

Defending a Tractor-Trailer Case

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Defending a catastrophic injury or wrongful death case involving a tractor-trailer collision is considerably more complex than defending a case involving a garden-variety motor vehicle accident. Many jurors have had the unnerving experience of being passed just a little too closely by a multi-ton tractor trailer traveling at 80 miles an hour, and most are familiar with the cavalier reputation of truckers as depicted in movies such as Smokey and the Bandit and Convoy. A plaintiff's attorney can be expected to capitalize on such prejudices, and a skilled plaintiff's attorney will employ the myriad federal regulations applicable to truckers and their employers in crafting claims for negligent supervision and punitive damages.

If your company is faced with a trucking suit, you need an attorney willing to obtain an early grasp of the facts, and with a strong command of the applicable federal regulations. You want a firm seasoned and experienced enough to take on the plaintiff, but willing to give you and your case focused, personal attention. When Gorby, Reeves & Peters, P.C., takes your case, we work hard to earn your trust. We can be reached by email <<FORM BUTTON>> or phone at 404-239-1150.

A. Early attorney involvement in the accident investigation can be crucial.

As in any case involving a motor vehicle accident, a thorough investigation into the causes of and circumstances surrounding the tractor-trailer collision is essential. The earlier such information is obtained, the better, and a trucking company should not wait until litigation has been filed before a thorough investigation is undertaken. To the extent possible, obtaining early recorded interviews of the injured party and any eyewitnesses is essential.

Often times, and especially in cases involving a fatality, the highway patrol will have conducted a thorough investigation of the accident, which will include a physical examination of the scene and debris field, a notation of environmental, roadway, and vehicle conditions, and a measuring of skid and yaw marks. In addition, the state's department of transportation will often dispatch an officer to investigate the driver's hours of service at the time of the accident. Records from responding emergency personnel, the local agency handling "911" calls, and towing and repair companies are sources of potentially significant information.

B. Special consideration must be given to the use of experts.

1. Accident Reconstruction and "Human Factors" Testimony.

Just as the early retention of an attorney is important, so too is the attorney's early retention of an engineer specializing in accident reconstruction. Such an engineer will have expertise which the investigating officer will likely not have, and the early dispatch of an engineer to the scene can provide the trucking company with an early advantage not typically enjoyed by a prospective plaintiff. The accident reconstructionist should perform a physical examination and take detailed photographs of the accident scene and any and all physical evidence left behind on the roadway to ascertain how the accident occurred.

A key aspect of accident reconstruction is, of course, ascertaining whether the accident was avoidable. While eyewitnesses to the accident are crucial on this point, an experienced accident reconstructionist or "human factors" expert can be indispensable. Tractor-trailers driving on the highway will expectedly be traveling at high speeds with heavy cargo, and it should come as no surprise that they cannot stop or change lanes on a dime. "Human factors" testimony can be used to establish the visibility of the other vehicle (a consideration especially important in nighttime cases), the time it will take a driver to perceive and react to the "threat" posed this other vehicle (a concept commonly referred to as "perception and reaction time"), and the time and distance it will take traveling at any given speed under the then-existing roadway conditions to make a successful evasive maneuver, such as braking the tractor-trailer to a stop or changing lanes. Demonstrative evidence, such as a computer-

animated depiction of the accident, can be extremely useful in conveying to the jury the split-second decisions which must be made in emergency situations.

The reconstructionist should perform a detailed examination of the truck itself to ensure that it was properly equipped and that all of its equipment, such as its braking system, was in working order. Many tractor-trailers are equipped with electronic control modules (ECMs), not too dissimilar from the "black boxes" with which commercial airplanes are equipped, which can give vital data regarding the truck's braking and speed at the time of the accident. Detailed inspections and photographs from the other vehicle(s) should be obtained, enabling the engineer to ascertain the "crush," or damage to the other vehicle. With such data, it will often be possible for the accident reconstructionist to determine the quantum and direction of forces in play in a collision, a matter especially important in accidents involving multiple vehicles, and hence, multiple collisions. It would be a grave mistake for one to assume, in a fatality case, that just because the deceased did not survive a tractor-trailer collision that it was the collision with the tractor-trailer, as opposed to any preceding collisions, which took the decedent's life.

2. Biomechanics/Medical Testimony.

Just as a car will respond to the external forces of a collision, so too will the occupant(s) within the car respond to these forces. The "secondary collisions" which occur during a collision, causing the driver and any passengers to move within the vehicle and perhaps strike the interior, is commonly referred to as "occupant kinematics," and is an area to be addressed by a biomechanical or biomedical engineer. As noted above, while the collision with the tractor-trailer may be expected to produce catastrophic or lethal injuries, this does not preclude the possibility that a preceding collision produced what was in fact the complained-of injury.

By analyzing the quantum of forces (typically measured by what is referred to as a "Delta V") and direction of forces ("PDOF") involved in the accident, an experienced biomechanical engineer can help ascertain the severity of any given collision in a multi-vehicular accident.

A forensic pathologist will typically have much experience in performing autopsies of individuals killed in motor vehicle accidents, and should be consulted for an opinion on the precise cause and manner of death. One would be surprised as to how little force is required to produce crippling or lethal injuries to the cervical spine and head.

3. Trucking Industry Safety Experts.

A skilled plaintiff's attorney may employ an expert fluent with the Federal Motor Carrier Safety Regulations, applicable to carriers involved in interstate commerce, to identify violations committed by the trucking company. Many states will have their own regulations which mirror the federal regulations. These regulations proscribe various requirements with which truckers and their employers must comply.

For instance, federal regulations limit the number of hours in any given day or week which a trucker can spend behind the wheel of a tractor-trailer. These "hours of service" regulations are designed to prevent truckers from operating tractor-trailers while fatigued, and truckers are required to maintain a log book of the hours they have spent on and off duty. A skilled plaintiff's attorney will likely request a driver's log books, which the employer is required to keep on file for 6 months, along with a variety of independent verifying data, in an effort to demonstrate that the driver was driving in excess of these hours at the time of the accident, and hence, fatigued. Awareness of such tactics is essential in combating such strategies.

C. Motions practice can be used to keep the court and jury focused on the case.

In light of plaintiffs' efforts to interject potentially damaging material into what may otherwise be a stream-lined motor vehicle accident case, it is important to file appropriate motions to dismiss in whole or part the claims which plaintiffs attempt to pursue. In federal court, Rule 702 of the Federal Rules of Evidence and the Supreme Court case of Daubert v. Merrill Dow and its progeny can be employed to lodge a successful attack on the admissibility of the opinions of the plaintiff's experts. Motions for summary judgment may be employed on issues such as the avoidability of the accident, plaintiff's inability to meet their burden to show that the tractor-trailer collision was the cause of injury or death, or that there is any causal relation between a regulatory violation and the accident.

Successfully defending catastrophic injury cases involving a tractor-trailer collision is a complex endeavor. Early investigation of the facts, and retention of a skilled accident reconstructionist, is essential. It is important to identify at an early stage potential issues with the myriad federal regulations so as to be in a position to present the best defense. With detailed, thorough, and thoughtful analysis, a successful defense can be mounted to an unfortunate circumstance which has the potential to become "train wreck" for the trucking company.