to FMCSRs must complete certification item(s) 18A through 18C).								
A. Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards, and the Hazardous Materials Regulations (if a property carrier transporting hazardous materials), understands and will comply with such regulations, and has ensured that all company personnel are aware of the current requirements.						Yes <input type="checkbox"/> No <input type="checkbox"/>		
B. Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States.								
1. Driver qualifications:								
a) The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver and procedures for identifying drivers who are not complying with the safety regulations.						Yes <input type="checkbox"/> No <input type="checkbox"/>		
b) The carrier has procedures in place to review drivers' employment and driving histories for at least the last 3 years to determine whether or not the individual is qualified and competent to drive safely.						Yes <input type="checkbox"/> No <input type="checkbox"/>		
c) The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.						Yes <input type="checkbox"/> No <input type="checkbox"/>		
d) The carrier will ensure that all of its drivers are at least 21 years of age and if applicable possess a valid Commercial Drivers License (CDL).						Yes <input type="checkbox"/> No <input type="checkbox"/>		
2. Hours of Service:								
a) The carrier has in place a recordkeeping system and procedures to monitor the hours-of-service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring compliance with all operations requirements.						Yes <input type="checkbox"/> No <input type="checkbox"/>		
b) The carrier has ensured that all drivers are knowledgeable of the hours-of-service requirements, and has clearly and specifically instructed the drivers concerning their responsibility to comply with applicable 10/11, 14/15, and 60/70-hour rules as well as the requirement for preparing daily log entries in their own handwriting for each 24-hour period.						Yes <input type="checkbox"/> No <input type="checkbox"/>		
3. Drug and alcohol testing:								
a) The carrier is familiar with the alcohol and controlled substance testing requirements of 49 CFR part 382 and 49 CFR part 40 and has in place a program for systematic testing of drivers.						Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>		
4. Vehicle condition:								
a) The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.						Yes <input type="checkbox"/> No <input type="checkbox"/>		
b) The carrier will ensure that all violations and defects noted on inspection reports are corrected before vehicles and drivers are permitted to continue operation.						Yes <input type="checkbox"/> No <input type="checkbox"/>		
5. Accident monitoring program:								

a) The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15.	Yes <input type="checkbox"/> No <input type="checkbox"/>
b) The carrier has established an accident countermeasures program and driver training program to reduce accidents.	Yes <input type="checkbox"/> No <input type="checkbox"/>
6. Production of records:	
a) The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized Federal or State official.	Yes <input type="checkbox"/> No <input type="checkbox"/>
7. Hazardous Materials (to be completed by carriers of hazardous materials only).	
a) The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations and has established programs for the thorough training of its personnel as required under 49 CFR part 172, Subpart H, and 49 CFR 177.816.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
b) The carrier has established a system and procedures for inspection, repair and maintenance of its reusable hazardous materials packages (cargo tanks, portable tanks, cylinders, intermediate bulk containers, etc.) in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT Hazardous Materials Regulations.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
c) The HM carrier has established a system and procedures for filing and maintaining HM shipping documents.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
d) The HM carrier has a system in place to ensure that all HM trucks are marked and placarded as required by 49 CFR part 172, Subparts D and F.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
e) The carrier will register under 49 CFR part 107, Subpart G, if transporting any quantity of hazardous materials requiring the vehicle to be placarded.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
8. For Cargo Tank (CT) Carriers of HM	
a) The carrier has a system in place to ensure that its cargo tanks are inspected and tested as required by 49 CFR 180 by a facility registered with the U.S. DOT under part 107, Subpart F.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding to assess civil penalties and/or lead to the revocation of the authority granted.	
C. All applicants must certify as follows:	
1. Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.	Yes <input type="checkbox"/> No <input type="checkbox"/>
2. Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the U.S. Department of Transportation, including the Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and Hazardous Materials Regulations, within 48 hours of any written request.	Yes <input type="checkbox"/> No <input type="checkbox"/>
3. Applicant is not presently disqualified from operating commercial vehicles in the United States pursuant to the Motor Carrier Improvement Act of 1999 or any other law.	Yes <input type="checkbox"/> No <input type="checkbox"/>
NOTE: All motor carriers must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States. Such requirements include, but are not limited to, all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by a State agency operating a plan pursuant to Section 18 of the Occupational Safety and Health Act of 1970 ("OSHA State plan agency"). Such requirements also include all applicable statutory and regulatory environmental standards and requirements administered by the U.S. Environmental Protection Agency or a State, local or tribal environmental protection agency. Compliance with these statutory and regulatory requirements may require motor carriers and/or individual operators to produce documents for review and inspection for the purpose of determining compliance with such statutes and regulations.	
19. Certification Statement (to be completed by an authorized official) I, _____, certify that I am familiar with the Federal Motor Carrier Safety Regulations and/or the Federal Hazardous Materials Regulations. Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true, correct, and complete. <div style="display: flex; justify-content: space-between; margin-top: 10px;"> Signature _____ Date _____ Title _____ </div>	

