

5 NUGGETS ON HANDLING TRUCK CASES



Anapol Schwartz | Attorneys at Law

CONTACT LAWYER: JIM RONCA, ESQ.
CALL: 215-735-1130
EMAIL: JRONCA@ANAPOLSCHWARTZ.COM
READ MORE INFORMATION ONLINE AT: www.anapolschwartz.com

ORGANIZED BY THE LAWYERS AT ANAPOL SCHWARTZ. (C) 2007 ALL RIGHTS RESERVED.

DISCLAIMER - This document is dedicated to providing public information regarding Truck Accidents and other legal information. None of the information on this site is intended to be formal legal advice, nor the formation of a lawyer or attorney client relationship. Please contact a truck or highway accident law firm, for information regarding your particular case. This document is not intended to solicit clients outside the States of New Jersey and Pennsylvania. This information is not intended to replace the advice of a doctor.



TABLE OF CONTENTS

Technology

Electronic Data Recorder - On Board Computer

General Trip information

Specific information

DDEC Data

Other technological devices

Lane Guidance Warning System Roll Advisor & Control System

Safety & Innovation

Global Positioning Systems: Qualcomm Mobile Communications

The Volvo Alco-lock

Save The Data!

The MCS 90 Endorsement

Endorsement for Motor Carrier Policies Of Insurance For Public Liability Under Section 29 & 30 of The Bus Regulatory Reform Act Of 1980

Occidental Fire and Casualty v. Westport

Information

Documents

Vicarious Liability

Mustang Transp. Co. v. Ryder Truck Lines Inc.

The Lease Requirement: 49 CFR 1057

The Placard Requirement

Engaging and Incompetent Contractor

1. TECHNOLOGY

Electronic Data Recorder - On Board Computer

Also known as [Electronic Control Module](#) (ECM), records parameters of data in general and after events. The ECM is on practically all vehicles made since the late 90's in some form. Some vehicles even have more advanced and detailed units, which can have purchaser input.

General Trip information includes:

The Electronic Control Module (ECM) records data about the highest speed, average speed and percent of time speeding.



Specific information:

The Electronic Control Module (ECM) also records specific trip information about hard brake, 5 seconds recorded, speed, engine RPM, throttle, brake and clutch.

How long will DDEC Data record without losing data?

There are different limits for various parts of the product. Daily Engine Usage begins to lose data after 30 days. Data for the 31st day is written over data for the 1st day. Monthly data is stored for the current month plus the two previous months. Hard Brake, Diagnostic Records and the Last Stop Record store the most recent events regardless of the length of time since data was extracted.

The other reports summarize the data, so there is no practical limit to the length of time data for these reports can be stored.

LANE GUIDANCE WARNING SYSTEM ROLL ADVISOR AND CONTROL SYSTEM

Why?

Is a driver making frequent panic stops?
Who is exceeding the speed limit?
What do our good drivers do differently?
How can we help our drivers?

DDDS gives fast and simple answers to questions like, "Who is the best driver in the fleet? What does he or she do that's different from the others? Which drivers are over or under the fleet's goals? Is one driver constantly making panic stops? Who is using cruise control and who isn't? Who is exceeding the fleet speed limit? How can I help my drivers?" All good questions and DDDS has all the answers.

On the other hand:

Data could be good for your client, bad for your client or even inaccurate.



Other technological devices coming into play.

Forward Collision Warning - Audio and visual warnings that alert drivers to objects up to 500 feet ahead, even around curves.
SmartCruise® - Automatically maintains a safe following distance between your vehicle and the vehicle ahead.
BlindSpotter™ - Checks adjacent lane for obstacles, eliminating dangerous blind spots present even with triple-lens mirrors.
BackSpotter™ - Alerts you to obstacles behind the vehicle while in reverse.
Eaton VORAD Information Management System (EVIMS) - Analyze safety trends for drivers and vehicles, benchmark safety goals for your fleet, and identify drivers who are not performing to safety standards.

