



ILLINOIS TRUCK LITIGATION

An Attorney's Guide

Frank P. Andreano

ILLINOIS TRUCK LITIGATION MANUAL

2014-2015 Edition

Frank P. Andreano¹

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¹ Mr. Andreano is a partner at Castle Law, a firm based in Joliet, Illinois. The oldest of nine children, Mr. Andreano is a graduate of the University of Notre Dame, DePaul College of Law, and has practiced law in the State of Illinois since 1990. A member of both State and Federal Trial Bars, he has handled legal matters throughout the State and in Federal Courts. He has published multiple articles on jury selection, trial advocacy and is a frequent presenter at Continuing Legal Education seminars.

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1.1 Introduction – Why Truck Collisions Are Different.

Commercial motor carrying is a pervasively regulated industry. This is the first and most important part of this Manual. When making presentations to my fellow attorneys I'll normally repeat this refrain several times. It's not that I think lawyers or judges are stupid, but most have little exposure to the commercial transport industry. Thus, they mistakenly think of crashes in the same way as collisions involving passenger automobiles.

A crash involving a commercial motor vehicle is an industrial failure - no different than a fire at a refinery or a chemical release at a processing plant. Industrial failures occur when established safety standards are ignored, and in the State of Illinois deviation from established safety standards is considered evidence of negligence.¹ The Federal Motor Carrier Safety Regulations² [FMCSR] govern commercial motor carrying and unlike most safety standards, the FMCSR have the force of law.³ As part of federal roadway funding states are required to adopt the FMCSR⁴ and every state [including Illinois⁵] has adopted the FMCSR.

As stated at the outset, commercial motor carrying is a pervasively regulated industry. Though no single manual or book can cover every scenario, understanding industry terms, regulations and duties will help any attorney faced with handling a commercial motor vehicle collision. And most importantly, never forget that the duties and responsibilities for these collisions are framed by industry and regulatory standards.

1.2 The Public Franchise Rule and Illinois' Regulation of Motor Carrying.

The public franchise doctrine⁶ is based on the Restatement of the Laws of Torts, and holds that an individual or a corporation carrying on an activity which can be lawfully carried on only under a franchise granted by public authority, and which involves an unreasonable risk of harm to others, is subject to liability for bodily harm even if performed by a contractor.⁷ Illinois long ago recognized that commercial motor carrying comes within this rule⁸ and is part of Illinois' long history of regulating motor carrying.⁹

¹ *French v. City of Springfield*, 65 Ill. 2d 74, 357 N.E.2d 438 (1976).

² 49 CFR §300-399

³ *People v. Blackorby*, 146 Ill. 2d 307, 319, 586 N.E.2d 1231, 1237 (1992)

⁴ 49 USC §31311; 49 USC §31314

⁵ *Id.*; See also 625 Ill. Comp. Stat. Ann. §5/18b-105(b)

⁶ *Louis v. Youngren*, 12 Ill. App. 2d 198, 138 N.E.2d 696 (Ill. App. Ct. 1956)

⁷ *Id.*

⁸ *Id.*

⁹ *Chicago Rys. Co. v. Commerce Comm'n*, 336 Ill. 51, 63, 167 N.E. 840, 845 (1929)

The Illinois Commerce Commission is vested with regulatory authority over intrastate motor carriers and freight brokers,¹⁰ and the Federal Motor Carrier Safety Administration [FMCSA] has jurisdiction over interstate motor carriers and freight brokers.¹¹ Thus, whether a motor carrier is engaged in intrastate or interstate commerce, they are subject to regulation by either the ICC or the FMCSA.

1.3 Illinois has adopted the FMCSR.

Because the FMCSR are federal standards, judges and opposing counsel can become confused about the application or relevance of federal standards to state court proceedings. The Illinois General Assembly has adopted almost the entire FMCSR *verbatim*.¹² The Illinois Supreme Court has recognized this adoption of the FMCSR was done to make Illinois highways safer¹³ and it is well established that violation of a safety statute supports a cause of action and raises a presumption of negligence.¹⁴

Conforming motor carrier safety laws to federal mandates is not unique to Illinois, but is required for receipt of federal highway funds.¹⁵ The Illinois General Assembly has declared it the policy of the State of Illinois to accept federal highway funds¹⁶ and the General Assembly has authorized the Department of Transportation to adopt the FMCSR.¹⁷ It is also a criminal offense to violate the FMCSR or cause another to violate the FMCSR.¹⁸

Once the judge and opposing counsel understand that the FMCSR is part of Illinois law, any confusion about the relevance of the FMCSR disappears. Also, setting forth the applicability of the FMCSR should be placed of record in every case in order to assure that the correct legal analysis is preserved in the event of an appeal.

