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Suing a North American Commercial Motor Vehicle Driver and Carrier: United States, Canada and Mexico.

I. Overview: North American Commercial Motor Vehicle Carrier and Operator Statistics.

As of 2009, the United States Department of Transportation issued operational authority to 740,540 motor carriers, comprised primarily of United States carriers, the remaining being Canada based (22,620) and Mexico based (15,014) carriers. Of the Mexico based carriers, only 7,342 carriers have OP-1 operational authority, meaning that such carriers may freely engage in interstate commerce within the entire United States. There are almost 5 million power units and licensed commercial motor vehicle operators in North America.

Out of service rates between North American licensed operators are as follows: United States, 5.9%; Canada 5.3%; and, Mexico, 1.7%. Vehicle out of service rates are reported as follows: United States, 22.2%; Mexico, 17.3%; and, Canada, 13.7%. Canada based carriers have been operating in the United States since 1982 with similar statistics during such commerce.

In 1993, Congress approved the NAFTA (North American Free Trade Agreement) which allowed Mexico based commercial motor vehicle carriers' access to border states and eventually the entire United States. Due to safety concerns, the Clinton Administration postponed implementation of the NAFTA provisions concerning Mexico based carriers by limiting access to the United States within certain commercial zones in Arizona, California, New Mexico and Texas. In 2001, the Bush administration implemented NAFTA's provisions allowing Mexico based carriers access outside of the commercial zones into United States interstate commerce.

II. Federal Motor Carrier Safety Regulations: Uniform Requirements.

In part, the Federal Motor Carrier Safety Regulations require that all operators of commercial motor vehicles in the United States are governed by the same safety standards. All

commercial drivers on United States roadways are required (Part 391.11, et. seq.) to comply with the following minimum standards:

(a) A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. A motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.

(b) A driver must meet the following minimum criteria:

1. Be at least 21 years old;
2. Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;
3. Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;
4. Is physically qualified to drive a commercial motor vehicle;
5. Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction.
6. Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by [§391.27](#);
7. Is not otherwise disqualified to drive a commercial motor vehicle under the rules in [§391.15](#); and
8. Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with [§391.31](#), or has presented an operator's license or a certificate of road test which the motor carrier that employs him/her has accepted as equivalent to a road test in accordance with [§391.33](#).

With respect to commercial motor vehicle carriers, the following minimum requirements exist, in part to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner.

The basic safety rules for carriers:

1. Prohibits a commercial motor vehicle driver from having more than one commercial motor vehicle driver's license;

2. Requires a driver to notify the driver's current employer and the driver's State of domicile of certain convictions;
3. Requires that a driver provide previous employment information when applying for employment as an operator of a commercial motor vehicle;
4. Prohibits an employer from allowing a person with a suspended license to operate a commercial motor vehicle;
5. Establishes periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;
6. Establishes testing and licensing requirements for commercial motor vehicle operators;
7. Requires States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard;
8. Sets forth commercial motor vehicle groups and endorsements;
9. Sets forth the knowledge and skills test requirements for the motor vehicle groups and endorsements;
10. Sets forth the Federal standards for procedures, methods, and minimum passing scores for States and others to use in testing and licensing commercial motor vehicle operators; and
11. Establishes requirements for the State issued commercial license documentation.

III. United States and Canadian Commercial Carriers: New Entrant Safety Program.

A commercial carrier must request authority to operate a commercial motor vehicle in interstate operation. A new request for Department of Transportation authority, must comply with the terms and conditions of Part 385, Subpart A, Safety Fitness Procedures. In part, all motor carriers (with the exception of Mexico based operations) seeking authority are deemed a "new entrant" and as such, probationary authority may be issued for an 18 month period. During the 18 month period, a safety audit will be conducted by the Federal Motor Carrier Safety Administration to determine whether a satisfactory safety rating has been achieved.

To meet the safety fitness standard, the motor carrier must demonstrate it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

- (a) Commercial driver’s license standard violations ([Part 383](#)),
- (b) Inadequate levels of financial responsibility ([Part 387](#)),
- (c) The use of unqualified drivers ([Part 391](#)),
- (d) Improper use and driving of motor vehicles ([Part 392](#)),
- (e) Unsafe vehicles operating on the highways ([Part 393](#)),
- (f) Failure to maintain accident registers and copies of accident reports ([Part 390](#)),
- (g) The use of fatigued drivers ([Part 395](#)),
- (h) Inadequate inspection, repair, and maintenance of vehicles ([Part 396](#)),
- (i) Transportation of hazardous materials, driving and parking rule violations ([Part 397](#)).
- (j) Violation of hazardous materials regulations (Parts 170 through 177), and
- (k) Motor vehicle accidents and hazardous materials incidents.

As of December 16, 2009, the FMCSR raised the standard for passing the new entrant safety program (Part 385.301, Subpart D). The FMCSA identified 16 regulations that are essential elements of basic safety management controls necessary to operate in interstate commerce and makes a carrier’s failure to comply with any of the 16 regulations an automatic failure of the safety audit. The purpose of the strengthened regulations are to identify at-risk new entrant carriers and ensure deficiencies in basic safety management are corrected before permanent registration is granted. Such strengthened regulations include:

Table to § 385.321(b)	
Violations That Will Result in Automatic Failure of the New Entrant Safety Audit	
Violation	Guidelines for Determining Automatic Failure of the Safety Audit
1. § 382.115(a)/§ 382.115(b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).	Single occurrence.
2. § 382.201—Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.	Single occurrence.
3. § 382.211—Using a driver who has refused to	Single occurrence.

submit to an alcohol or controlled substances test required under part 382.	
4. § 382.215—Using a driver known to have tested positive for a controlled substance.	Single occurrence.
5. § 382.305—Failing to implement a random controlled substances and/or alcohol testing program.	Single occurrence.
6. § 383.3(a)/§ 383.23(a)—Knowingly using a driver who does not possess a valid CDL.	Single occurrence.
7. § 383.37(a)—Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle.	Single occurrence.
8. § 383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.	Single occurrence. This violation refers to a driver operating a CMV as defined under § 383.5.
9. § 387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.	Single occurrence.
10. § 387.31(a)—Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility.	Single occurrence.
11. § 391.15(a)—Knowingly using a disqualified driver.	Single occurrence.
12. § 391.11(b)(4)—Knowingly using a physically unqualified driver.	Single occurrence. This violation refers to a driver operating a CMV as defined under § 390.5.
13. § 395.8(a)—Failing to require a driver to make a record of duty status.	Requires a violation threshold (51% or more of examined records) to trigger automatic failure.
14. § 396.9(c) (2)—Requiring or permitting the operation of a commercial motor vehicle declared	Single occurrence.

"out-of-service" before repairs are made.	
15. § 396.11(c)—Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again.	Single occurrence

IV. Standards Concerning Mexico Based Carriers.

All Mexico based carriers must comply with Subpart B, 385.101, which provides provisional operating authority, either within certain border areas (commercial zones) or outside of such areas. Provisional operating authority will be revoked as a result of failure to ensure basic safety management controls. All Mexico based carriers are subject to a safety oversight program ensuring compliance with the Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and Hazardous Materials Regulations. In part, such rules require that each Mexico based commercial motor vehicle undergo an inspection by a United States inspector, receive and display a compliance sticker and a safety audit and compliance audit within 18 months of provisional authority.

An expedited audit or compliance action may be ordered against a Mexico based carrier if any of the following occur:

1. Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor. An invalid Licencia Federal de Conductor includes one that is falsified, revoked, expired, or missing a required endorsement.
2. Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria, without making the required repairs.
3. Involvement in, due to carrier act or omission, certain hazardous material incident(s) within the United States.
4. Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.
5. Operating within the United States a motor vehicle that is not insured as required by [part 387](#).
6. Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

7. Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's provisional operating authority or provisional Certificate of Registration until the required showing of corrective action is submitted to the FMCSA.

However, a satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a safety audit or compliance review, as appropriate, during the provisional registration period.

During the provisional registration period, Mexico based carriers are subject to the same safety audit and compliance review as other registrants. A specific concern as to safety protocols and carrier management are the benchmark of the Mexico based carrier safety system. A satisfactory rating is mandatory to continued operation in the United States. A conditional rating will initiate a revocation process at the end of the 18 month probationary period, whereas an unsatisfactory rating will trigger an immediate suspension and revocation period. If, at the end of this 18-month period, the carrier's most recent safety audit or safety rating was satisfactory and no additional enforcement or safety improvement actions are pending, the Mexico-domiciled carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

After the Mexico based carrier receives permanent authority, all fleet vehicles operating in the United States must display a valid Commercial Vehicle Safety Alliance inspection decal. In addition, all Mexico based carriers must create a drug and alcohol testing program, system of compliance with United States federal hours of service requirement, adequate data and safety management systems.

V. Minimum Insurance Requirements: Part 387.7.

No motor carrier shall operate a commercial motor vehicle on United States roadways without minimum insurance coverage. All policies of insurance shall be binding and valid, cancellable by the insurer or insured with 35 days written, advance, notice. However, a Mexico based carrier may obtain insurance coverage for periods of 24 hours or more provided operation solely within border municipalities or commercial zones. If such interim policies are obtained, Mexican carriers must have the following available for inspection in each of its vehicles:

1. Certificate of Registration;
2. Required insurance endorsement (MCS-90);
3. Insurance identification information clearly identifying effective and termination date and time, as well as insurer information.

As of December 16, 2009, non-North American-domiciled private and for-hire motor carriers shall file evidence of financial responsibility with the FMCSA in accordance with the requirements of subpart C, 387.301 et seq.

Schedule of limits (Public liability)

Type of carriage	Commodity transported	January 1, 1985
(1) For-hire (In interstate or foreign commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Property (nonhazardous).	\$ 750,000
(2) For-hire and Private (In interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8 , transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2 and 1.3 materials. Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403 .	\$5,000,000
(3) For-hire and Private (In interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,001 or more pounds).	Oil listed in 49 CFR 172.101 ; hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101 , but not mentioned in (2) above or (4) below.	\$1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,001 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403 .	\$5,000,000

Pursuant to the terms and conditions of Part 387.11, the issuance of a policy of insurance or surety bond is only effective if the insurer is legally qualified (Part 387.315):

1. To issue such policies or bonds in each State in which the motor carrier operates; or,

2. To issue such policies or bonds in the State in which the motor carrier has its principle place of business AND is willing to designate a person upon whom legal process may be made; or,
3. To issue such policies or bonds in any State, is eligible as an excess lines carrier AND is willing to designate a person upon whom legal process may be made.

For United States and Canada based carriers, each must file an official designation of persons upon whom service of legal process may be made. Part 366.1, et seq. Designations shall be made on Form BOC-3, Designation of Agent for Service of Process. Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier or broker at its principal place of business. All persons (as defined at 49 U.S.C. 13102(16)) designated must reside or maintain an office in the State for which they are designated. If a State official is designated, evidence of his willingness to accept service of process must be furnished. Every motor carrier (of property or passengers) shall make a designation for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier (including private carriers) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed. Every broker shall make a designation for each State in which its offices are located or in which contracts will be written.

VI. How to Initiate a Complaint Against a North American Carrier and its Driver.

1. Log on to the Federal Motor Carrier Safety Administration website at www.fmcsa.dot.gov
2. Under Registration & Licensing, click the Registration & Assistance link.
3. Under Find a Company's Status, click USDOT Number/Name.
4. Enter Safety and Fitness Electronic Records System (SAFER), <http://safer.fmcsa.dot.gov>
5. Click Company snapshot. User may search by DOT number, MC/MX Number or Carrier Name.
6. If searching by carrier name, enter value and select possible keyword match.
7. Company snapshot will display corporate information, inspections/crashes/safety rating and insurance.
8. Select insurance and download FMCSA filings.
9. Insurance carrier information will display, along with policies and registered/process agent.
10. Select registered/process agent and state in which crash or carrier is based.

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Federal Motor Carrier Safety Administration

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The Federal Motor Carrier Safety Administration (FMCSA) is focused on reducing crashes, injuries, and fatalities involving large trucks and buses.

Rules & Regulations More...

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Examples: Medical Form, 391.53, 391

- [Latest Rulemakings and Notices](#)
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 - [Driver Qualification \(Part 391\)](#)
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- [New Company Guidance \(New Entrant\)](#)
- [Process Agent or Insurance Filing](#)
- [Commercial Driver's License \(CDL\)](#)

Safety & Security More...

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- [Search Company Safety Records](#)
 - [Company Safety Snapshot \(SAFER\)](#)
 - [Safety Data Analysis \(A&I Online\)](#)
- [Dispute Safety Data \(DataQs\)](#)
- [Safety Violation and Household Goods Consumer Complaints](#)
- [Hazardous Material Complaint or Cargo Tank Facility Complaint](#)

International Programs More...