DISCOVERY CHANGES TO CONSIDER

Interrogatories:

1. Are you a participant/member of the Pre-Employment Screening Program (PSP), and if so state
 - a) If you ran a check on your driver, state the date of the first check, and the date of each subsequent check.
 - b) State what each check of the PSP on your driver revealed.
2. Are you a participant in CSA 2010?
3. Have you been found deficient in any BASIC (**Behavior Analysis and Safety Improvement Categories**) category by the FMCSA? If so state the date of each such deficiency and list by each such date all BASIC categories in which you were found deficient. State all steps you have taken, since being found deficient, to correct the deficiency and whether the deficiency has been corrected.

Admissions:

4. Do you admit that a violation of a BASIC (**Behavior Analysis and Safety Improvement Categories**) category can lead to a crash?
5. Do you admit that any violation of BASIC (**Behavior Analysis and Safety Improvement Categories**) category is unsafe?
6. Do you admit that these are the seven BASICS and their corresponding Code of Federal Regulations (CFR) parts?
 - a) Unsafe Driving (CFR Parts 392 & 397)
 - b) Fatigued Driving (Hours-of-Service (HOS)) (CFR Parts 392 & 395)
 - c) Driver Fitness (CFR Parts 383 & 391)
 - d) Controlled Substances/Alcohol (CFR Parts 382 & 392)
 - e) Vehicle Maintenance (CFR Parts 393 & 396)
 - f) Cargo-Related (CFR Parts 392, 393, 397 & Hazardous Materials)
 - g) Crash Indicator (Reportable Crashes)
7. Do you admit that your driver was in violation of one of the BASICS at the time of the collision in this case?

Request for Production:

1. Produce any of the following documents you or your driver has received from the FMCSA/DOT:
 - a) warning letter,
 - b) the results from any targeted roadside inspection,
 - c) the results from any off-site investigation,

- d) the results from any on-site investigation,
- e) any cooperative safety plan,
- f) any notice of violation,
- g) any notice of claim/settlement agreement, and
- h) any notice you received that stated you or your driver were unfit.

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 09 CVS _____

JANE DOE,
Administrator of the Estate of John
Doe. (deceased),

Plaintiff,

v.

TRUCK DRIVER,

Defendant.

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT**

**TO: DEFENDANT _____
SERVED WITH COMPLAINT**

The undersigned hereby serves upon you the following written Interrogatories and Requests for Production of Documents under the provisions of *Rules 26, 33 and 34 of the North Carolina Rules of Civil Procedure*.

Pursuant to *Rule 33 of the North Carolina Rules of Civil Procedure* you are required to have these Interrogatories answered separately and fully in writing under oath and to serve a copy of your answers on the undersigned within the time provided by *Rule 33*.