A few of the more significant FMCSR regulations are:

49 CFR 390.1

Motor carriers are must require drivers to adhere to the FMCSR, including compliance with local speed limits, hours of server and other safety regulations.

49 CFR 390.3

Trucking companies are required to be familiar with trucking regulations and teach them to drivers and loading lock personnel.

¹⁰ 625 Ill. Comp. Stat. Ann. 5/18c-1201

¹¹ 49 USC §113; 49 USC §31142; 49 CFR §390 *et. seq.*; 49 CFR §371. *et. seq.*

¹² 625 Ill. Comp. Stat. Ann. §5/18b-105(b).

¹³ *People v. Blackorby*, *supra*.

¹⁴ *French v. City of Springfield*, 65 Ill. 2d 74, 357 N.E.2d 438 (1976)

¹⁵ 49 USC §31311; 49 USC §31314

¹⁶ 605 Ill. Comp. Stat. Ann. 5/3-101

¹⁷ 625 Ill. Comp. Stat. Ann. 5/18b-102

¹⁸ 625 Ill. Comp. Stat. Ann. 5/18b-108

49 CFR 390.5

Broadly defines "employee" of a trucking company to include independent contractors and drivers of leased trucks. A driver may simultaneously qualify as an "employee" of multiple companies, increasing the amount of liability insurance available in a case of catastrophic injury. *See also* 49 USC §31132(2), 49 USC §31301(7), 49 USC §31101(2) and 92 Ill. Admin Code §390.1020 ["Employee" includes independent contractor].

49 CFR §391.11

A motor carrier shall not require or permit an unqualified person to drive a commercial motor vehicle.

49 CFR 390.6

Prohibits a motor carrier, shipper, receiver or transportation intermediary from coercing a driver to operate in violation of the FMCSR.

49 CFR 390.5

Defines "Coercion" as a threat by a motor carrier, shipper, receiver, or transportation intermediary, to withhold business, employment or work opportunities from, or to take or permit any adverse employment action against, a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require him or her to violate one or more of the regulations.

49 CFR 391.11

Truck drivers must be over 21, pass a test on ability to safely operate the truck, read and speak English, and pass a physical exam related to ability to safely operate a large truck.

49 CFR 391.23

Trucking companies must check the driver's driving history and document that references have been checked.

49 CFR 391.15

A truck driver is automatically disqualified if caught driving under the influence of alcohol or drugs, with a blood alcohol score of 0.04 gr/%, and cannot consume any alcohol within four hours before driving.

49 CFR 391.25

Trucking company must monitor the truck driver's driving records at least annually.

49 CFR 390.13

Trucking companies should not aid, abet or encourage drivers' violations of regulations. Paying truck drivers by the mile, and not paying for inspections, required rest time, time out of service due to safety concerns, etc., may encourage violations of regulations.

49 CFR 395.3

Trucking companies must not permit or require drivers to exceed hours of service regulations. If a driver falsifies time, rest time, inspections, etc., that is imputed to the employer.

49 CFR 392.2

Interstate truck drivers must obey traffic laws of states where they operate.

49 CFR 392.3

Driver and company prohibited from operation when driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate a commercial vehicle.

49 CFR 392.4

Drivers' use of amphetamines prohibited.

49 CFR 392.5

Drivers' use of alcohol prohibited.

49 CFR 392.6

Trucking companies must schedule loads with time for safe delivery.

49 CFR 392.7

In a pre-trip inspection the following must be in good working order: service brakes, including trailer brake connections; parking (hand) brake; steering mechanism; lighting devices and reflectors; tires; horn; windshield wipers; rear-vision mirror or mirrors; coupling devices. See also **49 CFR 396.13**.