Safety & Innovation

Freightliner LLC has led the way in North American commercial vehicle safety and innovation. For years, the company has pioneered the implementation of new safety features that make commercial vehicles safer for drivers, passengers and others on the road. Safety technologies offered by Freightliner LLC brands include a Lane Guidance Warning System that alerts the driver when the vehicle is drifting out of its lane, and a Roll Advisor and Control System that warns the driver to a potential rollover and slows the truck down. Freightliner is also evaluating advanced systems like electronically-controlled braking, which enables additional braking performance and control. Freightliner engineers take steps to protect the driver in the unfortunate event of an accident. Vehicles are designed for maximum crash-worthiness with optional airbags and supplemental restraint systems in some configurations.

GLOBAL POSITIONING SYSTEMS: QUALCOMM MOBILE COMMUNICATIONS

The Volvo Alco-lock

Volvo Trucks is participating today at a seminar on alco-locks in Brussels. The aim of the meeting is both to demonstrate how the equipment works and to persuade the EU to introduce the alco-lock as standard on all commercial vehicles.

"Volvo supports the Swedish government's proposal regarding the introduction of alco-locks in vehicles throughout the EU. We are convinced that this measure would save many lives every single day on European roads," says Lennart Pilskog, director of Public Affairs at Volvo Trucks.

SAVE THE DATA!



2. The MCS 90 Endorsement

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a for-hire motor carrier of passengers with Sections 29 and 30 of the Bus Regulatory Reform Act of 1980 and the rules and regulations of the Federal Highway Administration (FHWA) and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment received against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to financial responsibility requirements of Section 29 and 30 of the Bus Regulatory Reform Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured.

Endorsement for Motor Carrier Policies Of Insurance For Public Liability Under Section 29 And 30 of The Bus Regulatory Reform Act Of 1980

ISSUED TO _____ OF _____
DATED AT _____ THIS _____ DAY OF _____, 20 _____
AMENDING POLICY NO. _____ EFFECTIVE DATE _____
NAME OF INSURANCE COMPANY _____
TELEPHONE NUMBER (_____) _____
COUNTERSIGNED BY _____

AUTHORIZED COMPANY REPRESENTATIVE



"Motor Carrier means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof."

"Whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere."

"No condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. "

- Coverage even when vehicle not on schedule
- Coverage irrespective of the operation at the time of the incident
- Protection extended to coverage on trailer even when no evidence of negligence
- Trumps non-cooperation clauses

Coverage is for benefit of the public but does not effect allocation between defendants or among insurers

Allstate v. Liberty Mutual 368 F.2d 121 (3d cir. 1966);

Old Republic v. Canal Ins. Co. 876 F.Supp 80 (D.Md. 1994);

Empire Fire and Marine v. J. Transport 880 F.2d 1291 (11th Cir. 1989)

Occidental Fire and Casualty v. Westport, 2004 WL 2028616 (ED Pa. 2004)

Simpkins driving a tractor owned by F.O.

Simpkins picked up a BK trailer in Wilmington

Stopped in Philly to rest then disengaged the tractor and drove tractor only to get cash

Hit a pedestrian while bob-tailing

BK – trailer insurance covers specifically listed autos, "hired autos", and "nonowned autos"

FO – Tractor policy covered only specifically listed autos and tractor was not listed

BK(trailer) argued they had no lease under 49 CFR 376.11-12 therefore no control so actually a broker under 371.2.

Ct. ruled that since not a safety issue, policy not CFR controls.

Under the BK policy, the FO tractor is not a "hired vehicle" because BK does not meet the test of having control, so BK does not cover Simpkins the driver.

FO - tractor policy covered only specifically listed vehicles and tractor involved was not listed.

But MCS-90 endorsement makes tractor policy responsible so it has coverage

However policy had a reimbursement clause, requiring FO to pay back its carrier for any payments. Carolina Cas. V. Insurance Co. of N. Amer., 595 F.2d 128 (3d Cir. 1979)



TRACTOR POLICY PAYS PLAINTIFF.

Tractor owner pays back its insurer!