Pursuant to *Rule 34 of the North Carolina Rules of Civil Procedure*, you are requested to produce for copying those documents and records requested to be attached to these Requests for Production at the Law Offices of Davis Law Group, P.A., 1 North Pack Square, Ste. 412, Asheville, NC 278801 within the time provided by *Rule 34*, or in the alternative, to provide copies of all the

documents to Davis Law Group, P.A. within the time required by the *Rules of Civil Procedure*.

These discovery requests shall be continuing in nature until the day of trial, and you are required to serve supplemental responses as additional information may be found or is made available to you as required by *Rule 26* of the *Rules of Civil Procedure*.

I. DEFINITIONS

PLEASE NOTE: The following definitions govern, and must be consulted in order to respond properly to, the following Interrogatories and Requests for Production.

A. **"Complaint"** refers to the complaint in this captioned action.

B. **"You"** shall be defined to refer to the Defendant to whom this set of discovery materials is addressed. Wherever a question refers to the contentions, knowledge, or awareness of "you", "you" is defined to include Defendant _____ and your agents, employees, representatives and attorneys.

C. **"The subject vehicle"** shall be defined to refer to the vehicle operated by the Defendant _____ described in the Complaint.

D. **"The collision"** shall refer to the vehicular collision which is the subject of this lawsuit.

E. **"Document"** is used in its customary broad sense to mean, by way of illustration, and not by way of limitation:

1. All written, printed, typed, recorded or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive

possession, custody or control of defendant, or defendant's attorneys, including but not limited to all writings, letters, minutes, bulletins, correspondence, telegrams, memoranda, notes, instructions, literature, work assignments, notebooks, records, agreements, contracts, notations of telephone or personal conversations or conferences, intra and out of office communications, microfilm, circulars, pamphlets, advertisements, catalogues, studies, notices, summaries, reports, books, invoices, graphs, photographs, drafts, data sheets, data compilations, computer data sheets, computer data compilations, work sheets, statistics, speeches and other writings, tape-recordings, transcripts of tape-recordings, phonograph records, data compilations from which information may be obtained or can be translated through detection into reasonably usable form, or any other tangible thing;

2. Originals and all other copies not absolutely identical; and
3. All drafts and notes (whether typed, handwritten or otherwise) made or prepared in connection with such documents, whether used or not.
4. The pronouns "he," "him" or "his" include "she," "her," "hers," and "they" or "theirs" when appropriate.

F. **"Describe with particularity"** means to give a full and complete narrative account of the information requested without omission of all relevant facts, whether deemed material by the defendant or not, and without omission of

information which could lead to the discovery of admissible evidence, all within the spirit of the discovery rules.

G. **"Identify"**, when used in reference to an individual **person**, shall be read and defined to call for a full and complete description of the **identity** and **location** of the person, to include all such information reasonably available to this answering defendant regarding the person's full name, including any other names by which such person has been known, and his or her present or last known address and phone number.

H. **"Identify"** when used in reference to a business, governmental or other legal **entity** shall be read and defined to call for a full and complete description of the **identity** and **location** of the entity, to include all such information reasonably available to this answering defendant regarding the entity's name and the address and phone number of its principal offices with which you have had contact.

I. **"Identify"** when used in reference to a **document** (as herein below described), shall be read and defined to call for a full and complete description of the **identity, discoverability** and **location(s)** of the document, to include all such information reasonably available to this defendant regarding the date and general nature of the document, the general subject matter(s) of the document's contents, the name and address of the author(s) and recipients, and, if you contend the document to be privileged or otherwise excluded from discovery, your basis for same.

J. **"Identify"** when used in reference to an **unrecorded communication** (as defined herein) shall be read to call for a complete description of the nature and participants of the communication, to include all such information reasonably available to this answering defendant regarding the date and place it was made, the name and address of each and every person who participated in or was witness to the communication; the manner of such conversation or oral communication (i.e.—whether by telephone, face-to-face, etc.); and the verbatim content or a detailed description of the communication.

