Newsletters - Truck Litigation Issue

Opening Remarks

Injury and wrongful death claims resulting from truck collisions make up a large part of our practice. Many of these cases involve complex accident reconstruction, mechanical engineering, analysis of fleet operations and equipment maintenance, and violations of the Federal Motor Carrier Safety Regulations for hiring and supervising.

We hope this information may be of assistance to our friends and colleagues. If you would like additional information or have suggestions, call us at 1.888.305.7447 or 541.393.8192, fax to 541.484.0882, or e-mail us.

Trucking Safety Regulations Key to $2.2 Million Settlement

Mt. Hood Beverage Co.

The parents of a 12 year old girl came to us after their daughter was killed by a truck driver who was acting in the scope of his employment. Because he was a licensed commercial driver, he and his employer had to comply with the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR section 391 et seq. In depositions of upper management and fleet supervisors, we explored the fault of the company in failing to comply with the FMCSR, particularly in respect to hiring and supervising their drivers. Mt. Hood had failed to implement those important safety regulations. Those failures became the basis of Plaintiffs' motion for punitive damages. The young girl's death was a horrible and preventable loss, and the threat of punitive damages against the employer increased the pressure to settle the claim for $2.2 million.

The truck driver and his passenger, employees of Mt. Hood Beverage Company, were making a beer delivery when they slammed into the child walking alongside the road, fled the scene, then later drove back, stopped, and asked if anyone had seen the vehicle that hit her, leaving again without identifying themselves. For five days the two employees covered up their involvement. They claimed they had hit a deer, glued deer hair to the damaged vehicle, and tried to buy parts to repair the van from a local wrecking yard.

After the girl's parents retained us to prosecute the wrongful death claim, we began to investigate how such people were entrusted with a company vehicle. Extensive document and deposition discovery revealed a gross lack of compliance with the FMCSR. Although Mt. Hood operated a fleet of more than 300 commercial vehicles, including semi-trucks and trailers, ten bay local delivery trucks, and vans, they had no adequate FMCSR compliance program.

The Federal Motor Carrier Safety Regulations require detailed background checks when a driver is hired: driving records, criminal records, employment records, and physical qualifications must be verified. If a potential hire doesn't check out, he or she must not be allowed to drive a truck. Experience reflected in the statistics of the
Federal Motor Carrier Safety Administration shows that failure to follow these rules will likely lead to predictable -- and tragic -- results. Had Mt. Hood done the required background check, it would have discovered that its driver was unqualified to drive a commercial vehicle. The driver was blind in one eye and not physically qualified. He had lied on his job application, had been fired for failing urinalysis tests, and had been convicted of reckless driving and lying to a police officer.

The critical driver qualification regulations that Mt. Hood failed to follow required that motor carriers: (1) obtain prior addresses, driving records, prior employment history, driving experience, and records of convictions; (2) actively investigate the applicant's employment; (3) maintain a driver's qualification file documenting prior employment history and prior driving records, results of driving tests, current driving records, copies of road skill tests and written examinations, copies of physical examinations (including vision exams), a copy of the Commercial Driver's License (CDL), current medical certificate, and records of violations and accidents, and; (4) perform an annual review of the driving record of each driver. 49 CFR section 391 et seq. Because of the proven safety record of the FMCSR, we were able to show that not only did the FMCSR conclusively establish the standard of care for CDL drivers, the rules also were strong evidence of the common law standard applicable to all vehicles and drivers in the fleet.

One of the most important aspects of the settlement was Mt. Hood's agreement to comply with federal safety regulations in the future. Mt. Hood agreed to send all of its operations managers to a nationally-certified course on the application of the FMCSR, to hire one manager to be in charge of fleet safety and compliance with the FMCSR, and to apply the principles of the FMCSR to every driver of every company vehicle throughout the company's fleet. These terms set a standard for the operation of such mixed fleets, which we hope will improve safety on the roadways.

**American Red Ball Transit Co.**

A family of four were driving home on Highway 38 after visiting family over the Thanksgiving weekend. The father stopped the car when they came upon landslide debris covering both lanes of the roadway. He began to back the car in order to turn around, when Defendant's tractor-trailer bounced through the landslide debris and veered into the oncoming lane. The truck struck the family's car and drove it spinning backwards, off the road, and over the bank into the Umpqua River. The mother and two children were drowned.

Working with private investigators, trucking experts, a laser surveying and mapping crew, a photography and night vision expert, and an accident reconstructionist, our investigation documented that Defendant's truck struck the family's car in their lane of travel, that the driver of the truck had adequate sight distance to stop the truck short of the slide, and that even on low beams the truck driver should have seen the slide and safely stopped. Our investigation also documented numerous log book violations suggesting overdriving in violation of the FMCSR. The claims were settled for a total of $1,500,000.
Ron's Oil Co.

Confidential Settlement

When a Ron's Oil tanker truck crossed the center line, crashed into a woman's pickup and rolled into a coastal stream, investigators from two police agencies, DEQ, EPA, and a federal HAZMAT team converged on the scene. A great deal of energy was focused on containing the oil spill and protecting spawning grounds. We were retained by the woman's family to focus on how the collision occurred and to prosecute a wrongful death claim for the loss of this vital 45 year old woman.

From the beginning we worked with the law enforcement agencies to reconstruct how the tanker truck collided with the woman's pickup. Based on the accident reconstruction, analysis of physical evidence at the scene, and close inspection of the pickup stored at our warehouse, the Lane County District Attorney indicted the driver for criminally negligent homicide. After protracted negotiations the driver plead guilty. Soon thereafter the civil case settled for a confidential amount.