49 CFR 392.8

Duty to inspect emergency equipment.

49 CFR 392.9

Driver must inspect truck's load at beginning of trip, again in first 25 miles, and every 3 hours or 150 miles thereafter, except for a sealed trailer.

49 CFR 392.22

Warning devices must be put out within ten minutes when a truck is disabled.

49 CFR 392.14

Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued.

49 CFR 396.13

Driver vehicle inspection requirements.

49CFR §391.41

Driver must have current medical examiners certificate to drive a commercial motor vehicle.

1.4 Important Terms.

The American Trucking Associations publish a glossary of motor carrier terms which is a useful starting point for industry familiarity.¹⁹ For legal purposes, the definitions which Congress²⁰ and the FMCSR provide are critical. Because safety is the touchstone of the FMCSR, these definitions are broadly stated and much more expansive than the common law. For example, an ‘employee’ includes an independent contractor when operating a commercial motor vehicle, a mechanic, a freight handler, or other individual who directly affects commercial motor vehicle safety.²¹ A ‘motor carrier’ includes a carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers, as well as employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.²²

In sum, certain terms have certain defined meanings. When a term is defined in legislation the statutory definition controls.²³ Knowing and understanding these definitions is critical to proper analysis of legal duties, obligations and effective representation.

2. Using The FMCSA website – A Useful Starting Point.

The Federal Motor Carrier Safety Administration [FMCSA] website²⁴ is an excellent resource. The latest version of the FMCSR is on the site, along with its corresponding regulatory guidance.²⁵ The FMCSA’s Safety and Fitness Electronic Records (SAFER) System offers company safety data to industry and the public over the internet.²⁶ For a small fee, a carrier’s Company Safety Profile (CSP) operations are also available.²⁷ In the electronic age significant information is publically available and attorneys are well advised to take full advantage of these tools.

2.1 Compliance Safety Accountability [CSA].

Compliance, Safety, Accountability (CSA) is a Federal Motor Carrier Safety Administration (FMCSA) initiative to improve large truck and bus safety and ultimately reduce

¹⁹ <http://www.trucking.org/ATA%20Docs/What%20We%20Do/Image%20and%20Outreach%20Programs/STR/Trucking%20Glossary.pdf>

²⁰ See 49 USC §31132; 49 USC §31301; 49 USC §31101; see also 92 Ill. Admin. Code §390.1020.

²¹ *Id.* See also 49 CFR 390.5 and 49 CFR 383.5.

²² 49 CFR 390.5

²³ *Colautti v. Franklin*, 439 U.S. 379, 392–393, 99 S.Ct. 675, 58 L.Ed.2d 596 9 (1979)

²⁴ <https://www.fmcsa.dot.gov/>

²⁵ <https://www.fmcsa.dot.gov/regulations/title49/b/5/3>

²⁶ <http://safer.fmcsa.dot.gov/CompanySnapshot.aspx>

²⁷ http://safer.fmcsa.dot.gov/CSP_Order.asp

crashes, injuries, and fatalities that are related to commercial motor vehicles. Rolled out in December 2010, the program uses primarily roadside inspection and crash data to measure carrier safety performance, identify potentially unsafe carriers and prioritize them for enforcement. The program is set forth at 49 CFR 385, and safety scores are assigned to carriers. Carriers with deficient scores are identified as below an intervention threshold, which is a strong indication of substandard operations. This data can be used to demonstrate that a carrier should not have been hired, thus supporting a claim against the shipper and/or broker who failed to conduct a due diligence inquiry.

As part of CSA motor carriers are required to have in place safety management controls, which are listed at 49 CFR 385, and should be explored and examined in any truck collision. The factors include the following:

§ 385.7: Factors to be considered in determining a safety rating.

The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following:

(a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

(b) Frequency and severity of regulatory violations.

(c) Frequency and severity of driver/vehicle regulatory violations identified during roadside inspections of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(d) Number and frequency of out-of-service driver/vehicle violations of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

(f) For motor carrier operations in commerce and (if the motor carrier operates in the United States) in Canada and Mexico: Frequency of accidents; hazardous materials incidents; accident rate per million miles; indicators of preventable accidents; and whether such accidents, hazardous materials incidents, and preventable accident indicators have increased or declined over time.