K. **"Unrecorded Communication"** shall mean any method by which ideas or expressions, whether articulated or nonverbal, are transmitted between persons or entities and shall include by way of illustration, and not by way of limitation, oral statements, conversations, conferences, signs, gestures, and other, non-verbal transmissions of ideas.

L. **"Identify"**, when used referring to a **diagram, drawing plat or other illustration**, shall be read and defined to call for a complete description of the identity and present whereabouts of the item in question, to include all such information reasonably available to this answering defendant regarding the general nature of the item; the subject matter(s); the identity, by name and address, of the present custodians; the date(s) the item was created; and the identities, by name and address, of the creators and collaborators.

M. **"Identify"**, when used referring to an **experiment, test, measurement, inspection or other observation**, shall be read and defined to call for a complete description of the identity and present whereabouts of the item

in question, to include all such information reasonably available to this answering defendant regarding the general nature of the item; the subject matter(s); the identity, by name and address, of the present custodians; the date(s) the item was conducted; and the identities, by name and address, of the participants and witnesses.

N. **"Identify"** when used in reference to a **photograph, film, videotape, audiotape or some other recording**, shall be read and defined to call for a complete description of the identity and whereabouts of the item, to include all such information reasonably available to this answering defendant regarding the date and general nature; the general subject matter(s); and, the identity, by name and address, of the producer(s) and present custodians.

O. **"Identify"**, when used in reference to a **standard, statute or regulation**, or to sets thereof, shall be defined to call for a complete description of the identity and whereabouts of each item, to include all such information reasonably available to this answering defendant regarding the title(s); the date of promulgation or issuance; the issuing or publishing body or entity; a present address for obtaining a copy; and the time period in which the item was in effect.

P. **"Identify"**, when used in reference to an **expert witness**, shall be defined to call for a complete identification and disclosure of opinions and factual basis pursuant to Rule 26(b)(4)(A)(I) by indicating, the witness's full name and business address; the witness's areas of expertise or specialty; the subject matter upon which the witness is expected to testify as an expert; the substance

of the facts and opinions to which the expert is expected to testify; and, the grounds for each opinion.

Q. **"Traffic violation"** shall mean any violation of the traffic laws of the State of North Carolina as defined in Chapter 20 of the North Carolina General Statutes or any violation of the Federal Motor Carrier Safety Regulations.

II. PRIVILEGE

If any document referred to or identified in response to any Interrogatory or Request for Production would be identified, described, or produced except for the fact that a privilege against such identification, description, or production is claimed, then please prepare a Privilege Log and set forth for each such document:

- a. Its date, title, type of document, and its length;
- b. Its writer, preparer, sender, addressee and every person receiving copies;
- c. A general description of its subject matter;
- d. The exact grounds on which the objection to production is based;
- e. The identity of all persons, in addition to those identified as required by section (b), supra, known to you who have seen the document;
and
- f. The identity of the person now in possession of the document.

III. DOCUMENTS NO LONGER IN EXISTENCE OR NO LONGER UNDER POSSESSION, CUSTODY OR CONTROL

If any document referred to or identified in response to in any Interrogatory or Request for Production, was at one time in existence and under defendant's or

defendant's attorneys' possession, custody or control, but has been lost, discarded or destroyed, or has been removed from defendant's or defendant's attorneys' possession, custody or control, then with respect to each such document:

- a. Identify and describe such document by date, title, and type of document;
- b. State when each such document was most recently in the possession or subject to the control of defendants, or defendant's attorneys, and what disposition was made of such document, including an identification of the person, if any, presently in possession or control of such document;
- c. State when such document was transferred or destroyed, identify the person who transferred or destroyed such document and the persons who authorized or directed that the document be transferred or destroyed or having knowledge of its transfer or destruction and state the reason such document was transferred or destroyed; and
- d. Identify all persons having knowledge of the contents thereof.

INTERROGATORIES

1. Please state your full name, date of birth, and current address.

ANSWER:

2. Have you been correctly designated in the Summons and Complaint in this action? If not, please state your correct name.