- [Guidance for Canada-Based Motor Carriers](#)
- [Guidance for Mexico-Based Motor Carriers](#)
- [Notice of termination of demonstration project](#)

January 4, 2010

Alerts

12/31/09
FMCSA Issues Emergency Order to Arrow Trucking Company

12/04/09
December 16, 2009: Effective Date for New Regulations Affecting Start-up Truck and Bus Companies

12/04/09
December 17, 2009: Effective Date for New Regulations Affecting Intermodal Equipment Providers

New at FMCSA

12/18/09
FMCSA Enforces Safety Compliance for Intermodal Equipment Providers

12/16/09
New Entrant Safety Assurance Process compliance is required by December 16, 2009

12/16/09
FMCSA Raises Safety Requirements for New Truck and Bus Companies

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Motor Carrier Safety Advisory Committee

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- [Drug & Alcohol Testing](#)
- [Medical Program](#)

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- [Large Truck and Bus Crash Facts 2008: Early Release](#)
- [FMCSA's 2010 Analysis, Research and Technology Programs Forum](#)
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- [Safety Technologies](#)
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- [Increasing Safety Belt Use Among CMV Drivers](#)
- [Safety Is Good Business](#)
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- [TACT \(Ticketing Aggressive Cars and Trucks\) Program](#)

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[Overview](#)

Company Registration

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- [What is a USDOT Number?](#)
- [What is Operating Authority?](#)
- [Registration Steps](#)
- [What Forms Do I need?](#)
- [Licensing & Insurance Requirements](#)
- [New Company Requirements \(New Entrant Program\)](#)

How to Register

[Online Registration](#)

[Download Registration Forms](#)

Find a Company's Status

- [By USDOT Number/Name](#)
- [By Operating Authority](#)

Driver Registration

[Commercial Driver's License \(CDL\) Program](#)

Registration & Assistance: USDOT Number/Operating Authority



Help me Register

The step-by-step registration guide helps you:

- Determine if you need a USDOT Number, Operating Authority (MC Number), Hazardous Materials Safety Permit, or Cargo Tank (CT) Number
- Find out what forms and processes you need to complete
- Determine what costs are involved
- Find out which regulations apply to you
- Fill out online forms

Start the [Step-by-Step Registration Guide](#)

Register Now without Help

Go directly to the online registration system to:

- Submit New and/or Additional Registration
- Complete partially completed forms (using your tracking number and PIN)
- Update your registration (biennial update, name changes, etc.)

Start the [Online Registration without Help](#)

Background on Registration

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- [Medical Requirements](#)

Related Registration Information

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- [Educational Materials](#)
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****WARNING**WARNING**WARNING**

WELCOME TO SAFER

The FMCSA Safety and Fitness Electronic Records (SAFER) System offers company safety data and related services to industry and the public over the Internet. Users can search FMCSA databases, register for a USDOT number, pay fines online, order company safety profiles, challenge FMCSA data using the DataQs system, access the Hazardous Material Route registry, obtain National Crash and Out of Service rates for Hazmat Permit Registration, get printable registration forms and find information about other FMCSA Information Systems.

Notice

Due to a system problem, FMCSA Registration and Fine Payments may be unavailable or responding slowly. Work is underway to restore full functionality of these services as soon as possible. We regret any inconvenience that this may be causing.

Enforcement users must now use the FMCSA Portal link to SAFER to access SAFER Enforcement Related Functions.

FMCSA Services

- [FMCSA Registration & Updates](#)
- [Company Safety Profile](#)
- [Company Safety Profile Subscription](#)
- [Online Fine Payment](#)
- [MCMIS Data Dissemination Catalog](#)

SAFER Information

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- [SAFER News](#)
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Out of Service Orders \(OSO\)](#)
- [Cargo Tank](#)
- [Crash Rate & Inspection Out of Service \(OOS\) Rates for Hazardous Materials Safety Permit Program \(Calculated on 01/01/2000\)](#)
- [FMCSA Registration Forms](#)
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Company Snapshot

The *Company Snapshot* is a concise electronic record of a company's identification, size, commodity information, and safety record, including the safety rating (if any), a roadside out-of-service inspection summary, and crash information. The Company Snapshot is available via an ad-hoc query (one carrier at a time) free of charge.

Search Criteria

Users can search by DOT Number, MC/MX Number or Company Name.

USDOT Number MC/MX Number Name

Enter Value:

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Possible Keyword Matches

CARRIER/DBA NAME	LOCATION
<u>DOUG HENNESSY ROADSIDE SERVICES</u>	NISKAYUNA, NY
<u>DOUGLAS P HENNESSY SR</u>	NISKAYUNA, NY
<u>GEORGE HENNESSY HORSE TRANSPORTATION LLC</u>	WELLINGTON, FL
<u>HENNESSY AND SONS TOWING</u>	WAUKON, IA
<u>HENNESSY ASPILAIRE</u>	DEEP RIVER, CT
<u>HENNESSY CONSTRUCTION SERVICES</u>	SAINT PETERSBURG, FL
<u>HENNESSY CONSTRUCTION SERVICES CORP</u>	SAINT PETERSBURG, FL
<u>HENNESSY HOMEBREW EMPORIUM</u>	RENSSELAER, NY
<u>HENNESSY HOMEBREW INC</u>	RENSSELAER, NY
<u>HENNESSY IND INC</u>	LA VERGNE, TN
<u>HENNESSY LOGISTICS INC</u>	NAPANEE, ON
<u>HENNESSY PRODUCTS INC</u>	CHAMBERSBURG, PA
<u>HENNESSY TOWING</u>	WAUKON, IA
<u>HENNESSY TRUCKING</u>	DEEP RIVER, CT
<u>HENNESSY'S SMALL EXCAVATIONS</u>	MT AIRY, MD
<u>HENNESSY'S TRANSPORT LTD</u>	SURREY, BC
<u>J HENNESSY TREE</u>	WALLINGFORD, PA
<u>JAMES F HENNESSY</u>	WAUKON, IA
<u>JOHN HENNESSY</u>	WICHITA, KS
<u>KEVIN PATRICK HENNESSY</u>	MT AIRY, MD
<u>MICHAEL HENNESSY</u>	WAUKON, IA
<u>MICHAEL HENNESSY</u>	WINDSOR, CO
<u>PATRICK B HENNESSY & TIMOTHY H HENNESSY</u>	SOUTH LAKE TAHOE, CA
<u>R HENNESSY LUMBER LTD</u>	BURNS LAKE, BC

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USDOT Number MC/MX Number Name

Enter Value: HENNESSY LOGISTIC

Company Snapshot

HENNESSY LOGISTICS INC

USDOT Number: 1797264

ID/Operations | [Inspections/Crashes](#) | [Safety Rating](#) | [Insurance](#)

Carriers: If you would like to update the following ID/Operations information, please complete and submit form [MCS-150](#) which can be obtained [online](#) or from your State FMCSA office. If you would like to challenge the accuracy of your company's safety data, you can do so using FMCSA's [DataQs](#) system.

Other Information for this Carrier

- ▼ [SafeStat Results](#)
- ▼ [Licensing & Insurance](#)

Carrier and other users: FMCSA provides the Company Safety Profile (CSP) to motor carriers and the general public interested in obtaining greater detail on a particular motor carrier's safety performance than what is captured in the Company Snapshot. To obtain a CSP please visit the [CSP order page](#) or call (800)832-5660 or (703)280-4001 (Fee Required).

For help on the explanation of individual data fields, click on any field name or for help of a general nature go to [SAFER General Help](#).

The information below reflects the content of the FMCSA management information systems as of **01/03/2010**.

Entity Type:	Carrier		
Out of Service (Interstate Only):	No	Out of Service Date:	None
Legal Name:	HENNESSY LOGISTICS INC		
DBA Name:			
Physical Address:	205 JOHN STREET NAPANEE, ON K7R 1R7		
Phone:	(613) 354-5303		
Mailing Address:	205 JOHN ST NAPANEE, ON K7R 1R7		
USDOT Number:	1797264	State Carrier ID Number:	
MC or MX Number:	MC-653930	DUNS Number:	--
Power Units:	4	Drivers:	4
MCS-150 Form Date:	10/26/2009	MCS-150 Mileage (Year):	150,000 (2009)
Operation Classification:			
<input checked="" type="checkbox"/> Auth. For Hire	<input type="checkbox"/> Priv. Pass.(Non-business)	<input type="checkbox"/> State Gov't	
<input type="checkbox"/> Exempt For Hire	<input type="checkbox"/> Migrant	<input type="checkbox"/> Local Gov't	
<input type="checkbox"/> Private(Property)	<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> Indian Nation	

Priv. Pass. (Business)	Fed. Gov't	
Carrier Operation:		
<input checked="" type="checkbox"/> Interstate	Intrastate Only (HM) Intrastate Only (Non-HM)	
Cargo Carried:		
<input checked="" type="checkbox"/> General Freight	Liquids/Gases	Chemicals
Household Goods	Intermodal Cont.	Commodities Dry Bulk
<input checked="" type="checkbox"/> Metal: sheets, coils, rolls	Passengers	Refrigerated Food
Motor Vehicles	Oilfield Equipment	Beverages
<input checked="" type="checkbox"/> Drive/Tow away	Livestock	<input checked="" type="checkbox"/> Paper Products
<input checked="" type="checkbox"/> Logs, Poles, Beams, Lumber	<input checked="" type="checkbox"/> Grain, Feed, Hay	<input checked="" type="checkbox"/> Utilities
<input checked="" type="checkbox"/> Building Materials	Coal/Coke	<input checked="" type="checkbox"/> Agricultural/Farm Supplies
Mobile Homes	Meat	<input checked="" type="checkbox"/> Construction
<input checked="" type="checkbox"/> Machinery, Large Objects	Garbage/Refuse	Water Well
Fresh Produce	US Mail	

[ID/Operations](#) | [Inspections/Crashes](#) | [Safety Rating](#) | [Insurance](#)

Inspection results for 24 months prior to: **01/03/2010**

Total inspections: **7**

Note: Total inspections may be less than the sum of vehicle, driver, and hazmat inspections. Go to [Inspections Help](#) for further information.

Inspections:

Inspection Type	Vehicle	Driver	Hazmat
Inspections	4	7	0
Out of Service	0	0	0
Out of Service %	0%	0%	0%
Nat'l Average % (2007- 2008)	22.27%	6.60%	5.02%

Crashes reported to FMCSA by states for 24 months prior to: **01/03/2010**

Crashes:

Type	Fatal	Injury	Tow	Total
Crashes	0	1	0	1

[ID/Operations](#) | [Inspections/Crashes](#) | [Safety Rating](#) | [Insurance](#)

The Federal safety rating does not necessarily reflect the safety of the carrier when operating in intrastate commerce.

[Carrier Safety Rating:](#)

The rating below is current as of: **01/03/2010**

Review Information:

Rating date:	None	Review Date:	None
Rating:	None	Type:	None

[ID/Operations](#) | [Inspections/Crashes](#) | [Safety Rating](#) | [Insurance](#)

For the most current information on the status of operating authority and insurance for this carrier, go to the [FMCSA Licensing & Insurance site](#).

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Carrier Search

USDOT Number	Prefix	Docket Number	Legal Name	DBA Name	City	State	View Details (Report is PDF)	
1797264	MC	653930	HENNESSY LOGISTICS INC		NAPANEE	ON	HTML	Report

In order to view PDF files, you will need the Adobe® Acrobat® Reader™, a plug-in available from Adobe Systems, Inc. You may obtain this free plug-in at:

<http://www.adobe.com/products/acrobat/readstep2.html> 

Monday , January 04, 2010 at 10:47:03

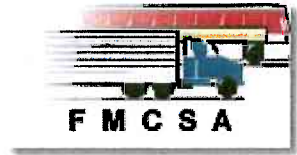
[FMCSA Home](#) | [DOT Home](#) | [Privacy Policy/Disclaimer](#) | [Accessibility](#) | [Related Sites](#) | [Help](#)



United States Department of Transportation - **Federal Motor Carrier Safety Administration**

FMCSA Motor Carrier

USDOT Number: 1797264
Docket Number: MC653930
Legal Name: HENNESSY LOGISTICS INC
DBA (Doing-Business-As) Name



Addresses

Business Address: 205 JOHN STREET
NAPANEE, ON K7R 1R7
Business Phone: (613) 354-5303 Business Fax: Fax: (613) 354-5339
Mail Address:
Mail Phone: Mail Fax: Undeliverable Mail: NO

Authorities:

Common Authority:	ACTIVE	Application Pending:	NO	
Contract Authority:	NONE	Application Pending:	NO	
Broker Authority:	NONE	Application Pending:	NO	
Property:	YES	Passenger:	NO	Household Goods: NO
Private:	NO	Enterprise:	NO	

Insurance Requirements:

BIPD Exempt:	NO	BIPD Waiver:	NO	BIPD Required:	\$750,000	BIPD on File:	\$1,000,000
Cargo Exempt:	NO			Cargo Required:	YES	Cargo on File:	YES
BOC-3:	YES			Bond Required:	NO	Bond on File:	NO

Blanket Company: PROCESS AGENT SERVICE COMPANY, INC.

Comments:

Active/Pending Insurance:

Form: 91X	Type: BIPD/Primary	Posted Date: 08/28/2008
Policy/Surety Number: 133850039	Coverage From: \$0	To: \$1,000,000
Effective Date: 08/22/2008	Cancellation Date:	

Insurance Carrier: UNITED STATES FIRE INSURANCE CO.
Attn: TO REPORT A CLAIM CALL 888-890-1500
Address: 305 MADISON AVE.
MORRISTOWN, NJ 07962-1973 US
Telephone: (973) 490 - 6000 Fax: (973) 490 - 6448

Form: 34	Type: CARGO	Posted Date: 08/28/2008
Policy/Surety Number: 321850040	Coverage From: \$0	To: \$5,000*
Effective Date: 08/22/2008	Cancellation Date:	

Insurance Carrier: UNITED STATES FIRE INSURANCE CO.
Attn: TO REPORT A CLAIM CALL 888-890-1500
Address: 305 MADISON AVE.
MORRISTOWN, NJ 07962-1973 US
Telephone: (973) 490 - 6000 Fax: (973) 490 - 6448

FMCSA Motor Carrier

USDOT Number: 1797264
Docket Number: MC653930
Legal Name: HENNESSY LOGISTICS INC
DBA (Doing-Business-As) Name



Note:

* If a carrier is in compliance, the amount of coverage will always be shown as the required Federal minimum (\$5,000 per vehicle, \$10,000 per occurrence for cargo insurance and \$10,000 for bond/trust fund).
The carrier may actually have higher levels of coverage.

Rejected Insurances:

Form:	Type:	Coverage From:	\$0	To:	\$0
Policy/Surety Number:		Received:	Rejected:		
Received:		Rejected Reason:			

Insurance History:

Form:	Type:	Coverage From:	\$0	To:	\$0
Policy/Surety Number:		Effective Date From:	To:	Disposition:	

Authority History:

Sub No.	Authority Type	Original Action	Disposition Action
	MOTOR PROPERTY COMMON CARRIER	GRANTED	09/04/2008

Pending Application:

Authority Type	Filed	Status	Insurance	BOC-3

Revocation History:

Authority Type	1st Serve Date	2nd Serve Date	Reason



Process Agents for: PROCESS AGENT SERVICE COMPANY, INC.