(g) Number and severity of violations of CMV and motor carrier safety rules, regulations, standards, and orders that are both issued by a State, Canada, or Mexico and compatible with Federal rules, regulations, standards, and orders.

2.2 Why Regulatory Guidance Matters.

As noted above, the FMCSA's website provides applicable regulatory guidance. This guidance is entitled to deference given the specialized experience and information available to the agency.²⁸ Some of the most cited regulatory guidance answers involve liability for owner-operators, hours of service regulations and operation of commercial motor vehicles, viz:

Question 17: May a motor carrier that employs owner-operators who have their own operating authority issued by the ICC or the Surface Transportation Board transfer the responsibility for compliance with the FMCSRs to the owner-operators?

Guidance: No. The term "employee," as defined in §390.5, specifically includes an independent contractor employed by a motor carrier. The existence of operating authority has no bearing upon the issue. The motor carrier is, therefore, responsible for compliance with the FMCSRs by its driver employees, including those who are owner-operators.²⁹

Question 7: What is the liability of a motor carrier for hours of service violations?

Guidance: The carrier is liable for violations of the hours of service regulations if it had or should have had the means by which to detect the violations. Liability under the Federal Motor Carrier Safety Regulations (FMCSRs) does not depend upon actual knowledge of the violations.³⁰

Question 1: How many miles may a driver record on his/her daily record of duty status and still be presumed to be in compliance with the speed limits?

Guidance: Drivers are required to conform to the posted speed limits prescribed by the jurisdictions in or through which the vehicle is being operated. Where the total trip is on highways with a speed limit of 65 mph, trips of 550-600 miles completed in 10 hours are considered questionable and the motor carrier may be asked to document that such trips can be made. Trips of 600 miles or more will be assumed to be incapable of being completed without violations of the speed limits and may be required to be documented. In areas where a 55 mph speed limit is in effect, trips of 450-500 miles are open to question, and runs of 500 miles or more are considered incapable of being made in compliance with the speed limit and hours of service limitation.³¹

²⁸ *Trotter v. B & W Cartage Co.*, No. 05-CV-0205-MJR, 2006 WL 1004882, at *5 (S.D. Ill. Apr. 13, 2006); *Almy v. Kickert Sch. Bus Line, Inc.*, No. 08-CV-2902, 2009 WL 2972487 (N.D. Ill. Sept. 11, 2009)

²⁹ <https://www.fmcsa.dot.gov/regulations/title49/section/390.5?guidance>

³⁰ <https://www.fmcsa.dot.gov/regulations/title49/section/395.3?guidance>

³¹ <https://www.fmcsa.dot.gov/regulations/title49/section/392.6?guidance>

3. Investigation, Accident Reconstruction and Preservation of Evidence.

3.1 Introduction.

Evidence is a perishable commodity. Getting crashed vehicles out of the roadway and victims to the hospital is generally the priority of law enforcement. In many jurisdictions, law enforcement doesn't take photos or measurements of a crash scene unless the collision involves fatalities. For motor carriers fixing broken equipment and putting a truck back on the road is their priority. This means that evidence is quickly altered or destroyed.

The single most important thing in any investigation is to preserve a record of the scene and maintain the physical evidence. This means, at a minimum, obtaining photos of skid marks, gouge marks, measurements of the accident scene, crush damage analysis and inspection of the vehicles involved. It is important to remember that insurance companies will quickly dispatch adjusters to inspect damaged equipment and preserve favorable evidence, and it is frequently the case that unfavorable evidence isn't documented.

Equally important are the contents of the truck, which may include log books and other physical items such as maintenance records, prescription drug containers, weight tickets, time-stamped bills of lading, gas station receipts [critical for timeline purposes], all of which disappear quickly. Getting a temporary restraining order may be a critical and necessary step. As a general rule police departments don't inventory the vehicles unless the collision involves multiple fatalities or the driver is suspected of drugs or alcohol intoxication.

In short, it is important to act quickly following a collision and to preserve as much evidence as possible.