Eugene Chemical Works

Settlement: $1,925,000

A Eugene Chemical Works truck driving east on Highway 58 near Pleasant Hill crashed into the rear of the car driven by our client and pushed her into the oncoming lane, where she was struck by an oncoming vehicle. The truck then drove up over her stopped vehicle. Our client suffered partial paralysis, requiring a wheelchair and regular nursing or attendant care. A medical expert prepared a life care plan for trial, detailing future medical and nursing needs and expenses. A home economist prepared an analysis of the additional economic loss from her inability to perform the routine chores around her rural home. The claim was settled for $1,925,000.

WDI Co. of Oregon, Inc.

Settlement: $850,000

A Twenty-two year old man, a single college student, was killed when his vehicle was struck head-on by a long-haul diesel truck and semi-trailer. The driver of the truck had fallen asleep, permitting his truck to veer across the centerline of Highway 58. Our investigation revealed that the truck driver was guilty of overdriving and had falsified his driver's log showing the number of hours worked the day and week before the collision. The driver had also previously been diagnosed with congestive heart failure, and was not physically qualified to drive the truck. The case was settled for a total of $850,000.
Rose Logging, Inc., et al.

Verdict: $561,457.85

A sixty-foot-long loaded log truck illegally parked in a center turn lane obstructed the view of other drivers, causing a motorcyclist to be struck by a turning car. Neither driver could see the other until it was too late to avoid the collision. The motorcyclist suffered multiple severe injuries. After a week-long trial, the jury assessed damages against the trucking company in the amount of $561,467.85.

Emerald Express

Settlement: $550,000

A ten-year-old girl died when a loaded tractor-trailer tipped over on a curve and slid across the centerline of the highway, head-on into the oncoming car. Our investigation revealed that the truck driver had violated the FMCSR regarding hours of driving. He kept two sets of logs in order to drive more hours than the law permitted. Experts in the fields of accident reconstruction, professional truck driving, and truck fleet maintenance analyzed the logs and the lack of supervision by the employer truck company. Discovered documents showed that the trucking company had knowledge of the misconduct that contributed to an otherwise preventable collision. After depositions the case settled for $550,000.

Emery Trucking

Confidential Settlement

As an Emery Trucking rig drove south on I-5, one of its wheels broke off its axle and careened across the freeway, striking our northbound client, a mother of three. Our client suffered a head injury with severe brain and spinal cord damage. Several experts analyzed why the wheel broke. They included a metallurgist, an engineer, and a former fleet manager with expertise in truck maintenance. It was determined that the wheel had not been properly inspected and maintained and had cracked from fastener to fastener, leaving the center plate of the wheel attached to the trailer axle as the rim flew off.

Other Trucking Defendants

In recent years we have successfully made claims against many other major trucking companies, including: Schneider Trucking, Dick Simon Trucking, White Top Transport, Boise Cascade, Marker Industries, Inc., Ajax Trucking, and Payne Transport Co.
Experts Key to Trucking Cases

Our trial practice relies heavily on the expertise of professionals in a wide variety of disciplines. We call on qualified experts for review and evaluation of cases and for expert testimony. For trucking cases, we have retained professionals with advanced degrees or training in fields such as photography, night vision, fleet maintenance and operation, metallurgy, engineering, accident reconstruction, and laser mapping.

Trucking Resources

A variety of sources provide useful information online to prepare trucking cases, including:

**U.S. Department of Transportation (USDOT)**
[www.dot.gov](http://www.dot.gov)

**Federal Motor Carrier Safety Administration**
An agency of USDOT, responsible for enforcement of FMCSR.
[www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)

**National Highway Traffic Safety Administration (NHTSA)**
An agency of USDOT.

**National Center for Statistics and Analysis**
An office of NHTSA.
[www.nhtsa.dot.gov/people/ncsa](http://www.nhtsa.dot.gov/people/ncsa)

**National Safety Council**
A federally-chartered safety organization.
[www.nsc.org](http://www.nsc.org)

**National Transportation Safety Board**
An independent federal agency that investigates significant trucking accidents.
[www.ntsb.gov](http://www.ntsb.gov)

**National Association of Fleet Administrators**
An association for professional vehicle management.
[www.nafa.org](http://www.nafa.org)

**Safety and Fitness Electronic Records (SAFER)**
Under contract with FMCSA, provides access to carrier snapshots, a concise electronic record of a carrier
identification, size, commodity information, and safety record, including the safety rating (if any), a roadside out-of-service inspection summary, and crash information.

www.safersys.org

Oregon Department of Transportation (ODOT)
Motor carrier transportation division.

www.odot.state.or.us/trucking

Staff Notes

Gary Vencill

A key resource in trucking case preparation is our full-time legal investigator, Gary Vencill. Mr. Vencill is a nationally accredited accident reconstruction consultant with thirty years of experience in law enforcement and independent investigation. His work focuses on accident reconstruction and product failures. His extensive contacts in law enforcement serve as a rich source of information.

Donna Wilson

Donna Wilson, who has been a legal assistant in the firm's litigation department since the founding of the firm, has personal and family experience in the trucking industry. She combines her insider's knowledge with effective case-management skills when assisting on truck collision discovery and trials.

Mardel Chinburg

Mardel Chinburg's commitment to civil justice began with her experience as a schoolteacher, and then as a legislative assistant to Congressman Jim Weaver. Since 1984 she has brought the same dedication and sense of purpose to her work in trucking, product liability, and medical cases. Ms. Chinburg is proficient in the use of the Internet and other computerized databases, both legal and technical. She uses litigation support software to manage voluminous depositions and documents.