ANSWER:

3. List all motor vehicle violations to which you have been found guilty or to which you have pled guilty or responsible or to which you have otherwise paid a fine or penalty, and provide a description of the nature of the offense, the date thereof, the county and state in which the offense occurred, and the disposition of each charge.

ANSWER:

4. List all motor vehicle violations or offenses that you have been charged with, including any violations or offenses involved with the collision which is the subject of this action, which were dropped or dismissed upon furnishing the prosecuting officials with a written communication from your liability insurance company that the damages to the injured party or other driver's vehicle were being paid, that your liability insurance company had accepted responsibility for the collision, or language to that effect.

ANSWER:

5. List all non-motor vehicle criminal charges to which you were found guilty or to which you pled guilty or responsible, and provide a description of each such offense, the date thereof, the county and state in which the offense occurred, and the disposition and jurisdiction of the charge.

ANSWER:

6. If you were performing any duties or acts for any company or entity other than yourself at the time of the subject collision, state the nature of your duties and the name and address of the company or entity for whom you were performing the duties.

ANSWER:

7. If, at the time of the collision, you, the vehicle you were driving, or any other vehicle owned by you were insured through a policy of liability insurance (including umbrella and/or excess coverage), either in your own name or through the name of some other person, state:

- a. The number of each policy and the name of the issuing insurance carrier;
- b. The limits of liability under each policy;
- c. The named insured(s) under each policy; and
- d. The nature and extent of coverage that applies to you or anyone else against the claim made by plaintiff in this lawsuit.

ANSWER:

8. Did the truck involved in the collision which is the subject of this lawsuit have an onboard computer? If so, identify all disks, computer tapes and all other written and/or electronic materials and/or information generated by the use of the on-board computer during the trip on which the collision at issue occurred.

ANSWER:

9. Please describe each communication that you had with someone from an insurance company between the time of the collision at issue and the filing of this lawsuit, including but not limited to the name of the person with whom you spoke, the name of the insurance company, the date of the communication, and the subject matter of the conversation.

ANSWER:

10. Please identify all documents (including but not limited to reports, forms, memoranda, correspondence, and notes) prepared by you relating to the collision with plaintiff on July 18, 2008. This interrogatory does not seek any communications you have had with your attorneys or anyone acting on their behalf. If you object to the interrogatory based upon a privilege, then please prepare a Privilege Log pursuant to the instructions on page 6 of this document titled "Privilege."

ANSWER:

11. Please state if you consumed alcohol, drugs and/or any medications, including prescription, over the counter or illegal, in the 24 hours preceding the collision in this case.

ANSWER:

12. Identify all persons known to you who have knowledge of the facts, circumstances, conditions, and events surrounding the collision with plaintiff on July 18, 2008.

ANSWER:

13. State the name and last known address of every witness known to you or to your attorney who has any knowledge regarding the facts and circumstances surrounding this collision, including but not limited to eyewitnesses to the collision.

ANSWER:

14. Identify each person to whom you have made a written or oral statement regarding any of the events surrounding the collision in this case. This interrogatory does not seek any information that would be covered by the attorney client privilege.

ANSWER:

15. Identify all written, recorded and oral statements taken from any person by you or any insurance representative of yours relating to the collision that is the subject of this claim. This interrogatory does not seek any such statements taken by your attorneys or anyone acting on their behalf.

ANSWER:

16. List and describe with particularity each photograph taken by you or any insurance company representative on your behalf of any matter relating to the collision in this case.

ANSWER:

17. If you or your attorney(s) expect to call any person as an expert witness in the issues involved in this case, please state the following:

- a. The name and address of each such person;
- b. The subject matter on which each expert is expected to testify; and
- c. The substance of the facts and opinions to which each such expert is expected to testify.

ANSWER:

18. At the time of the collision that is the subject of this case, if you had access to a mobile communication device, such as a cellular phone, in your vehicle, please state the name of the company who provided the service for your mobile communication device and state your account number with that company.