3.2 Fact Gathering

Once preservation of perishable evidence is addressed, witnesses should be interviewed and detailed recording of all statements collected. Memories fade and sending a witness a recording of their prior statement can help protect against the very human tendency to forget details with the passage of time. Interviewing first responders, tow truck drivers, dock workers and other witnesses is also critical. Personally, I find a good private investigator is worth his/her weight in gold.

There are also records which truck companies are required to keep, including record of duty,³² hours of service, inspections, accident register and driver log sheets. The *Commercial Motor Vehicle Safety Act of 1986*³³ required states to meet minimum training and qualification standards in order for drivers to obtain a Commercial Driver's License (CDL). The driver's CDL

³² 49 CFR §395.8

³³ 49 USC §31301 *et. seq.*

must list the class and type of vehicle he or she is authorized to operate, and any medical or other restrictions placed on the driver.³⁴ In addition, drivers must meet certain minimum physical standards³⁵ and carry with them a medical certificate attesting to his/her physical qualifications to operate a CMV.³⁶

During interstate operations a driver must have a CDL, a medical certificate and log book in his possession. The driver will also have his *trip envelope*, which generally includes expense receipts, repair records, scale readings and other documents. Obtaining these documents are important in establishing time and distance, and whether a driver is complying with hours of service and speed restrictions. Many carriers use Electronic Logging Devices (ELD) and some use GPS and other technology to track their vehicles.

In December of 2015, the FMCSA passed a rule requiring ELDs³⁷ in all 2000 year and newer CMVs. The rule is being litigated and is not set to go into effect until December of 2017. However, many companies have adopted e-logs and use them as part of risk management programs.

After an accident involving death or serious injury, or if the driver received a traffic ticket, the driver must submit to a test for controlled substances within 32 hours of the collision,³⁸ and for alcohol within 2 hours.³⁹ After an accident involving hazardous materials a report must be made to the National Response Center no later than 12 hours after the occurrence.⁴⁰

Motor carriers are also required to have qualified equipment inspection personnel,⁴¹ as well as specially trained brake inspection personnel.⁴² Records of periodic inspections must be kept,⁴³ all of which should be reviewed as part of any crash investigation. And even if produced, these records and the qualifications of those performing the inspections should be verified to exclude any possibility of fraud.

All of these devices and paper records create a record which should be reviewed, and include:

³⁴ 49 USC §31308; 49 CFR §383.153(9)& (10)

³⁵ 49 USC §31149

³⁶ 49 USC §31149(C)(1)(B); 49 CFR §391.41(a)(1)(i)

³⁷ https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/FMCSA-ELD-Final-Rule_12-10-2015.pdf

³⁸ 49 CFR §382.303

³⁹ 48 CFR §383.303(a)(1)(2)(i)(ii)

⁴⁰ 49 CFR §171.15

⁴¹ 49 CFR §396.19

⁴² 49 CFR §396.25

⁴³ 49 CFR §396.17

DRIVER RECORDS:

- Driver/Vehicle Inspection Report (49 CFR §396.11)
- Registration
- Trip Records
- Commercial Driver's License
- Medical Certificate
- Road Test Certificate
- Log Book
- Bills of Lading
- Road Expenses

COMPANY RECORDS:

- Driver Qualification File
- List of Driver's Violations
- List of Driver Discipline / Company Violations
- Annual Review of Driving Records
- On-Board Computer Systems Download Information
- Engine Control Modual
- Pre-employment Drug Screening
- Maintenance Records
- Trip Reports
- I-Pass / Electronic Toll Records
- Equipment List Driver's Record of Duty Status
- Bill of Lading
- Weight Tickets / Loading Receipts / Loading Records
- Driver's Duty Status Records

OTHER INFORMATION

- Identity of qualified motor carrier equipment inspection personnel (49 CFR §396.19)
- Identity of qualified brake inspector (49 CFR §396.25)
- Dispatch Records
- Dispatch Bid / Electronic Route Offers
- Dispatch History / Call History
- Qualcomm / GPS data
- Alcohol / Drug Tests and Test History for Driver
- Incident Investigation / Accident Review Board findings
- List of Employees responsible for driver safety, and title of each

- Identity of Safety Director / Flee Safety Manager(s)
- List of Employees responsible for equipment safety

3.3 Preservation Letters and Orders.

As noted in the previous section evidence is a perishable commodity. And quite frankly, trucking companies and their insurers sometimes destroy key evidence by ‘mistake’. I have yet to see a situation where they destroyed favorable evidence by mistake, but that’s a different topic. Placing the company and its insurer on notice to preserve evidence is a key part of representing injured persons, and the destruction of evidence may support an evidentiary presumption that the destroyed evidence was favorable to the injured party.⁴⁴ Destruction of evidence may also support a separate lawsuit.