3. Information

Oodles of information is available

Examples Truck sites

www.etrucker.com
www.truck.net/education/category/catname/Safety
www.onlinesafetytraining.com
www.trucking.org/safetynet
www.ttnews.com
www.pmta.org/
www.landlinemag.com

Government sites

www.fmcsa.dot.gov [Federal Motor carrier Safety Administration]
www.nhtsa.dot.gov/ [National transportation & highway safety administration]

Advocacy group sites

www.trucksafety.org/
www.citizen.org/autosafety/

Scientific sites

www.sae.org [Society of Automotive Engineers]
www.nsc.org [National Safety Council]
www.hwysafety.org/ [Insurance Institute for Highway Safety]

2+ hour road test
Governors set below 70
Charge back
Following distance policies
Hours of service warnings
Right side fender mirrors
Formal bad weather plans
GPS
ECM download at service
Weekly safety communications
Skid pad training

Manufacturer sources:

www.Freightliner.com
www.Macktrucks.com
www.Paccar.com
www.volvo.com
www.Sterling.com
www.xata.com
www.caterpillar.com
www.cummins.com
www.detroitdiesel.com
www.caterpillar.com
www.cummins.com
www.qualcomm.com/OmniTRACS/
www.skycell.com/commframe.html
www.highwaymaster.com



4. Documents

DRIVER HIRING

Basic Qualifications 40 CFR 391.11
Prior Employers 40 CFR 391.23
Accident history 40 CFR 391.23 (a)(2)
Violations 40 CFR 391.23
Medical Examination 40 CFR 391.41
Application
Drug Testing 40 CFR 382.301
Employment Contract
Training 40 CFR 391.21
Written test
Road testing 40 CFR 391.31

Basic qual. – Age 21, english, CDL
Prior empl. – Much check for prior 3 years
Accient History – prior 3 years but there may be more
Past violations – Must check the state issuing the CDL for past 3 years (Company may have more)
Medical exam – Must have medical certificate by physician.
Application – There is a standard application required by the regs but many employers ask for more info
Drug Testing – Random drug testing program; an elaborate and lengthy part of the regs.
Employment contract – Some will have a K, some will actually be employed by an outside firm
Training – You may find certificate of graduation from truck driving school or courses
Written Tests – even though there is a written test to obtain a CDL, you may find that the employer has their own written test or may have a copy of the actual CDL test.
Road Test – Was it done? By whom?

COMPANY SAFETY/REGULATORY COMPLIANCE

Company Manual - most companies of any size will have one. Some are professionally done, some are a conglomeration of photocopies, articles, internet downloads, notics to employees etc. Most are full or pious sounding words about the importance of safety and setting strict rules for compliance with FMCSR

Maintenance records – Smaller cpanies often done off site. Can compare to driver inspections 2 ways, Did driver see things that were not taken care of? Or, did maintenance find things that driver missed? (lights out, wheels out of alignment) Did a maintenance problem persist indicating the driver either did not know how to do inspections or did not do them.

Record of violations 40 CFR 391.27 – Annual check required

Drug testing program – privacy questions on the program in general including identity of those tested

Log audit – required – computer programs - electronic logging – comparing to receipts

DOT Inspections - Safety rating, letter explaing results, Was you guy or your truck randomly selected for inspection?

Safety Meetings



DRIVER GENERATED INFORMATION

Logs (DRDS) 40 CFR 395

Are they relevant? Did fatigue have any role in collision? Can the information in the suggest speeding? Contradict driver's testimony? "I always drive the speed limit? His habit of complying with the regs?

Receipts

Food, fuel, anything that sets a time or place

Pretrip Inspections 40 CFR 396

Often on back of log sheet or a separate tablet of sheets – compare with maintenance, timing of log

Accident Reports

Often there is a call in / Cell phone Records

Fuel Tax Records – do files jive with logs?

TRIP GENERATED

Equipment Receipt

Lease

Satellite Tracking and Dispatch Systems

Bil of Lading

Freight Bill - Time pace cargo and often weight

Delivery receipts

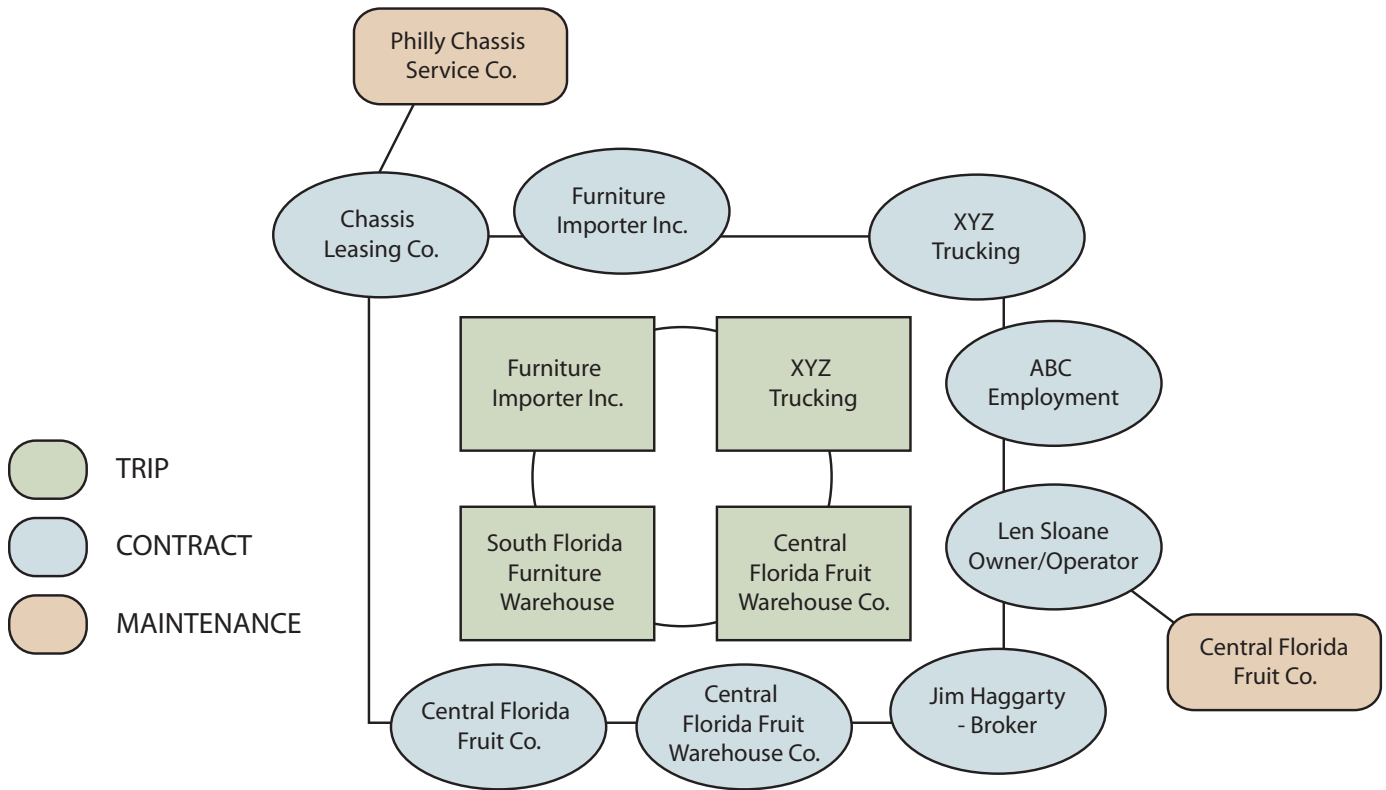
Receipts: Fuel, Toll, Scale. Sets time and place

5. Vicarious Liability

The Lease

Non-delegable Duty

Punitive Damages



Mustang Transp. Co. v. Ryder Truck Lines Inc., 523 F.Supp. 1097 (1981)

Crowder driver and owner of tractor

Mustang Transp. Owner of trailer. These was a lease agreement between Mustang and Crowder. Lease says Crowder is an independent contractor.

Ryder set up one way lease with Crowder

While carrying Ryder load, Crowder hits plaintiff.

Who Pays?

MUSTANG (OWNER OF TRAILER) PAYS!



The Lease Requirement: 49 CFR 1057

"exclusive possession, control, and use of the equipment, and for complete assumption of responsibility in respect thereto by the lessee for the duration" of the lease.

The Placard Requirement - Independent Contractor Liability

Exceptions:

Public franchise: based on old case law and FMCSA regulations and the Lease requirements

Principal retains control over the manner and means of doing the work

Principal engages and incompetent contractor: RS 2nd 411

Ultra hazardous or Inherently Dangerous Activity. Morales v. Davis Brothers Const. Co. 647 So. 2d 1302 (La. Ct App. 1994) (trucking not inherently dangerous).

Hazmat hauling: FMCSA, CERCLA

Engaging and incompetent contractor

Valid drivers license

Valid registration

Valid Liability insurance

Valid Vehicle Inspection

Puckrein v. ATI Transport Inc. 5/22/6 New Jersey Supreme Court