ANSWER:

19. Did you provide a urine sample for analysis after the wreck and, if not, why not? If so, please state the results of any such analysis and attach a copy of the report to your responses.

ANSWER:

20. Did you receive medical care for any injuries that you received in the collision at issue in this case.

ANSWER:

21. With respect to the rig involved in the collision, give its complete configuration (including at least the following information):

- a. Style of cab;
- b. Weight of tractor;
- c. Empty weight of trailer;
- d. What the load was at the time of the wreck;
- e. The weight of the load at the time of the wreck;
- f. Length, width, and height of the trailer in question;
- g. Licenses held for the tractor;
- h. Licenses held for the trailer;
- i. The speed potential of the rig as configured;
- j. The make and model of the trailer;
- k. The maximum weight recommended to be carried in the trailer by the manufacturer; and
- l. The make(s), model(s) and type(s) of brakes located on the rig at the time of the wreck;

ANSWER:

These Interrogatories are continuing and require supplementation as mandated by the *North Carolina Rules of Civil Procedure*.

REQUESTS FOR DOCUMENTS

1. A copy of all documents identified in your responses to Plaintiff's First Set of Interrogatories to Defendant.

RESPONSE:

2. Any and all photographs that you took that relate to any matter arising out of the collision in this case.

RESPONSE:

3. Any and all experts' reports which have been prepared in connection with this lawsuit or the incident giving rise to this lawsuit, if the expert is expected to or may testify as an expert witness. If any such expert has not prepared a report, request is hereby made that one be prepared and furnished to plaintiff's attorney.

RESPONSE:

4. Any and all expert reports that were or will be relied upon in whole or in part by any testifying expert in this case.

RESPONSE:

5. Any and all work papers, notes and documents in the file of any expert witness who is expected to testify, or in the file of any expert witness who has written a report which is or will be relied upon in whole or in part by a testifying expert.

RESPONSE:

6. A curriculum vita or resume for each individual whom you may call as an expert witness at the trial of this case.

RESPONSE:

7. All documents or tangible things prepared by any expert whom you expect to call as a witness, including but not limited to those which would include his report, factual observations, opinions, conclusions, photographs, field notes, calculations, models and exhibits.

RESPONSE:

8. Any and all insurance agreements or policies under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment which may be rendered in this action or to indemnify or reimburse for payments made to satisfy the judgment, including but not limited to any liability insurance policy covering defendant or the automobile being driven by defendant at the time in question. This request includes insurance policies for excess and/or umbrella coverage.

RESPONSE:

9. Copies of any and all statements previously made by plaintiff concerning the subject matter of this lawsuit, including any written statement signed or otherwise adopted or approved by the plaintiff hereto and any stenographic, mechanical, electrical or other type of recording and any transcription thereof.

RESPONSE:

10. Copies of any and all statements made by you prior to the filing of this lawsuit, including but not limited to any written statement signed or otherwise adopted or approved by you and any stenographic, mechanical, electrical or other type of recording or any transcription thereof. This request does not seek any statement(s) that you have given to your attorneys or anyone acting on their behalf.

RESPONSE:

11. Any and all drawings, maps or sketches of the scene of the collision at issue.

This request does not seek any documents that would be privileged from disclosure by the attorney-client privilege.

RESPONSE:

12. Any and all photographs that were taken by someone on your behalf regarding any matter related to this case. If you object to this request for production based upon a privilege, then please prepare a Privilege Log pursuant to the instructions beginning on page 6 of this document titled "Privilege."

RESPONSE:

13. Copies of any witness statements that relate to the collision in question. If you object to this request for production based upon a privilege, then please prepare a Privilege Log pursuant to the instructions beginning on page 6 of this document titled "Privilege."

RESPONSE:

14. A copy of any movies, videotape or other reproduction of the wreck scene. If you object to this request for production based upon a privilege, then please prepare a Privilege Log pursuant to the instructions beginning on page 6 of this document titled "Privilege."