Proving that you quickly asked for the preservation of evidence is critical. I have attached a model preservation letter which should be sent at the earliest possible moment. In theory the destruction of evidence hurts the party who destroyed the evidence. However, some judges formerly worked for insurance companies and will blame the injured party for not asking quickly enough. In short, it’s better to have the evidence than to point fingers later. Proving that you asked as soon as possible is critical, and why a spoliation letter should be sent.

It is also proper to file suit and send injunction orders to the local police and the impound lot so that evidence can be preserved. Each case is different, but how to best preserve the evidence should be considered in each case.

3.4 Root Cause Analysis.

The term ‘root cause analysis’ comes from the engineering field. There are multiple types of cause analysis, and different types of commercial software which assist with cause analysis.⁴⁵ In the context of trucking, root cause is the attempt to discover the factors which lead to a collision. There are multiple methods of cause analysis, such as the ‘5 why’ method,⁴⁶ but all result in trying to discover the human factors, equipment or other contributing facts which lead to a crash. The largest study of truck collisions was commissioned by the FMCSA and provides an excellent analytical oversight of truck collision causes.⁴⁷

Fatigue, speeding and prescription drug use are some of the most common contributing factors to truck collision. Review of some of the most common causes may help the practitioner:

⁴⁴ Illinois Pattern Jury Inst. §5.01

⁴⁵ e.g. <http://www.taproot.com/products-services/about-taproot>

⁴⁶ <http://www.isixsigma.com/tools-templates/cause-effect/determine-root-cause-5-whys/>

⁴⁷ <http://ai.fmcsa.dot.gov/lccs/default.asp>

Table 8 – Estimated Number of Trucks in All Crashes by Associated Factors		
Top 20 Factors	Number of Trucks*	Percent**
Drivers		
Prescription Drug Use	37,000	26.3%
Travelling Too Fast for Conditions	32,000	22.9%
Unfamiliar with Roadway (less than 6 times in 6 months)	30,000	21.6%
Over-The-Counter Drug Use	24,000	17.3%
Inadequate Surveillance	19,000	13.2%
Fatigue	18,000	13.0%
Under Work-Related Pressure	13,000	9.2%
Illegal Maneuver	13,000	9.1%
Inattention	12,000	8.5%
Inadequate Evasive Action	9,000	6.6%
Aggressive Driving Behavior	9,000	6.6%
Unfamiliar with Vehicle (less than 6 times in 6 months)	9,000	6.5%
Following Too Closely	7,000	4.9%
False Assumption of Other Road User Action	7,000	4.7%
Vehicle		
Brake Failure, out of adjustment, <i>ect.</i>	41,000	29.4%
Environment		
Traffic Flow Interruption (previous crash, congestion, other)	39,000	28.00%
Roadway Related Factors	29,000	20.5%
Driver Required to Stop Before Crash (Traffic control device, other)	28,000	19.8%
Weather Related Factors	20,000	14.1%
Other Factors		
Cargo Shift	6,000	4.0%
Driver Pressured to Operate Even Though Fatigued	5,000	3.2%
Cargo Securement	4,000	3.0%
Illness	4,000	2.8%

Looking at each of the foregoing possible causal factors may assist the practitioner in identifying the potential causes of a crash. One note of caution should be given when undertaking any type of cause analysis try not to make the endeavor too complex. Occam's razor teaches that among competing hypotheses the one with the fewest assumptions should be selected. Or, KISS (keep it simple stupid). If the driver didn't stop in time he either did see stopped traffic, or his brakes didn't work properly, or both.

3.5 Truck Inspection and Black Box Downloads.

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