State	Representative Name/ Company Name	Address
AK	REX LAMONT BUTLER	745 W. 4TH AVE., STE 300 ANCHORAGE AK, 99501
AL	GERALD D. COLVIN, JR.	1910 FIRST AVENUE NORTH BIRMINGHAM AL, 35203
AR	STEPHEN SMITH	1120 GARRISON AVENUE FORT SMITH AR, 72201-2893
AZ	SANDRA WILLIAMS	2050 S 59TH AVE., #B PHOENIX AZ, 85043
CA	RONALD C. CHAUVEL	155 BOVET ROAD, SUITE 780 SAN MATEO CA, 94402
CO	CHARLES J. KIMBALL	5400 WARD ROAD, BLDG III, SUITE 150 ARVADA CO, 80002
CT	GREGORY KIMMEL	9 MORGAN AVENUE NORWALK CT, 06851
DC	SHAW PITTMAN	2300 N STREET, NW WASHINGTON DC, 20037
DE	MICHAEL W. MODICA	715 N. KING STREET, STE 300 WILMINGTON DE, 19899
FL	MARVIN I. MOSS	20801 BISCAYNE BLVD., STE 506 N. MAIMI BEACH FL, 33180-1430
GA	CHRISTOPHER MEACHAM	5704 VETERANS PARKWAY COLUMBUS GA, 31904
HI	GARETH SAKAKIDA	2850 PAA STREET, SUITE HONOLULU HI, 96819
IA	ROBERT GILLESPIE	117 PIERCE ST., STE: 201 SIOUX CITY IA, 51101
ID	DON HENDRIKSEN	4240 BOTT LAND MERIDIAN ID, 83642
IL	MARTIN KENNEDY	39 SOUTH LASALLE ST., SUITE 1400 CHICAGO IL, 60605
IN	RICHARD TRETTIN	6350 N SHADELAND, SUITE 4 INDIANAPOLIS IN, 46220
KS	BENOIT M.J. SWINNEN	2913 SOUTHWEST MAUPIN LANE TOPKEA KS, 66614-4139
KY	WILLIAM D. KIRKLAND	300 STATE NAT'L BANK BLDG. STE 300 FRANKFORT KY, 40601
LA	F A COURTNEY JR	PAN AMERLIFE 601 POYDRAS ST STE1700 NEW ORLEANS LA, 70130
MA	DAVID BELFORT	24 THORNDIKE ST., STE: 300 CAMBRIDGE MA, 02141
MD	SUE LAWLESS	1901 RESEARCH BLVD., STE: 500

		ROCKVILLE MD, 20850
ME	CATHY S. ROBERTS	THREE CANAL PLAZA PORTLAND ME, 04112
MI	JOHN BRYANT	801 W. BIG BEAVER, 5TH FLOOR TROY MI, 48084
MN	PAUL TAYLOR	900 WEST 128TH ST., STE: 101 BURNSVILLE MN, 55337
MO	JOSEPH E. REBMAN	8000 MARYLAND AVE., STE: 1060 ST. LOUIS MO, 63105
MS	ROY LIDDELL	300 CONCOURSE BLVD., STE: 200 RIDGELAND MS, 39157
MT	KAREN HINMAN	1224 HWY 87 EAST BILLINGS MT, 59101
NC	ANN SELF	1606 E. CHURCH STREET CHERRYVILLE NC, 28021
ND	LEAH PARMER	3739 38TH ST. SW FARGO ND, 58201-4707
NE	RANDY HISEY	412 7TH AVENUE S. SIOUX CITY NE, 68776
NH	JAMES KAKLAMANOS	374 MAIN STREET NASHUA NH, 03060
NJ	JERRY CASSER	75 LANE ROAD., STE: 402 FAIRFIELD NJ, 07004
NM	JEAN ROUSE	5401 CACTUS AVENUE ROSWELL NM, 88202
NV	ANTHONY L. HALL	5441 KIETZKE LANE, SECOND FLOOR RENO NV, 89511
NY	GEORGE CARL PEZOLD	120 MAIN STREET HUNTINGTON NY, 11742-6936
OH	ERIC BEERY	275 EAST STATE STREET COLUMBUS OH, 43215-4330
OK	SAM G. BRATTON	STE 500, 320 S. BOSTON AVE TULSA OK, 74103
OR	JOHN A. ANDERSON	1515 SW5TH AVE., STE: 1020 PORTLAND OR, 97201
PA	JAMES D. CAMPBELL	3631 NORTH FRONT STREET HARRISBURG PA, 17110-1533
RI	FRANK HOLBROOK	122 TOURO STREET NEWPORT RI, 01840
SC	ROBERT D. MOSELEY, JR.	300 EAST MCBEE AVENUE, SUITE 500 GREENVILLE SC, 29601
SD	ROBERT W. RASMUSSEN	3500 S. PHILLIPS AVE., SUITE 250 SIOUX FALLS SD, 57105
TN	ROBERT M ASBURY	800 S. GAY ST. PLZ TOWER, STE. 1600 KNOXVILLE TN, 37929
TX	E.M. POWELL	3303 MAIN, SUITE 207 HOUSTON TX, 77002
UT	MICHAEL F. OLMSTEAD	STE 102, 2650 WASHINGTON BLDV. OGDEN UT, 84401
VA	ROBERT WALKER	709 OLD HUNT WAY HERNDON VA, 20170

VT	HERBERT G. OGDEN	76 GROVE STREET RUTLAND VT, 05701
WA	DENISE ALTO	3601 W WASHINGTON AVE SUITE 1 YAKIMA WA, 98903
WI	CHRISTOPHER WALTHER	241 N. BROADWAY, SUITE 403 MILWAUKEE WI, 53202
WV	JOE BOGGS	1703 WOODVALE DRIVE CHARLESTON WV, 25314
WY	BERT T. AHLSTROM, JR., SUITE 100, THE TETON BUILDING	1615 HOUSE AVE., P.O. BOX 133 CHEYENNE WY, 82003

Monday, January 04, 2010 at 10:52:18

[Close](#)

United States Department of Transportation - Federal Motor Carrier Safety Administration

STATE OF INDIANA)
) SS:
COUNTY OF MORGAN)

MORGAN CO. SUPERIOR COURT, No. 1

CAUSE NO.: 55D01-

55D01 0907 - CT - 0330

DONALD M. AGEL, NICOLE)
VICKERS-AGEL, INDIVIDUALLY AND)
AS PARENTS AND GUARDIANS OF)
JOSHUA A. AGEL and MATTHEW J.)
AGEL, MINORS)

Plaintiffs,)

v.)

KEVIN L. WILKINS and)
HENNESSY LOGISTICS, INC.)

Defendants.)

FILED

cm 7/10/09
JUL 13 2009

Marguerite Mayfield
CLERK CIRCUIT/SUPERIOR COURTS
MORGAN COUNTY

COMPLAINT FOR DAMAGES

Come now the Plaintiffs, Donald M. Agel, Nicole Vickers-Agel, Individually and as Parents and Natural Guardians of Joshua A. Agel and Matthew J. Agel, minors, by counsel, and for their cause of action against the Defendants, Kevin L. Wilkins and Hennessy Logistics, Inc., allege and state as follows:

1. That at all times relevant herein, Donald M. Agel and Nicole Vickers-Agel were married and were the natural parents and guardians of Joshua A. Agel and Matthew J. Agel, minors (hereinafter, PLAINTIFFS).
2. That PLAINTIFFS are residents of the State of North Carolina.
3. That on July 2, 2009, Nicole Vickers-Agel was operating a passenger vehicle at or near the intersection of State Road 37 and Ohio Street in Martinsville, Indiana, Morgan County, State of Indiana.
4. That at all times relevant herein, Joshua and Matthew Agel were passengers

in the motor vehicle operated by their mother.

5. That at the same time and place, a commercial motor vehicle operated by professional truck driver, Kevin L. Wilkins (hereinafter, WILKINS), was traveling southbound on State Road 37.

6. That at all times relevant herein, WILKINS was operating a commercial motor vehicle on behalf of Hennessy Logistics, Inc. (hereinafter, HENNESSY).

7. That HENNESSY is a commercial motor vehicle carrier based at 205 John Street, Napanee, ON K7R 1 R7, and duly qualified to operate in the United States pursuant to DOT authority number 1797264.

8. That HENNESSY's registered agent is Process Agent Service Company, Indiana representative, Richard Trettin, 6350 North Shadeland, Suite 4, Indianapolis, IN 46220.

9. That at all times relevant herein, WILKINS was within the scope and course of employment on behalf of HENNESSY.

10. That while exercising ordinary and reasonable care, the vehicle operated by Nicole Vickers-Agel was struck by the tractor trailer operated by WILKINS.

11. That as a professional truck driver, WILKINS failed to keep a proper lookout, disregarded traffic control signals and further, failed to comply with the rules, regulations and standards set forth in the Federal Motor Carrier Safety Regulations and the Commercial Motor Vehicle Drivers Manual all violations without excuse or justification.

12. That as a direct and proximate result of WILKINS and HENNESSY's negligence, the PLAINTIFFS were injured and have incurred, damages and expenses, in part, as follows:

- A. Injuries to their bodies, some of which may be permanent;
- B. Medical and hospital expenses, and may incur future medical and hospital expenses;

- C. Lost wages and an impairment to their earning capacity; and,
- D. Pain and suffering, which they will likely incur in the future.

12. That as a result of Nicole Vickers-Agel's injuries, Donald Agel has lost and or impaired the services, love and affection of his wife, Nicole.

13. That as a result of the Joshua and Matthew Agel's injuries, his natural parents and guardians have lost and or impaired the love and affection of their children.

WHEREFORE, the Plaintiffs, Donald M. Agel, Nicole Vickers-Agel, Individually and as Parents and Natural Guardians of Joshua A. Agel and Matthew J. Agel, minors, by counsel, and for their cause of action against the Defendants, Kevin L. Wilkins and Hennessy Logistics, Inc., pray for an amount reasonably calculated to compensate them for their damages which they have incurred as a result of this collision, the costs of this action, and for all other relief just and proper in the premises.

Respectfully submitted,

DOHRMAN•CHAMBERLAIN



Daniel S. Chamberlain, Esq. (#16375-49)

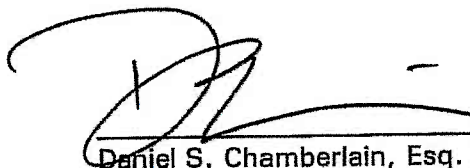
DOHRMAN•CHAMBERLAIN
Three Meridian Plaza, Suite 100
10333 N. Meridian Street
Indianapolis, IN 46290
(317) 844-9999

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon counsel of record, listed below, via United States Mail, First Class, postage prepaid this 10th day of July, 2009:

United States Fire Insurance Co.
305 Madison Avenue
Morristown, NJ 07962-1973

Hennessy Logistics, Inc.
205 John Street
Napanee, ON K7R 1 R7



Daniel S. Chamberlain, Esq. (#16375-49)

DOEHRMAN•CHAMBERLAIN
Three Meridian Plaza, Suite 100
10333 N. Meridian Street
Indianapolis, IN 46290
(317) 844-9999

SUMMONS

DONALD M. AGEL, NICOLE VICKERS-AGEL,
INDIVIDUALLY AND AS PARENTS AND
GUARDIANS OF JOSHUA A. AGEL and
MATTHEW J. AGEL, MINORS

Plaintiffs

MORGAN CO. SUPERIOR COURT NO. 1

CAUSE NO.: 55D01-

55D01 0907 - CT - 0330

-vs-

KEVIN L. WILKINS and
HENNESSY LOGISTICS, INC.

Defendants

TO DEFENDANT: Hennessy Logistics, Inc.
Richard Trettin, Registered Agent
Process Agent Service Company
6350 North Shadeland Avenue, Suite 4
Indianapolis, IN 46220

You are hereby notified that you have been sued by the person named as Plaintiff(s) and in the Court indicated above.

The nature of the suit against you is stated in the complaint which is attached to this Summons. It also states the relief sought or the demand made against you by the plaintiff.

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by plaintiff.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

Dated JUL 13 2009

Marquerite Mayfield

(Seal)
Clerk, Morgan Co. Circuit and Superior Courts

(The following manner of service of summons is hereby designated.)

- XX Registered or certified mail.
- _____ Service at place of employment, to-wit: _____
- _____ Service on individual -- (Personal or copy) at above address.
- _____ Service on agent. (Specify) _____
- _____ Other service. (Specify) _____

Daniel S. Chamberlain, Esq. (#16375-49)
Attorney for Plaintiff

DOEHRMAN•CHAMBERLAIN
Three Meridian Plaza, Suite 100
10333 N. Meridian Street
Indianapolis, Indiana 46204
Address

(317) 844-9999
Telephone

SUMMONS

DONALD M. AGEL, NICOLE VICKERS-AGEL,
INDIVIDUALLY AND AS PARENTS AND
GUARDIANS OF JOSHUA A. AGEL and
MATTHEW J. AGEL, MINORS

Plaintiffs

MORGAN CO. SUPERIOR COURT NO. 1

CAUSE NO.: 55D01-

55D01 0907 - CT - 0330

-vs-

KEVIN L. WILKINS and
HENNESSY LOGISTICS, INC.

Defendants

TO DEFENDANT: Kevin L. Wilkins and
Hennessy Logistics, Inc.
205 John Street
Napanee, ON K7R 1R7

You are hereby notified that you have been sued by the person named as Plaintiff(s) and in the Court indicated above.

The nature of the suit against you is stated in the complaint which is attached to this Summons. It also states the relief sought or the demand made against you by the plaintiff.