RESPONSE:

15. Any and all books, documents, photographs, or other tangible things which you contend have a bearing on this cause of action.

RESPONSE:

16. A copy of any documents that you prepared regarding the wreck at issue in this case. This request includes but is not limited to accident reports and/or incident reports, notes, memos, or other written, typed, or electronically mailed material (email). If you object to the request for production based upon a privilege, then please prepare a Privilege Log pursuant to the instructions on page 6 of this document titled "Privilege."

RESPONSE:

17. If prescription or over the counter medications were consumed by you in the 24 hours prior to the collision in this case, please produce copies of any medical records and/or prescriptions related to those medications.

RESPONSE:

18. If you had access to a mobile communication device, such as a cellular phone, in your vehicle, please produce a copy of your monthly statement which included April 10, 2009 daily usage and charges on it. Plaintiff is only seeking a copy of the documents that show the calls and/or messages and/or text messages to and from your mobile communication device that occurred in the one hour before and the one hour after the time of the wreck as it is identified in the collision report (DMV-349) in this case. You are welcome to redact all other data regarding calls outside of this time frame.

RESPONSE:

19. Your complete driving record from each state in which have a drivers license and/or in which you have received a citation from a law enforcement agency.

RESPONSE:

20. Your complete criminal record history for each state where you have received a conviction.

RESPONSE:

21. All maintenance records for the vehicle you were driving at the time of the collision for the six (6) months prior to the collision at issue.

RESPONSE:

22. All training materials, manuals, operating procedures, slides, videotapes, memoranda or other documents reflecting your employer's policy with regard to the safe driving of trucks.

RESPONSE:

23. All reports to public agencies, governmental agencies, and/or other records related to the collision which is the subject of this lawsuit.

RESPONSE:

24. All reports and/or other documents prepared by the North Carolina Department of Transportation regarding the collision at issue in this case, including but not limited to internal reports, memoranda, emails, letters, notes, drawings, etc.

RESPONSE:

25. If you kept a Driver's Daily Log book, then produce all of your Driver's Daily Log Books for the six (6) months before the subject collision including your log book entries on the date of the collision.

RESPONSE:

26. All documents concerning information regarding your log books for the six (6) months immediately prior to the wreck.

RESPONSE:

27. All records concerning the speed of the tractor trailer rig, including any sheets, tapes and/or data recorders (including but not limited to Electronic Control Modules, Air Bag Modules, GPS Tracking Systems, etc.) on the vehicle itself during the time periods the tractor-trailer rig was operated by defendant on the day immediately prior to the collision and on the date of the subject collision.

RESPONSE:

28. All safety meeting minutes and/or records from your employer which relate to the proper operation of tractor-trailer rigs during the six (6) months prior to the collision at issue.

RESPONSE:

29. Any and all safety meeting minutes and/or reports concerning the collision which is the subject of this lawsuit during the six (6) months prior to the collision at issue.

RESPONSE:

30. All measurements of the scene of the wreck which is the subject of this lawsuit.

RESPONSE:

31. All information supplied by the manufacturer or seller of the subject tractor-trailer rig which pertains to the safe operation of the same or similar tractor trailer rig, including videotapes, manuals, pamphlets, brochures, photographs, or other documentation.

RESPONSE:

32. All precautions and/or warnings supplied by the manufacturer or seller of the subject tractor trailer rig which pertain to the safe operation of the same or similar tractor trailer rig, including the avoidance of loss of control and/or entering highways and/or interstates from the side of the road.

RESPONSE:

33. All documents in your possession, custody or control evidencing your efforts to obtain a commercial driver's license, including, but not limited to, the documentation required by 49 C.F.R., Part 383 Subpart E.

RESPONSE:

34. All documents in your possession, custody or control pertaining to any testing pursuant to 49 C.F.R. § 383.93.

RESPONSE: