

Special Feature

Truck Crash Cases -- The Unlevel Playing Field

By Jeffrey A. Burns

Through my close involvement with two national truck-safety advocacy groups (P.A.T.T. - Parents Against Tired Truckers and CRASH - Citizens for Reliable and Safe Highways) I have frequently heard from crash victims and survivors that their case was hurt because their lawyers didn't know something about truck-industry-specific statutes or regulations. And it is true that there appears to be an imbalance in truck-litigation expertise between defense and plaintiffs' lawyers. Lawyers who *defend* truck cases frequently have a regular diet of truck-crash litigation and can justify spending significant time each year attending CLE programs on truck-crash litigation.

Most plaintiffs' lawyers, on the other hand, don't spend a lot of time keeping up with trucking issues. Additionally, a typical truck-crash initially may not seem to raise specialized issues that would require referral to a specializing lawyer, as in a specialized tax or medical malpractice case. They are treated as standard automobile accident cases, without regard to the special trucking issues that *may* be present. Often, the attorney succeeds in getting a "reasonable" result that satisfies both him and his client. But the defendant and the defendant's insurer are happier by far because important issues were not even addressed.

The following steps can help identify whether there are any trucking issues that should be considered before finalizing a truck crash case:

Immediately stop default spoliation. Immediately write a certified letter to the motor-carrier's president or owner informing him that a claim is being made, instructing him to preserve any information regarding operation of the truck or driving by the driver for the thirty day period prior to the crash, and warning that failure to preserve such information will constitute destruction and spoliation of evidence. Motor carriers are required to keep log information for six months under 49 CFR 395.8. However, there is no D.O.T. requirement to keep, in addition to written logs, information gathered by on-board recording devices and communication or satellite-location devices. Satellite data, available to the carrier from the satellite communication company, may only be available for a matter of days. It is routinely destroyed as a matter of course.

Record Keeping

Motor carriers are required by the Department of Labor to keep a record of the hours worked by their employees. Motor carriers are subject to the minimum wage provisions of the Fair Labor Standards Act and to the record-keeping requirements for persons subject to the minimum wage laws. A description of documentation required to be kept by employers subject to the minimum wage provisions can be found at 29 CFR 516.2. Section 516.6 provides that the records shall be preserved for two years. This regulation is rarely followed.

Lawyers for the trucking companies contend that the motor carrier is only