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by plaintiff.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

Dated JUL 13 2009

Marquette Hayfield (Seal)
Clerk, Morgan Co. Circuit and Superior Courts

(The following manner of service of summons is hereby designated.)

XX Registered or certified mail.
_____ Service at place of employment, to-wit: _____
_____ Service on individual -- (Personal or copy) at above address.
_____ Service on agent. (Specify) _____
_____ Other service. (Specify) _____

Daniel S. Chamberlain, Esq. (#16375-49)
Attorney for Plaintiff

DOHRMAN•CHAMBERLAIN
Three Meridian Plaza, Suite 100
10333 N. Meridian Street
Indianapolis, Indiana 46204

Address

(317) 844-9999

Telephone

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DONALD M. AGEL, NICOLE
VICKERS-AGEL, INDIVIDUALLY AND
AS PARENTS AND GUARDIANS OF
JOSHUA A. AGEL and MATTHEW J.
AGEL, MINORS)

Plaintiff,)

v.)

KEVIN L. WILKINS and
HENNESSY LOGISTICS, INC.)

Defendant.)

Case No. 1:09-cv-0962 RLY-DML

PLAINTIFFS, DONALD M. AGEL, NICOLE VICKERS-AGEL, INDIVIDUALLY AND AS PARENTS AND GUARDIANS OF JOSHUA A. AGEL AND MATTHEW J. AGEL, MINORS, INTERROGATORIES TO THE DEFENDANTS, KEVIN WILKINS AND HENNESSY LOGISTICS, INC.

Come now the Plaintiffs, Donald Agel, Nicole Vickers-Agel, Individually and as Parents and Guardians of Joshua A. Agel and Matthew J. Agel, Minors, by counsel, and hereby propounds the following written Interrogatories to be answered by the Defendants within thirty (30) days after service thereon based upon their own knowledge, and that of their attorney, anyone acting on their behalf and anyone having an interest in the outcome of this lawsuit; said Answers to be prepared under oath and to be amended from time to time by the Defendant to the end that any new information may be promptly available to the Plaintiff.

INTERROGATORY NO. 1:

Please state all information, evidence, documentation, and the witnesses that will testify in support of the following affirmative defenses, tendered in the Defendants, Kevin Wilkins and Hennessy Logistics, Inc.'s Answer, Affirmative Defenses, and Jury Demand to Complaint for Damages filed herein on August 7, 2009.

- A. First Affirmative Defense alleging Agels have failed to mitigate their damages.
- B. Second Affirmative Defense alleging the Agel's damages, if any, are barred or diminished under Indiana's Comparative Fault Act by the contributory fault and/or incurred risk of Plaintiff, Nicole Vickers-Agel.

ANSWER:

INTERROGATORY NO. 2:

Please identify all witnesses, that have knowledge of the incident in question, and are or may testify in support of any Affirmative Defense alleged herein. For each, please identify:

- A. Full name;
- B. Address and telephone number;
- C. Subject matter of the expected testimony;
- D. Whether any statements have been made; when such statement was made and by whom; and, the custodian of each; and
- E. All documents, physical evidence or information to support the same.

ANSWER:

Respectfully submitted,

DOEHRMAN•CHAMBERLAIN

Daniel S. Chamberlain, Esq. (#16375-49)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following attorneys by placing a copy of the same in the United States Mail, first class, postage prepaid this _____ day of _____, 2009:

Bernie W. Keller
Michael D. Rogers
BOSE MCKINNEY & EVANS, LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204

Daniel S. Chamberlain

DOHRMAN•CHAMBERLAIN
10333 N. Meridian Street
Suite 100
Indianapolis, IN 46290

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DONALD M. AGEL, NICOLE)
VICKERS-AGEL, INDIVIDUALLY AND)
AS PARENTS AND GUARDIANS OF)
JOSHUA A. AGEL and MATTHEW J.)
AGEL, MINORS)

Plaintiff,)

v.)

KEVIN L. WILKINS and)
HENNESSY LOGISTICS, INC.)

Defendant.)

Case No. 1:09-cv-0962 RLY-DML

**PLAINTIFFS, DONALD AGEL, NICOLE VICKERS-AGEL, INDIVIDUALLY AND
AS PARENTS AND GUARDIANS OF JOSHUA A. AGEL AND MATTHEW J. AGEL, MINORS'
INITIAL INTERROGATORIES & REQUEST FOR PRODUCTION
PROPOUNDED TO DEFENDANT, HENNESSY LOGISTICS, INC.**

Come now the Plaintiffs, Donald Agel, Nicole Vickers-Agel, Individually and as Parents and Guardians of Joshua A. Agel and Matthew J. Agel, Minors, by counsel, and serve upon the Defendant, HENNESSY LOGISTICS, INC. (hereinafter, HENNESSY, the following written Interrogatories and accompanying Request for Production to be answered by the Defendant within thirty (30) days after service thereof, based upon its own knowledge, that of its attorney, anyone acting in its behalf, and anyone having an interest in the outcome of this lawsuit; said Answers to be prepared under oath and to be amended from time to time by the Defendant to the end that any new information may be promptly available to the Plaintiff.

INTERROGATORY NO. 1:

Please identify each and every officer, agent or employee of the Defendant, HENNESSY, who is supplying or assisting in supplying the answers to the Interrogatories and describe his or her title, duties, and responsibilities.

ANSWER:

INTERROGATORY NO. 2:

Please state the full and correct name of the Defendant's business entity, the exact nature of the entity, the date of the formation, the state in which it is incorporated, if incorporated, the exact location of the business entity, the major business of the business entity, the type and nature of the business performed, the names and addresses of all officers, directors or partners, and the date the business entity was authorized to do business in the State of Indiana.

ANSWER:

INTERROGATORY NO. 3:

Please state whether HENNESSY was the owner of the semi-tractor trailer and attached trailer that was involved in the incident described in the Plaintiff's Complaint for Damages, and if not, please state the name and address of the owner and state whether HENNESSY had any interest in or to that vehicle, and if so, describe in detail the nature and extent of that interest.

ANSWER:

INTERROGATORY NO. 4:

If HENNESSY was either the owner or in possession of the semi-tractor trailer involved in the incident described in the Plaintiff's Complaint for Damages, please fully describe the vehicle (tractor & trailer), giving such particulars as make, the year of manufacturer, the date of purchase or of acquisition, and the date HENNESSY took possession of the vehicle.

ANSWER:

INTERROGATORY NO. 5:

Please state the full name, address, date of birth, employer and social security number of the driver/operator of the semi-tractor trailer rig at the time of the incident in question.

ANSWER:

INTERROGATORY NO. 6:

Please state whether the person listed in Interrogatory No. 5 above, was employed by HENNESSY on , and if so, describe in detail his position, the nature and scope of his activities involved in that position, and include his scheduled working hours for .

ANSWER:

INTERROGATORY NO. 7:

Please state whether the driver identified in Interrogatory No. 5 above was acting in the scope and course of his employment with HENNESSY on at the time and place of the incident in question.

ANSWER:

INTERROGATORY NO. 8:

If you contend that the driver identified in Interrogatory No. 5 above, was **not** acting within

the scope and course of his employment at the time of the incident in question, please state each and every fact upon which you rely to base your claim and the name, address and employer of each and every person who has knowledge of such information.

ANSWER:

INTERROGATORY NO. 9:

Please state the name, address, and employer of each and every person known to you or your representatives who claims to have any knowledge of the circumstances surrounding the incident in question.

ANSWER:

INTERROGATORY NO. 10:

Please state whether HENNESSY or anyone acting on its behalf has ever taken or received any statement, either orally or in writing, from any person, including the parties who have any knowledge relating to the incident in question, and if so, please state for each person, his or her name and address, the date of any such statement, the substance of any such statement, and whether counsel may obtain a copy of any such statement.

ANSWER:

INTERROGATORY NO. 11:

At the time of the incident in question, was there a policy of liability insurance or any indemnification or insurance agreement in effect that covered or may cover HENNESSY, the

vehicle being operated by the driver identified in Interrogatory No. 5 above, the type of risk upon which this Complaint for Damages is based, any judgment that might be entered in this action, or indemnification or reimbursement for any payments made to satisfy any judgments that might be entered in this action.

ANSWER:

INTERROGATORY NO. 12:

At the time of the incident in question, was there any insurance policy or indemnity agreement in force to cover HENNESSY for public liability, and if so, state whether it contained "omnibus" clause that covered the semi-tractor trailer in question, the driver of the semi-tractor trailer struck in question, the owner of the semi-tractor trailer in question, (if other than HENNESSY) any other person?

ANSWER:

INTERROGATORY NO. 13:

At the time of the incident in question, was HENNESSY protected against the type of liability alleged in the Complaint for Damages by any insurance, excess insurance or "umbrella" coverage?

ANSWER:

INTERROGATORY NO. 14:

If the answer to any of the three (3) previous Interrogatories is "yes", state for each policy such particulars as the name, address, telephone number of the insurer(s), the names and

addresses of the insured(s), the policy number, the effective dates, the nature of the coverage, the limits of liability, including coverage for one or more than one person, and the name and address of the custodian(s) of the policies at the present time.

ANSWER:

INTERROGATORY NO. 15:

Please identify each and every person you expect to call as an expert witness at the trial of this matter and for each expert witness, please state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and summary of the grounds for each opinion.

ANSWER:

INTERROGATORY NO. 16:

Please identify the name and address of each person you expect to call as a witness to the trial of this matter.

ANSWER:

INTERROGATORY NO. 17:

Please state whether any person has made any statement, written or otherwise, while being interviewed or questioned by you or in your behalf, in connection with the collision herein, and if so, for each statement, indicate the name, address, place of employment in relationship to you of the maker, the date of making, the place of making, how or whether written or oral, and whether signed

or unsigned, the names and addresses of all persons present at the time the statement was made, the name and address of the persons having custody or control of statement.

ANSWER:

INTERROGATORY NO. 18:

Please state whether you claim that the damages of the Plaintiff was caused in whole or in part by any "non-party" (meaning "a person who is, or may be, liable to the claimant in part or in whole for the damages claimed but who has not been joined in the action as a defendant by claimant"), and if so, state:

A. The name, current address, telephone number, social security number, date of birth, and last known place of employment of each such non-party;

B. The factual basis or legal grounds upon which you base such claim;

C. The full names, current addresses, telephone numbers and places of employment of each person known to the Defendant or their attorneys or investigators who have knowledge of facts or relevant information concerning such claims; and,

D. Identify all documents within the Defendant's care, custody or control, and the name and current address of the custodian thereof, upon which the Defendant relies to support such claim.

ANSWER:

INTERROGATORY NO: 19:

Were there any passengers in the vehicle operated by the driver identified in Interrogatory No. 5 above, on ? If so, whom?

ANSWER:

INTERROGATORY NO. 20:

Other than the incident at issue, please list all other incidents involving alleged personal injury in which the driver identified in Interrogatory No. 5 above, has been involved, either as an operator or passenger.

ANSWER:

INTERROGATORY NO: 21:

Did the driver identified in Interrogatory No. 5 above, complete an application for employment or any paperwork prior to employment by HENNESSY? If so, please attach a copy of the completed application to your response hereto.

ANSWER:

INTERROGATORY NO: 22:

Were any photographs taken of the parties, the semi-tractor trailer operated by the driver identified in Interrogatory No. 5 above, or of the scene of the incident, AT ANYTIME? If so, please attach laser copies of all such photographs to your responses hereto.

ANSWER:

INTERROGATORY NO: 23:

What, if any, maintenance had been performed on the tractor or trailer of the subject vehicle from 2005 to 2006. For each such maintenance visit, please list the following:

- A. What prompted the maintenance visit;
- B. Who performed the maintenance;
- C. Who diagnosed the necessity for maintenance;
- D. What diagnosis was rendered;
- E. When were the repairs performed;
- F. What, if any, parts were replaced; and,
- G. Did the problem reoccur? If so, when?

ANSWER:

INTERROGATORY NO: 24:

What, if any, load was contained in the semi-tractor trailer operated by the driver identified in Interrogatory No. 5 above, immediately prior to and at the time of the incident in question?

ANSWER:

INTERROGATORY NO. 25:

Please state the names of all individuals and their employees that loaded the trailer prior to the occurrence of the incident in question.

ANSWER:

INTERROGATORY NO. 26:

When was the trailer loaded prior to the incident in question?

ANSWER:

INTERROGATORY NO. 27:

Is there a bill of lading or any other document describing in detail, the entire load packaged in the trailer prior to the incident? If so, please list the custodian of each such document, the title of each, the preparer and employer of each and attach a copy of said document to your responses hereto.

ANSWER:

INTERROGATORY NO. 28:

Please describe, in detail, each delivery (from the time that the trailer was loaded, until the incident in question) including such particulars as:

- A. Location of delivery and company that received delivery;
- B. What goods were unloaded, and by whom;
- C. When did the driver arrive at the drop point;
- D. When did the driver leave the drop point; and,
- E. How long did it take to unload the cargo.

ANSWER:

INTERROGATORY NO. 29:

Was Kevin Wilkins an owner/operator of the semi-tractor trailer rig at issue in this lawsuit?

ANSWER:

INTERROGATORY NO. 30:

Was Kevin Wilkins operating the semi-tractor trailer at issue under a lease or contract with HENNESSY? If so, was that contract or lease in writing? If the contract or lease was in writing, please attach a copy to your responses hereto.

ANSWER:

INTERROGATORY NO. 31:

Please state the duration of the lease or contract (as referred to in Interrogatory No. 31) including the inception and termination dates of the lease and/or contract.

ANSWER:

INTERROGATORY NO. 32:

When did possession of the semi-tractor trailer rig at issue pass to HENNESSY, prior to the incident in question?

ANSWER:

INTERROGATORY NO. 33:

When did possession of the tractor-trailer at issue pass from HENNESSY back to Kevin

Wilkins pursuant to 49 CFR §1057.11(b)?

ANSWER:

INTERROGATORY NO. 34:

Did HENNESSY make an inspection of the semi-tractor trailer rig at the inception of the lease or contract? If so, please state the following:

- A. Who performed the inspection;
- B. Were any documents prepared concerning the inspection;
- C. Who is the custodian of the documents; and,
- D. Please attach a copy of all such documents to your responses hereto.

ANSWER:

INTERROGATORY NO. 35:

Was a copy of the lease or contract provided to Kevin Wilkins prior to the incident in question? If so, when was the lease or contract provided to Kevin Wilkins?

ANSWER:

INTERROGATORY NO. 36:

If your answer to the preceding Interrogatory is in the affirmative, was a copy of that lease kept in the semi-tractor at the time of the incident in question?

ANSWER:

INTERROGATORY NO. 37:

Was there an ICC number on the side of the semi-tractor operated by Kevin Wilkins on the date of the incident in question? If so, please state the following:

- A. The ICC number;
- B. The company, address, and resident agent of the company to whom the ICC number was registered;
- C. When the ICC number was obtained;
- D. When the ICC number has been renewed;
- E. Whether the ICC number has been revoked;
- F. When the ICC number was placed onto the semi-tractor issued herein;
- G. Is the ICC number still on the semi-tractor at issue in this lawsuit;
- H. If the ICC number is no longer on the semi-tractor at issue in this case, when was the ICC number removed, and by whom?

ANSWER:

INTERROGATORY NO. 38:

Were any accident reports prepared as a result of the incident at issue herein? If so, please state the following:

- A. the preparer of the report;
- B. With whom the report was filed and when the report was filed;
- C. The custodian of the report; and,
- D. Please attach a copy of the report to your responses to Interrogatories herein.

ANSWER:

INTERROGATORY NO. 39:

Describe and explain in detail the method of calculating Kevin Wilkins's pay, compensation, wages, salary, bonus, or commission for 2008 and 2009.

ANSWER:

INTERROGATORY NO. 40: The fuel capacity of the tractor involved in the crash.

ANSWER:

INTERROGATORY NO. 41:

Was Kevin Wilkins in compliance with, or in violation of federal requirements and regulations for a truck driver at the time of the crash on .

ANSWER:

INTERROGATORY NO. 42:

Who and by what method did Defendant verify that Kevin Wilkins was or was not and/or would or would not be within the regulations of federal ICC/DOT regulations for truck driving during his trips and travel in July, 2009, and/or at the time of the crash on July 2, 2009.

ANSWER:

INTERROGATORY NO. 43:

Describe the exact manner in which Kevin Wilkins was paid by the Defendant for his work

performed in July, 2009.

ANSWER:

INTERROGATORY NO. 44:

At the time of the crash, under what federal or state authority was the tractor-trailer operating?

ANSWER:

INTERROGATORY NO. 45:

At the time of the crash on , please identify all names and/or placards and ICC/DOT information including all numbers on the tractor-trailer pertaining to ICC/DOT authorizations.

ANSWER:

PLAINTIFF'S INITIAL REQUEST FOR PRODUCTION

Plaintiffs, Donald Agel, Nicole Vickers-Agel, Individually and as Parents and Guardians of Joshua A. Agel and Matthew J. Agel, Minors, by counsel, pursuant to Trial Rule 34 of the Federal Rules of Trial Procedure, and request that HENNESSY produce for inspection and copying within thirty (30) days of the date hereof by production at the offices of **Doehрман•Chamberlain**, Three Meridian Plaza, Suite 100, 10333 North Meridian Street, Indianapolis, Indiana 46290, the following articles in the possession of, or available to, the Defendants or its attorney:

1. Please produce the following:
 - A. The personnel file of Kevin Wilkins;
 - B. The qualification file of Kevin Wilkins;
 - C. The personnel file of Kevin Wilkins as it existed on July 2, 2009;
 - D. The qualification file of Kevin Wilkins as it existed on July 2, 2009;
 - E. Any other file kept on Kevin Wilkins;
 - F. All payroll and benefit records for Kevin Wilkins;
 - G. All cancelled checks of any kind paid to Kevin Wilkins for 2008 and 2009;
 - H. All logs of Kevin Wilkins for June and July of 2009;
 - I. Any and all records of health insurance claims, disability claims, sickness or doctors' excuses of Kevin Wilkins for 2006 through 2009;
 - J. Any work, trips, travel, truck driving and/or truck work of any type of Kevin Wilkins whether as driver or co-driver, or assistant, or whatever capacity, for July, 2009. With regard to this request, please produce the following materials for all such work, trips, travel, truck driving or assisting:

1. pickup instructions;
2. route map;
3. dispatch records;
4. trip records/sheets;
5. toll records;
6. bills of lading;
7. freight records;

8. any other shipping documents;
9. billing records for load hauled;
10. load sheets or records of any and all records of any payments made or received or transferred or distributed regarding payments, profits, salaries, expenses, commissions, trip leases;
11. fuel tax receipts or trip sheets;
12. trip tickets;
13. settlement statements;
14. billing to any shippers;
15. payment to any shippers;
16. billing to any other person or corporation;
17. payments received from any other person or corporation;
18. expenses of any type of Kevin Wilkins;
19. gas receipts/fuel receipts;
20. credit card receipts;
21. telephone credit charges;
22. trip records;
23. time records;
24. weight records;
25. scale records;
26. brokerage payments or commissions paid or received; and,
27. billings to and payments received from any other person or corporation.

- K. Any and all telephone records and bills of the defendant for June and July, 2009;
- L. Any and all credit card bills and receipts of the defendant for June and July, 2009;
- M. Any and all fuel records, tickets, receipts, summaries o the Defendant for June and July, 2009;
- N. Any and all toll receipts of Kevin Wilkins for June and July, 2009;
- O. Any and all settlement sheets of the Defendant for 2008 and 2009;
- P. Defendant fuel tax trip sheets for 2008 and 2009;
- Q. All ICC/DOT authority for this tractor on ;
- R. All USDOT Safety Fitness Ratings of the Defendant for 2006 through 2009;
- S. Copies of all USDOT Safety Compliance Audits of the Defendant for 2006 through 2009;
- T. All fuel tax reports of the June and July, 2009;
- U. All state safety audits of the Defendant for 2006 through 2009;

- V. ICC/DOT authorizations of Defendant in effect on July 2, 2009
- W. ICC registered permit or authorization of the Defendant in effect on July 2, 2009
- X. All federal accident reports filed by the Defendant for 2006 through 2009;
- Y. All DOT inspection reports of the Defendant for 2006 through 2009;
- Z. All long form DOT physicals of Kevin Wilkins;
- AA. Any and all Seven Day Prior Forms for Kevin Wilkins for June and July, 2009
- BB. All DOT and State inspections of the tractor involved in the crash for 2008 and 2009;
- CC. Motor Carrier Safety Rating of the Defendant for 2006 through 2009;
- DD. All fines of the Defendant for 2006 through 2009 by DOT, state, and/or federal authority; and,
- EE. Any conditional ratings of the Defendant by DOT, state or federal for 2006 through 2009.

RESPONSE:

2. Produce all records for June and July, 2009, of any type which documents any driving or travel in a truck by Kevin Wilkins and the dates and times and locations of all places traveled to and from by Kevin Wilkins.

RESPONSE:

3. The Defendant's logs for June, 2009 and July, 2009, of all his truck trips, including, but not limited to the names, addresses, employers of each and every person who saw, examined and/or copied any or all part of these logs.

RESPONSE:

4. Produce the original of any and all credit card records, fuel records, expense reimbursement, and pay records of the Defendant and identify and explain each item that relates to Kevin Wilkins during June and July, 2009.

RESPONSE:

5. Produce the originals of any and all telephone bills of the Defendant and identify any and all calls which were made to the Defendant by Kevin Wilkins or made by the Defendant to Kevin Wilkins in June and July, 2009, and the dates, time, and location of Kevin Wilkins at the time of such calls.

RESPONSE:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following attorneys by placing a copy of the same in the United States Mail, first class, postage prepaid this _____ day of _____, 2009:

Bernie W. Keller
Michael D. Rogers
BOSE MCKINNEY & EVANS, LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204

Daniel S. Chamberlain

DOHRMAN•CHAMBERLAIN
10333 N. Meridian Street
Suite 100
Indianapolis, IN 46290

At the time of the crash, you were operating a commercial motor vehicle on behalf of Carter Express

at the time of the crash, you were operating the commercial motor vehicle between 50 and 55 MPH

Agree that ICE is very slippery

Agree that virtually all skids are preventable

agree that the underlying cause fo nearly every skid is excessive speed for road conditions

agree that the number one thing you can do to prevent a skid is to slow down

did you have a glucose source in your truck at the time of the February 18, 2008 crash

what was it

where was it

You a professional truck driver

as a professional truck driver, you should possess the ability to prevent skids before they begin

earn your living driving a commercial motor vehicle

what education and training have you had that enables you to operate a commercial motor vehicle

what if any training did you have in the operation of a commercial motor vehicle in winter driving conditions

on 2/18/08 operating a cmv on us 31 in marshall county when a crash occurred at or near kenelworth road

2/18/08 Thursday

crash occurred appx 9:30 a.m.

Weather conditions at the time of crash

had the weather conditions stayed consistent throughout the morning

temperature

snow

rain

sleet

witness any snow plows or salt trucks prior to crash

Where, when

where were you going
where were you coming from
what time did you leave
how many stops planned for 2/18/08
time requirements to drop loads
planned to pick up any loads

kind of tractor being operated
within scope and course of employment for Carter Express
DOT authority number 223337
carter express tractor id 2550
brakes worked properly
headlamps worked properly
how much fuel on board
Any problems with the operation of the vehicle
equipped with a satellite, qual comm or traffic device

equipped with a radio, mobile phone, CB radio

last time used device prior to crash

tractor equipped with a trailer
Carter Express trailer id 511282
mechanically, was there any defect in the operation of the trailer
what kind of trailer
what was the load
how much did the load weigh
was the load secured
Who secured the load
At any point did you stop and check the load
Did the load shift at any point during your trip
what was the total weight of the tractor and the trailer combination

how many miles did you cover before the crash
other than traffic control signals, stop cmv for any reason

Lost control of the commercial motor vehicle and tractor combination and were involved in a series of crashes

at the time of the crash, you were operating a tractor trailer combo within the scope and course of your employment with Carter Express

what caused you to lose control
what did you do when you lost control
why did you lose control

how fast were you traveling when you lost control of your tractor trailer combo
what lane were you in when you lost control of the tractor trailer combo
why were you in the high speed lane
was there any vehicle in the lane immediately adjacent to your vehicle

as a professional truck driver, were you trained that you must "drive slowly and smoothly on slippery surfaces."

As a professional truck driver, why is it important to drive slowly and smoothly on slippery surfaces

were you driving slowly when you lost control of the tractor trailer combination
was the highway slippery at the time that you lost control of the tractor trailer combination

how long had the highway been slippery at the time that you lost control of the tractor trailer combination

was the highway very slippery immediately prior to the loss of control of the commercial motor vehicle

as a professional truck driver, do you agree that if the highway is very slippery that you should have stopped at the first safe place

were there any "safe places" to stop as you traveled northbound on US 31 prior to the crash

did you know my client, Lester Miller prior to the crash

where did the impact occur between the vehicle operated by Lester Miller and the commercial motor vehicle and trailer that you were operating

how fast

what lane

as a result of the crash, was it your belief that Lester Miller was injured

What observations of Lester Miller did you have that caused you to believe that he was injured in the crash

Federal and state regulations were designed to protect the public from the dangers of large trucks, yet 393,000 of them were involved in crashes in 1996.

Truck cases: rules of the road

Daniel S. Chamberlain

In 1991, the U.S. Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) to address, in part, the explosive growth of the transportation industry.(1) In an effort to protect the public, the act restricted the length and the number of trailers hauled by truck drivers. Most tractor trailers are 65 feet long, and in dual or triple combination the overall length may stretch to the ISTEA maximum of 110 feet, the same as an average city block.

Despite ISTEA's safety pledge, trucks continue killing and injuring America's citizens. In 1996, nearly 393,000 large trucks(2) were involved in traffic crashes in the United States.(3) Large trucks represent only 3 percent of all registered motor vehicles in this country, yet they are responsible for 22 percent of all deaths in multiple vehicle collisions.(4)

On October 1, 1997, the Congress unanimously reauthorized ISTEA for six months. The chair of the House Transportation and Infrastructure Committee, Bud Shuster (R-Pa.), favors replacing the act with the Building Efficient Surface Transportation and Equity Act. Should Congress do this, the present restriction on the length, weight, and number of trailers will be rescinded. This will result in more rollovers, jackknifed vehicles, turn instability, and increased stopping distance due to greater length and weight of vehicles. Public safety will be compromised.

The dangers associated with large trucks traveling on public thoroughfares were recognized as early as 1935. That year, Congress enacted the Motor Carrier Act, which created the Bureau of Motor Carriers of the Interstate Commerce Commission (ICC).(5) The commission was charged with developing and enforcing safety regulations in the trucking industry. In response to the charge, the commission developed the Federal Motor Carrier Safety Regulations (FMCSR).(6)

The 1980s brought extensive deregulation of the trucking industry, and licensing and monitoring of professional truck drivers have been transferred to the states. The FMCSR remains the sole safety standard that professional truck drivers and motor carriers must follow in operating commercial motor vehicles.

The purpose of the FMCSR is to "help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner."(7) A commercial driver's license (CDL) is required by the federal government but issued by the state. It requires advanced levels of knowledge and

operating skill. The written exam for a CDL tests not only driving rules and safety but also an understanding of air brake systems, hazardous materials, and pre-trip inspection procedures.

Drivers may hold only a single CDL issued by their home state, thus ending the once common practice of obtaining multiple licenses to circumvent license suspensions or revocations in a particular jurisdiction. Information is centralized in the Commercial Driver's License Information System, which is accessible to state motor vehicle licensing agencies. Applicants for a commercial license can be routinely checked through this system.

The regulations apply to everyone who operates a commercial motor vehicle in interstate, foreign, or intrastate commerce, and to all their employers. Each professional truck driver and motor carrier is required to comply with FMCSR §§ 383, 390-397, and 399 at all times.(8) The preface of the FMCSR booklet proclaims that "safety is no accident."

Truck drivers and motor carriers may be jointly and severally liable for violating the regulations. In most jurisdictions, a violation of a statute or ordinance adopted for the public's safety may be negligence per se and may establish the violator's civil liability. Before the negligence per se doctrine can apply, injured parties must show they are members of the class that the statute or ordinance was intended to protect.

In addition, an injured party must show that the injuries suffered were of the kind that the statute was enacted to prevent. Further, the party must show that the statute or ordinance prescribes or pro scribes the conduct at issue and that this conduct proximately caused the alleged harm.(9) For example, 49 C.F.R. § 392.2 requires that hazard warning flashers must be used when a truck breaks down or stops on the traveled part of the road or the shoulder.

Most states recognize the doctrine of negligence per se in areas of established statutory law, including building codes, motor vehicle safety statutes, motor vehicle and safety ordinances, and state liquor liability codes.(10)

The use of the FMCSR may be an important tool to establish liability in truck cases and to show how the negligent conduct of the truck driver and the motor carrier contributed to or caused the collision.

Sections of the FMCSR most regularly used in litigation against defendants are as follows:

§383 Minimum uniform commercial driver's license requirements: drug testing; required knowledge and skills; federal disqualification; employer responsibilities; requirements to obtain a driver's license.

§385 Safety fitness procedures.

§387 Minimum levels of insurance coverage: \$750,000 per carrier operating in interstate commerce; and \$1 million per carrier if the carrier transports hazardous cargo in interstate commerce.(11)

§390 Trucking company minimum requirements. (Carriers are subject to federal on-site review of vehicle inspection and maintenance procedures and records, driver qualifications and hours of service compliance, accident histories, and related subjects. Carriers receive a "safety fitness" rating: Certain aspects of the company's operating authority can be terminated for carriers that are judged unsatisfactory.)(12)

§391 Qualifications of drivers.

§392 Operation of motor vehicles.

§393 Vehicle options necessary for safe operation.

§395 Driver's hours of operation (including maximum hours on-duty, off-duty, and in sleeper berth).

§396 Inspection, repair, and maintenance of vehicles.

§397 Transportation of hazardous materials; driving requirements and parking rules.

The FMCSR establishes minimum safety standards for trucking companies and professional truck drivers. Merely because a company and a driver satisfy the standards does not obviate their responsibility to meet a higher standard of care that is reasonable under the circumstances.

Driver qualifications

Trucking companies have a nondelegable duty to hire only qualified operators. A qualified driver must satisfy the following criteria:(13)

1. Be at least 21 years old.
2. Be able to read and speak English.
3. By reason of experience or training, be able to safely operate the vehicle.
4. By reason of experience or training, be able to determine whether cargo is securely loaded.
5. Be physically qualified to operate a commercial motor vehicle (CMV). (A medical examiner must perform a thorough physical examination to determine if the driver is qualified.)(14)
6. Hold a valid commercial driver's license.
7. Complete an application form for employment.(15)
8. Complete a driving test in the type of vehicle the applicant will be expected to operate.(16)
9. Pass a written examination.
10. Be deemed qualified to operate a CMV (for example, must not have committed a criminal or other offense).

Defendant drivers who fail to satisfy one or more of these criteria subject themselves and the motor carrier to a viable punitive damages claim.(17)

Within 30 days after the initial hire, the carrier must submit an inquiry to every state agency that has issued a CDL to the driver during the last three years." A motor carrier must also investigate the driver's employment record for the previous three years. All

materials obtained in the investigation must be maintained in the driver's employment file.

After the initial hire and investigation are completed, the carrier has a continuing duty to supervise drivers. A carrier must conduct an annual review of each driver's driving record and obtain a list of the operator's traffic violations.(19)

The carrier must also closely monitor the hours that its drivers work to ensure that they file correct logs and do not operate a CMV for more than the maximum number of hours.(20) Further, carriers are prohibited from encouraging drivers to speed or otherwise violate the FMCSR.(21)

All carriers are required to inspect, repair, and maintain vehicles subject to their control.(22) Carriers are also required to maintain repair records and perform periodic vehicle inspections.

Motor carriers may be liable for their violation of these regulations under the theories of negligent entrustment, negligent hiring and retention, and negligent vehicle maintenance.

Drivers, likewise, are obligated to comply with the FMCSR.(23) They must operate vehicles subject to the regulations "in accordance with the laws, ordinances, and regulations of the jurisdiction in which [the vehicle] is being operated."(24) Drivers are prohibited from operating a semitrailer when they are tired or ill or are so impaired that they cannot operate one safely.(25) Drivers are also required to report FMCSR and traffic violations to the carrier as part of a self-reporting program.(26)

Leased trucks

In circumstances involving a semitrailer that the carrier does not own, the carrier and the driver must sign a written lease agreement.(27) The agreement must include the following:

1. The names of the parties.
2. The duration of the lease, including the time and date it begins and ends.
3. The amount the carrier will pay the driver.
4. The assumption that the carrier exclusively possesses and controls the semitrailer's equipment.
5. The obligation of the driver to display the carrier's placard or sign on the truck identifying the carrier by name and including the ICC number issued to the carrier by the U.S. Department of Transportation.
6. A provision for termination of the lease and removal of the placard from the vehicle.

Generally, the motor carrier is vicariously liable for all acts of the driver while he or she is operating the semitrailer with the placard attached to the truck.(28)

In severe crashes, it may be prudent to search for additional entities partly or wholly responsible for the collision. For example, a company that loaded its goods into a trailer may be liable for damages caused by the negligent loading or configuring of the trailer if the contents shift and cause the vehicle to lose control or the contents fall on people unloading it.(29)

Also, an insurance company and/or claims management service that participated in approving or denying the hiring of a driver for the carrier may also be liable under the Restatement of Torts § 324(a).(30)

Finally, a carrier that negligently provided a qualification certificate under 49 C.F.R. § 391.65 indicating the driver was qualified to operate a semitrailer on a trip lease--a lease for one load or one day--may be liable even though the carrier is not a party to the ultimate lease agreement.

In truck crash litigation, it is important to immediately secure all evidence that may otherwise be lost, destroyed, or unavailable later. For example, the FMCSR requires all drivers to complete a log book (also known as Record of Duty Status) to document the number of hours the driver has operated the truck, been off duty, and been on duty but not driving. The FMCSR established timetables for drivers to file records with the motor carrier within 13 days of completing the approved log or form.(31) The driver's home terminal must keep the log book until the 20th day of the next calendar month. The book is then forwarded to the carrier's principal place of business and retained for six months.(32)

Immediately after a crash, trucking company representatives and its accident reconstruction experts will secure the semitrailer and perform the background investigation. Critical evidence inside the truck, including beer cans, pep pills, cellular telephones, magazines, and duplicate log books, may be removed. The truck itself may be sold for scrap and destroyed before an attorney is even consulted by members of the victim's family to protect their interests.

Safety at risk

The FMCSR, ISTEA, and state regulations require professional truck drivers to comply with specific rules designed to protect public safety and to disqualify unsafe drivers from operating semitrailers. Should the U.S. Congress further deregulate the trucking industry, there will be even larger, longer, and heavier trucks on our public thoroughfares. Professional truck drivers may be inadequately trained to safely handle the new rigs.

If these monster trucks start traveling the roadways, the number of truck-car crashes will probably increase and more innocent people will be injured or lose their lives.

Notes

- (1.) 42 U.S.C. §§101-112 (1994).
- (2.) As of 1995, there were 6,881,074 "large trucks" registered with the U.S. Department of Transportation or its state counterpart. NATIONAL HIGHWAY TRAFFIC SAFETY ADMIN., TRAFFIC SAFETY FACTS 1996, LARGE TRUCKS (1997). Federal Motor Carrier Safety Regulations define commercial motor vehicles (large trucks) to include trucks of 10,001 or more pounds. 49 C.F.R. §390.5 (2)(iii)(2) (1996).
- (3.) NATIONAL HIGHWAY TRAFFIC SAFETY ADMIN., supra note 2.
- (4.) INSURANCE INST. FOR HIGHWAY SAFETY, LARGE TRUCK FATALITY FACTS 1 (1997).
- (5.) 40 U.S.C. §§1-27, 301-327 (1994).

(6.) 49 C.F.R. §301-399. A copy of the FMCSR Handbook for operators of commercial motor vehicles may be obtained for a nominal fee from the American Trucking Associations, 2200 Mill Rd., Alexandria, VA 22314-4677. The FMCSR is administered by the U.S. Department of Transportation, Federal Highway Administration.

(7.) 49 C.F.R. § 383.1(a); see also NATIONAL HIGHWAY TRAFFIC SAFETY ADMIN., HIGHWAY SAFETY DESK BOOK, introduction (1996).

(8.) *Id.* §§390.1,390.3(e). American Trucking Associations, FMCSR Handbook, Receipt ("This receipt is to be read and signed by the driver. It should then be countersigned by the motor carrier representative and placed in the driver's qualification file"); see also *Smith v. Tommy Roberts Trucking Co.*, 435 S.E.2d 54 (Ga. Ct. App. 1993).

(9.) *Hageman v. TSI, Inc.*, 786 P.2d 452,454 (Colo. Ct. App. 1989); see also *Inland Steel v. Pequignot*, 608 N.E.2d 1378, 1383 (Ind. Ct. App. 1993).

(10.) The policy of the Federal Highway Administration "is to encourage each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. The requirements for compliance with safety standards in one state should be compatible with the requirements in another state." 49 C.F.R. §350.5.

(11.) The Federal Motor Carrier Safety Act of 1997 amended 49 U.S.C. §31138(g) to \$5 million for the transportation of petroleum products classified as hazardous material in cargo tanks, portable tanks, or hopper-type vehicles with capacities of over 3,500 water gallons.

(12.) NATIONAL HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 7. To obtain a copy of a motor carrier profile, contact Computing Technologies, P.O. Box 3248, Merrifield, VA 22116-3248, tel. (703) 280-4001. The cost of the profile is \$27.50.

(13.) 49 C.F.R. § 391.11.

(14.) *Id.* §§391.41(2)-391.49.

(15.) *Id.* §391.21.

(16.) *Id.* §391.31.

(17.) *Zamalloa v. Hart*, 31 F.3d 911 (9th Cir. 1994); *Harmon v. Grande Tire Co.*, 821 F.2d 252 (5th Cir. 1987); see also *J.R. Mabbett & Son, Inc. v. Ripley*, 365 S.E.2d 155 (Ga. Ct. App. 1988); *Pequignot*, 608 N.E.2d 1378; *Stong v. Freeman Truck Line, Inc.*, 456 So. 2d 698 (Miss. 1984).

(18.) 49 C.F.R. §391.23.

(19.) *Id.* §391.25.

(20.) See *id.* §§385.5, 390.11, 390.13, and 395.3.

(21.) *Id.* §§390.13, 392.6.

(22.) *Id.* §§393.1, 396.9, 396.11.

(23.) Id. §390.3(e)(2).

(24.) Id. §392.2.

(25.) Id. §392.3.

(26.) Id. §391.27.

(27.) Id. §§1057.1-1057.42. A verbal lease may also be binding. See Zamalloa, 31 F.3d 911, 917. See generally DAVID N. NISSENBERG, THE LAW OF COMMERCIAL TRUCKING § 7-16(e) (1994 & Supp. 1997).

(28.) Rediehs Express, Inc. v. Maple, 491 N.E.2d 1006, 1011-12 (Ind. Ct. App. 1986).

(29.) See 49 C.F.R. § 392.9.

(30.) Hutcherson v. Progressive Corp., 984 F.2d 1152, 1156 (11th Cir. 1993).

(31.) 49 C.F.R. §395.8(i).

(32.) Id. §395.8(k).

RELATED ARTICLE: Section guides members past roadblocks to protecting consumers' rights

The motor Vehicle Collision, Highway, and Premises Liability Section-- now 2,026 members strong--uses technology and networking to provide its members with information about automobile recalls, highway design, reconstruction evidence, and experts.

According to Section Chair Linda Miller Atkinson of Channing, Michigan, the section's Internet home page--one of its most valuable resources--is constantly updated with links to current documents and information on experts. "The section pulls together bread-and-butter concerns," Atkinson said, "and puts the trial lawyer in touch with the tools needed to investigate, prove, and win a case. The lawyer is also given contact information for a wide variety of affiliated litigation groups."

At ATLA's Annual Convention in San Diego last year, the section sponsored a program in conjunction with ATLA's National College of Advocacy. The program featured speakers on noneconomic damages in motor vehicle wrongful death cases and compensation in soft tissue injury cases.

ATLA's Annual Convention gives section members the opportunity to network in person with colleagues from across the nation. To further encourage networking, the section publishes a directory, which includes the names, addresses, phone and fax numbers, and e-mail addresses of members as well as information on practice specialties.

To promote sharing of information, section leaders encourage members to submit pleadings, briefs, depositions, and memoranda on motor vehicle collision, highway, and premises liability issues to the ATLA Exchange's Deposition and Document Banks. The Exchange also offers section members discounts on database searches and documents. For more information, call the Exchange at (800) 344-3023.

Other section officers include First Vice Chair Lawrence Friedman of Boca Raton, Florida;

Second Vice Chair Laird of Fort Worth, Texas; and Secretary Daniel Chamberlain of Indianapolis.

For more information about the section, contact section Coordinator Nancy Dugan at (800) 424-2725, ext. 313. To become a section member, call Membership at (800) 424-2727, ext. 611. Membership dues are \$28.

RELATED ARTICLE: Proceeding to success: 10 litigation tips

Depending on when an attorney is hired, the following 10-step checklist may be useful in successfully litigating truck cases:

1. Hire investigators to photograph and videotape the crash site. They should take detailed pictures of the inside and outside and an overhead view (to show angle and severity of the impact) of all vehicles involved in the collision and, if possible, an overhead photo of the crash site.
2. Tape record statements of witnesses, police officers, investigators, emergency response personnel, the tow truck operator, the defendant driver and any passengers in the cab, and representatives of the motor carrier. Review written reports of investigating police officers and emergency personnel before taking their statements. Try to videotape statements at the collision scene so that witnesses can clarify and explain their testimony.
3. Immediately send a letter by certified mail informing the motor carrier, the truck driver, and the carrier's insurance company about the law firm's retention. The letter should clearly state that all physical evidence pertaining to the collision, including the vehicles, is necessary to investigate and prosecute the case and that the destruction or loss of evidence could result in a separate civil claim for spoliation of critical evidence.
4. Obtain legal title to the client's vehicle and the semitrailer. Locate secure storage facilities. If you are unable to obtain title to the vehicles, file a motion for a temporary restraining order to prevent any destruction or tampering of evidence until a thorough supervised inspection is completed.
5. Retain a competent expert to inspect the truck for mechanical difficulty, including improper brake adjustments. A mechanic and tow truck may be helpful to allow the expert to inspect all parts of the semitrailer, including the undercarriage, air brakes, and system operations.
6. File a lawsuit against the motor carrier and the truck driver. Attach comprehensive discovery documents to the complaint, such as interrogatories, requests for production, and requests for admissions, based on information that you have already obtained in the investigation. Request copies of all permanent and trip leases or contacts between the driver, the carrier, and the shipper to discover the legal obligations and responsibilities of each.
7. Request a motor carrier safety profile from Computing Technologies, P.O. Box 3248, Merrifield, VA 22116-3248. Obtain a driver's license record and criminal infraction sheet from the state where the truck driver's commercial driver's license was issued.
8. Consider whether to hire specialist to prepare an accident reconstruction and produce a computer animation of the crash.

9. Notice the deposition of the truck driver and the 30(b)(6) deposition of the motor carrier employee responsible for the safety and training of the company drivers.

10. File a nonparty subpoena to the defendant driver's previous employers to obtain a complete copy of the driver's employment file, including application, record of road test, violation history, and employment status and termination.

Application of the Federal Motor Carrier Safety Regulations in Trucking Litigation

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Section One
Application of the Federal Motor Carrier Safety Regulations
in Trucking Litigation..... Daniel S. Chamberlain

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Attachment

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I. INTRODUCTION

All motorists are required to know the rules of the road. Truck drivers, however are in a special situation. They are professionals. They are paid to drive, and the vehicles they drive are complex pieces of machinery. Trucks are much heavier than automobiles and passenger vans, they are much more difficult to maneuver, and they require a much greater distance to stop. As we all know, then trucks are involved in vehicular collisions, serious bodily injury or death often results.

The Office of Motor Carriers (OMC) of the Federal Highway Administration (FHWA) has compiled national data about truck crashes for over ten years¹. The OMC's report on the data for the last year available, 1999, reveals the following:

- (1) There were 453,000 police-reported crashes involving large trucks². 95,000 (20.9%) of these involved injury. 4,542 (1%) of the crashes involved a fatality which the number killed totaling 5,362.
- (2) 544 (1.9%) of the collisions that involved fatalities in 1999 occurred in adverse weather; almost 13,000 (13.7%) of the collisions involving non-fatal injuries occurred in adverse weather. Rain was the most common adverse condition reported, being listed as a factor in 7.7% of the collisions involving fatalities, and 10.4% collisions involving injuries.
- (3) Almost 1.5% of the truck drivers involved in fatal collisions (73 drivers) had invalid licenses, and 370 drivers (7.6%) had not CDL at all. Fifty-three (53) drivers were reported as intoxicated at the time of fatal collisions (1.1%). In 38% of the 453,000 reported conditions, the actions of the truck driver were cited as a contributing factor to the collision. In approximately 102 (2.1%) of the fatal collisions, fatigue or lack of sleep on the part of the truck driver was considered to be a contributing factor.

II. BASIC PRINCIPLES OF THE FMCSR.

To better understand the application of the duties and obligations of FMCSR place on truck drivers and trucking companies, it is helpful to first consider some general provisions of the

¹ All data from the OMC cited in this paper is online and can be found at the OMC's homepage: <http://www.fmcsa.dot.gov>.

² Large trucks were defined in the OMC study as having a Gross Vehicle Weight Rating (GVWR) of over 10,000 pounds. A "commercial motor vehicle" is likewise defined in the FMCSR as one with a GVWR of over 10,000 pounds. §390.5. However, "commercial motor vehicle" is defined as a vehicle have a GVWR of over 26,000 pounds in the section fo the FMCSR that deal only with the requirements for a Commercial Drivers License (CDL). §383.5.

regulatory scheme contained in the FMCSR and related federal regulations. Parts 390 through 399 of 49 CFR apply only to interstate trucking. However, most states have adopted the FMCSR to apply to intrastate trucking. Therefore, the interstate/intrastate distinction is often not meaningful in truck collision litigation³.

The purpose of the FMCSR is to create uniform standards of travel and thereby promote safety by helping to prevent truck collisions. This purpose is expressed in various sections of the FMCSR⁴ and has been recognized by courts⁵ in their interpretation of the FMCSR.

The obligations and responsibilities under the FMCSR are shared by both truck drivers and the companies that employ them. Section 390.11 states that when "a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition." This principle of shared responsibility between the driver and the trucking companies is further embodied in the definition of "employees" which includes an independent contractor operating a commercial motor vehicle on behalf of a trucking company⁶. Indeed, courts throughout the United States have held that carriers are vicariously liable for any negligent driving of such "employees" when that negligence occurs while the truck involved is under lease to a trucking company or companies.⁷

³ The aim of the Motor Carrier Safety Assistance Program is to provide financial assistance to States to "reduce the number and severity of accidents and hazardous materials incidents involving commercial vehicles." 49 CFR 350.101. The requirements for compliance with the safety standards in one State are to be compatible with the requirements in another State. Each State must assume responsibility for improving motor carrier safety and adopting and enforcing State safety laws and regulations that are compatible with the FMCSR's. (49 CFR parts 390-397). 49 CFR 350.201. The FMCSR also provide that "every motor vehicle must operated in accordance with the laws, ordinances and regulations of the jurisdiction in which it is being operated. However if a [FMCSR]... imposes a higher standard of care than that law, ordinance, or regulation, the [FMCSR]...must be complied with." 49 CFR 392.2.

⁴ §382.101, §383.1(a) and §387.1.

⁵ Hageman v. TSI, Inc., 786 P.2d 452 (Colo.App. 1989), Interstate Motor Lines v. Western Ry. Co., 161 F.2d 698 (10th Cir. 1947); and, Tri-State Casualty Ins. Co. V. Loper, 204 F.2d557 (10th Cir. 1953).

⁶ §390.5

⁷ See, Rediehs Express, Inc. v. Maple, 491 N.E.2d 1006 (Ind.Ct.App. 1986), wherein the Court held that the trucking company was responsible for injuries caused by negligence of the driver even if the driver was embarked on an undertaking of his own as long as the driver was operating within the term of the lease with the trucking company. The court in Rediehs cites 14 cases from other jurisdictions to support this holding.

The FMCSR embody the principle that "ignorance of the law is no excuse."⁸ Part 390.9 (e) requires that all motor carriers, their employees and drivers, shall be knowledgeable of, and comply with, the FMCSR. Further, this section requires that carriers instruct each of their driver regarding all applicable rules and regulations of the FMCSR. The failure to follow this requirement resulted in liability against a carrier in the case of Harmon v. Grande Tire Co., 821 F.2d 252 (5th Cir. 1987), wherein the Court noted that the trucking company had failed to provide substantive training to its drivers. The Court specifically emphasized the failure to train its drivers in the proper use of warning flashers pursuant to §392.22.

III. THE IMPORTANCE OF THE FMCSR IN ESTABLISHING LIABILITY & A PUNITIVE DAMAGE CLAIM

Courts throughout the United States have consistently held that violations of provisions of the FMCSR by a driver and/or his carrier(s)¹⁰ can form the basis for a negligence per se jury instruction.¹¹ Additionally, courts have recognized that punitive damages may be warranted against both the driver and the company when a trucking company blatantly ignores safety provisions of the FMCSR and this conduct leads to a tragic collision.¹² The following discussions will focus on which we have utilized in our practice. The discussion is not exhaustive, and if you are handling a case for a client injured in a truck collision, you should thoroughly familiarize yourself with the

⁸ See, Smith v. Tommy Roberts Trucking Co., 435 S.E.2d 54 (Ga.App.1993), wherein the Court held that an employer's purported lack of knowledge of a driver's lack of qualifications was not relevant because the employer was under a duty imposed by the FMCSR to check the driver's qualifications before hiring him.

¹⁰ The Ninth Circuit has held that a driver can be statutory employee of more than one carrier. In Zamolloa v. Hart, 31 F.3d 911 (9th Cir. 1994), the driver was under a long term lease with one carrier when he was involved in a collision while under a trip lease with another carrier. The long-term lessee company argued that only one carrier could be considered to be the statutory employer of the driver, under the leasing provisions of 49 CFR 1057.12(c)(1) which require a trucking company to take "exclusive possession" and "complete responsibility" for the operation of a vehicle once a lease has been entered into. The 9th Circuit rejected this argument holding that if an owner-driver lessor entered into two separate contracts with common carrier lessees the fact of the formation of the first contract should have no bearing on the liability of the other lessee under the second contract.

¹¹ See, for example, Inland Steel v. Pequignot, 608 N.E.2d 1378, 1383 (Ind. App. 1993); Wallace v. Ener, 521 F.2d 215 (5th Cir. 1975); Strong v. Freeman Trucking, Inc., 456 So. 698 (Miss. 1984); Carroll v. Deaton, Inc., 555 So. 140 (Ala. 1989); Simon v. Woodland, 179 N.W.2d 422 (N.D. 1970); Harmon v. Grande Tire Company, 821 F.2d 252 (5th Cir.); and, J.R. Mabbett & Son, Inc. v. Ripley, et al., 365 S.E.2d 155 (Ga. App. 1988).

¹² Smith v. Tommy Roberts Trucking Co., et al., 435 S.E.2d 54 (Ga. App. 1993); Wong v. Marziani, (US D CT., N.Y., 1995), 885 F.Supp. 74.

FMSCR.¹³

IV. OBLIGATIONS IMPOSED BY THE FMCSR ON TRUCKING COMPANIES

A. THE OBLIGATION TO MEET INDUSTRY STANDARDS

Under § 385 of the FMCSR, trucking companies are subject to on-sight examinations by the Federal Highway Administration (FHWA) to determine if they have a safety program in place to ensure compliance with various safety requirements of the regulations. At the time of these reviews, the carrier "shall demonstrate that it has adequate safety management controls in place" to ensure compliance with the FMCSR Safety Provisions.¹⁴ If the carrier's history of violations of the FMCSR Safety Provisions, vehicular collisions, and/or hazardous materials incidents is substantially above the norm for similarly situated carriers in the industry, the regulations state that such a finding by the FHWA would be "strong evidence that management controls are either inadequate or not functioning properly."¹⁵

Plaintiff's counsel should routinely check with the FHWA to obtain a copy of these ratings for the defendant carrier.¹⁶ If the carrier's ratings are below the norm for similar carriers, you have the basis for arguing that the particular violation in your case, for example the use of a fatigued driver, is part of a larger pattern or practice. Finding a pattern of safety violations on the part of a carrier can lead to a successful punitive damage claim.

B. THE TRUCKING COMPANY'S OBLIGATIONS TO ONLY USE QUALIFIED AND COMPETENT DRIVERS

Before a carrier allows an individual to drive, it has an affirmative duty to determine if the individual to drive, it has an affirmative duty to determine if the individual is "qualified." To be

¹³ The Pocketbook of the FMCSR does not include some sections of 49 CFR that may be helpful to you in your truck collision case. For example, §385, which requires a carrier to have a safety program in place to ensure compliance with the FMCSR, is not included in the Pocketbook. To get all of the sections of 49 CFR that deal with interstate trucking regulations, obtain a copy of the Fleet Safety Compliance Manual published by J.J. Keller and Associates, Inc., Neenah, Wisconsin. 1-877-564-2333

¹⁴ §385.5

¹⁵ §385.7(a)

¹⁶ You should request a Motor Carrier Safety Profile (CSP) for the trucking company in which you are interested. The CSP contains not only a history of compliance reviews of the carrier, but also the history of the carrier's enforcement cases, accident summaries, and inspection summaries. A CSP can be obtained from the following government contractor: The Scientex Corp., MCMIS Data Dissemination Program, P.O. Box 13028, Arlington, Virginia 22219. 703-276-3377

qualified to drive under the FMCSR, and individual must meet eleven (11) separate criteria:¹⁷

1. Must be at least twenty-one (21) years old;
2. Must be able to sufficiently read and speak the English language;
3. By reason of experience and/or training, must be able to safely operate the vehicle;
4. Is physically qualified to drive a commercial motor vehicle in accordance with subpart E -Physical Qualifications and Examinations of this part;
5. Has a currently valid commercial motor vehicle operator's license issued by only one (1) state or jurisdiction;
6. Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by Sec. 392.27;
7. Is not disqualified to drive a commercial motor vehicle under the rules in Sec. 391.15; and
8. Has successfully completed a driver's road test, and had been issued a certificate of driver's road test in accordance with Sec. 937.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him/her has accepted as equivalent to a road test in accordance with Sec. 391.33.

A defendant driver who does not meet one of these criteria subjects both himself and his carrier(s) to liability, which may include a claim for punitive damages.¹⁸

a. PHYSICALLY QUALIFIED TO DRIVE

The Sections 391.41-391.49 of the FMCSR contain the physical qualifications necessary to drive most trucks. These provisions in general require a driver to have adequate vision in both eyes, adequate hearing, be free from psychiatric disorder, epilepsy, high blood pressure, insulin dependent diabetes, certain heart conditions, have adequate use of his or her extremities, and have no current clinical diagnosis of alcoholism. The use of a driver that failed to meet the physical qualifications of 391.41, et. seq., can be the basis for liability against the trucking company and the driver. For example, we are currently handling a case where the driver had monocular vision (vision in only one eye). Under §391.41, monocular drivers can never be qualified to drive a truck. Our trial court has ruled that causal link between monocular vision and the collision is a question for the jury. Further, the trial court has indicated that it will give a negligence per se instruction of this violation of §391.41, applicable to both the driver and the trucking company.

b. DRIVING TEST

Section 391.31 of the FMCSR requires a carrier to give each prospective driver a road test, which may be successfully completed before that person is allowed to drive. This test includes not only the ability to handle the vehicle, but also skill in performing pre-trip inspections, coupling and uncoupling of units, and use of the vehicle's controls and emergency

¹⁷ §391.11

¹⁸ Smith v. Tommy Roberts Trucking Company, (Ga. App. 1993), 435 S.E.2d

equipment. The failure to give this test can form the basis for liability against a trucking company.¹⁹

c. APPLICATION FOR EMPLOYMENT

Section 391.21 of the FMCSR set out very stringent requirements as to the employment application and pre-employment investigation with which the carrier is required to comply. The carrier is required to obtain information about the prospective driver's driving record and employment history for the preceding three (3) years. The applicant must provide a list of employers for three (3) years prior to applying, and must also provide a list of names and addresses of employers for the previous ten (10) years for whom the applicant operated a commercial motor vehicle. In turn, the employer is required to investigate each driver it employs. This investigation includes the requirement that the trucking company inquire into the applicant's driving record during the preceding three (3) years to the appropriate agency of every state in which the driver held a license, and an investigation is to take place within thirty (30) days of the date of his or her employment begins. The failure to conduct an investigation on the part of a trucking company can lead to liability based under §391.21 if it can be shown that failure to conduct an investigation led to the hiring of an unqualified driver.²⁰

C. A TRUCKING COMPANY'S OBLIGATION TO SUPERVISE ITS DRIVERS.

¹⁹ See, Smith v. Tommy Roberts Trucking Co., et al. (Ga. App. 1993), 435 S.E.2d 54, wherein the court noted that the trucking company had failed to determine if the driver was qualified to drive the truck. The record showed that the trucking company had failed to give a driving test, failed to obtain the extensive application of employment, and failed to receive the history of the driver's traffic violations. The court held that these omissions presented a factual question of whether punitive damages could be awarded on the basis that the trucking company hired a driver who was "habitually reckless".

²⁰ See, for example, Stephens v. A-Able Rents Company, 654 N.E.2d 1315 (Ohio App. 1995) wherein the Ohio Appellate court held that the employer could be liable for doing nothing more than obtaining a driver's traffic record and failing to conduct a pre-employment check as required by the FMCSR. The court noted that had the employer conducted the check it would have been revealed that the driver's history of drug abuse, which the court indicated would be revealed as evidence in the case at bar which involved the driver's attempt at rape of a customer while the driver was under the influence of crack; and, Eagle Motorlines v. Mitchell, 78 So.2d 42 (Miss 1955), wherein the court held the employer liable for failure to discover the driver's drinking habits. Although this case does not specifically discuss the FMCSR, clearly the requirements to conduct an extensive pre-employment investigation mandated by the FMCSR provided for the same duty recognized by the Mississippi court in Eagle Motorlines. Indeed, the court noted that the trucking company "was not at liberty to shut its eyes and close its ears and thus be able to say, 'we did not know, and no facts were known to us whereby we should have known' that Burnham was an incompetent driver. They were charged with a duty to exercise reasonable diligence to find out whether he was a competent driver."

The FMCSR require diligence of the trucking company not only when it hires the driver, but also during the time that it employs the driver to operate a vehicle. Section 391.25 requires the company to conduct an annual review of each driver's driving record for the twelve (12) months. Section 391.27 requires each carrier to obtain a report from each of its drivers with a list of all violations of motor vehicle traffic laws and ordinances of which the driver had been convicted or of which the driver has forfeited a bond or collateral during the preceding twelve (12) months.

Section 391.15 requires the trucking company to not only obtain each driver's report of accidents and violations, but also to analyze these reports to ensure that any driver who has a violation proscribed by this section is disqualified for driving for a period of up to one (1) year. The disqualifying offenses under this section include driving commercial motor vehicle with an alcohol concentration of 0.04% or more.

The trucking company's supervision obligations under the FMCSR also include closely monitoring the hours that a driver actually drives a motor vehicle to ensure that the driver files correct logs and does not work in excess of the maximum number of hours. The failure of a trucking company to monitor a driver's logs has been held to create a jury question on punitive damages when an arguably fatigued driver caused a collision.²¹ A trucking company's failure to institute a program to discover falsification of its drivers' logs would violate various provisions of the FMCSR, including Section 390.11, 391.13, 395.3 and 385.5.

D. TRUCKING COMPANY LIABILITY FOR ENCOURAGING UNSAFE DRIVING PRACTICES.

Most of us can recall the litigation against Domino's Pizza arising out of vehicular collisions when its drivers were attempting to deliver pizzas within thirty (30) minutes of the order. The basis of this litigation was Domino's policy of encouraging their drivers to speed in order to meet the arbitrary delivery deadline. This type of policy, which would encourage speeding on part of truck drivers, is specifically prohibited by the FMCSR. §390.13 provides that a motor carrier should not aid, abet, encourage or require its employees to violate any of the rules of the FMCSR. §392.6 is more specific in this regard in providing that no trucking company shall schedule a delivery in such a way that would require the driver to operate his vehicle at speeds greater than those prescribed by the rules of the road in effect at the location in question. Finally, §395.3 provides that no trucking company shall permit or require any driver to exceed the maximum hours of driving time allowed under the FMCSR.^{22, 23}

As counsel for the Plaintiff, if you can establish that a trucking company has encouraged

²¹ Wong v. Marziani, et al., (US D Ct., N.Y. 1995), 885 F.Supp. 74, at 79.

²² See, Walt's Drive-A-Way Service, Inc. v. Powell, 639 N.E.2d 857 (Ind. App. 1 Dist. 1994), wherein a truck driver who was discharged for refusing to violate FMCSR by driving an excessive amount of hours, had cause of action against employer for wrongful discharge.

²³ See, Haas Carriage, Inc. v. Berna, 651 N.E.2d 284, (Ind. App. 1 Dist. 1995), wherein a former employee brought a wrongful discharge claim against employer which terminated him because he refused to commit an act unlawful under the FMCSR.

speeding by the method in which it pays a driver (for example, by the number of miles driven), or has encouraged other unsafe practices such as driving in excess of the number of hours allowed, you should consider adding a count for punitive damages to your complaint.²⁴

E. A TRUCKING COMPANY'S DUTY TO INSPECT, REPAIR AND MAINTAIN THEIR VEHICLES IN A SAFE CONDITION

The FMCSR require that all trucking companies "shall systematically inspect, repair and maintain, or cause to be systematically inspected, repaired and maintained, all motor vehicles subject to its controls."²⁵

This general duty of a trucking company to maintain its vehicles in good working order includes a duty to maintain repair records and inspection reports²⁶, the duty to maintain driver reports, which are to be filed each day on each vehicle driven²⁷, and a duty to make periodic inspections of each vehicle²⁸. The failure to maintain a vehicle in proper working order and safe condition can be the basis for a claim against the trucking company.²⁹ A trucking company that breaches this duty to maintain its vehicles in a safe condition can be subject to a claim of punitive damages for putting a defective vehicle on the roadway. See, J.B. Transport, Inc. v. Bentley, 427 S.E.2d 499 (Ga. App. 1992), wherein the court noted among other violations of the carrier, its putting a "defective tractor-trailer out on the highway" Id. at 505. The court noted that the driver had reported operational defects in the vehicle the day before his post-trip inspection report, and yet the company failed to present any evidence that the defects had been corrected prior to the time of the collision.

V. OBLIGATIONS IMPOSED ON DRIVERS AND TRUCKING COMPANIES BY THE FMCSR

As previously stated, all obligations of a truck driver under the FMCSR are likewise obligations of the carrier for whom he or she drives. Thus, it should be kept in mind that a breach of any following duties or obligations will support a claim of negligence not only against the offending driver, but also against the carrier(s) employing him. The following discussion is limited to provisions of the FMCSR that apply directly to the driver.

The FMCSR provide that every driver is to comply with all applicable regulations and

²⁴ See, for example, Wong v. Marziani, et al., (US D Ct., N.Y. 1995), 885 F.Supp. 74; Smith v. Tommy Roberts Trucking Co., et al., (Ga. App. 1993), 435 S.E.2d 54; and J.B. Transport, Inc. v. Bentley, 427 S.E.2d 499 (Ga. App. 1992).

²⁵ §396.3 (a)

²⁶ §396.11

²⁷ §396.11

²⁸ §396.17

²⁹ J.R. Mabbett & Son, Inc. v. Ripley, et al., 365 S.E.2d 155 (Ga. App. 1988).

obligations of the FMCSR.³⁰ §392 of the FMCSR contains most of the specific obligations for drivers. First, §392.2 provides that all vehicles subject to the FMCSR are to be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which they are being operated. Furthermore, this section provides the FMCSR are to be followed when the FMCSR are to be followed when the FMCSR impose a higher standard than a local law.

§392.3 prohibits any driver from operating a truck his is ability or alertness is so impaired though fatigue, illness, or any other causes making it unsafe for him to drive. This section can often b used in conjunction with §395.3 which set out the maximum driving time allowed for any driver in a 24-hour period, a 7-day period, and an 8-day period.³¹

§392.4 prohibits the use of any amphetamines or “pep pills” while driving and §392.5 prohibits any use of alcohol by a driver within four (4) hours before going on duty, which “alcohol use” being defined as “the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.”³² §392.7 requires a driver to make a pre-trip inspection vehicle to determine the specific parts and accessories are in good working order. Likewise §392.8 requires that a driver inspect the emergency equipment of his vehicle to make sure it is in good working order for driving. §392.9 provides for the responsibility of the driver to make sure that his vehicle has been properly loaded, and also provides that a driver is to examine his load and its load securing devices within the first twenty-five (25) miles after beginning a trip, and thereafter, every three (3) hours or one hundred fifty (150) miles of driving, whichever occurs first.³³

The actual driving of a truck is discussed in §392.14, which deals with adverse weather. **In light of the OMC statistics that almost 25 of the fatal truck collisions and 14% of the non-fatal truck collisions in 1999 occurred in adverse weather, §392.14 is important to remember.**

§392.14 requires using extreme caution in the operation of his truck during hazardous conditions, such as those caused by the snow, rain, etc., adversely affect visibility or traction. This section goes on to say that “speed shall be reduced when such conditions exist”. Although §392.14 of the FMCSR does not indicate what is considered a safe speed in hazardous conditions, counsel for the Plaintiff may find assistance in his or her state’s Commercial Drivers License Manual. For example, Indiana uses a Commercial Drivers License Manual, which has been prepared by the Federal Highway Administration (FHWA). This manual is provided to individuals who wish to obtain commercial drivers license, a requirement to drive a truck under the FMCSR. The manual includes

³⁰ §390.3(e)(2)

³¹ The FMCSR requires all drivers to keep a daily log setting out a complete record of what they have done in each 24-hour period so it can be ascertained if the driving is in compliance with the maximum driving time set out in §395.3. The daily log is to be sent to the carrier employing the driver withing two (2) weeks of the completion. §395.8(i). However, the carrier is only required to keep these logs for six (6) months. §395.8(k). Therefore, Plaintiff’s counsel must file suit and immediately request the logs to ensure the best opportunity of actually receiving them through discovery.

³² §382.107

³³ §392.9(b)

the following specific instruction concerning reduction of speed in hazardous conditions:

SLIPPERY SURFACES. It will take longer to stop and it will be harder to turn without skidding when the road is slippery. You must drive slower to be able to stop in same distance as on a dry road. Wet roads can double stopping distance. Reduced speed by about one-third (e.g., slow from 55 to about 35 mph) on wet road. On packed snow, reduce speed by one-half, or more. In the surface is icy, reduced speed to crawl and stop driving as soon as you can safely do so.

The above instruction may be very powerful evidence in your case if the collision occurred while the roadway was wet, either because of rain, snow, or ice. Although it may not have the status to warrant a negligence per se instruction, Plaintiff's expert can cite this section in support of an opinion that the truck was traveling too fast for the conditions, a statutory violation in most jurisdictions that would support a negligence per se instruction.

§392.22 requires a driver whose vehicle becomes disabled to activate the vehicle's hazard warning signal flashers and within ten (10) minutes to place warning devices at specified locations in both the front and rear of the vehicle. The failure to abide by these and other provisions of §392.22 concerning the use of emergency signals for a stopped truck has been the basis for liability in a number of cases, wherein such failure was held to be negligence per se on the part of the driver.³⁴

CONCLUSION

Once a decision was made by our government to allow the extremely dangerous vehicles commonly referred to as semis on our nation's roadways, the FMCSR were promulgated to promote the safety and reduce the risk of truck collisions. It is common for trucking companies and the drivers they employ to routinely ignore or blatantly violate the safety provisions of the FMCSR. When that occurs and a member of the general public is maimed or killed as a result, only a skillful Plaintiff's counsel well versed in the FMCSR can ensure that justice will prevail.

³⁴ See, for example, Brandes v. Burbank, 613 F2d 658 (7th Cir. 1980); Wallace . Ener, 521 F2d 215 (5th Cir. 1975); Thomas v. McDonald d/b/a DAPSCO, 667 So.2d 594, (Miss. 1995); and, Strong v. Freeman Truckline, Inc., 456 So.2d 698 (Miss. 1984).