THARPE & HOWELL, LLP

TRANSPORTATION LAW NEWSLETTER

MARCH 2011 EDITION

This Newsletter is brought to you by R. Bruce Salley, Chair of Tharpe & Howell's Transportation Law Practice Group. For those of you exposed to tractor-trailer trucking accidents, various supplements are attached including a recent ruling by the California Supreme Court, an Emergency Response Program Guide, and an analysis of the "primary versus excess" argument. Please contact "Bruce" at rsalley@tharpe-howell.com; or (818) 205-9955 to discuss any questions or comments you might have.

JUDGMENT BELOW POLICY LIMITS CAN STILL EXPOSE INSURERS TO ACTIONS FOR BAD FAITH

Previously, insurers felt some degree of relief when an adverse case was resolved below the policy cap. However, the Wisconsin Supreme Court recently held an insurer can still be sued for bad faith by failing to properly protect the insured's SIR.

In this case, a Truckers/Auto Insurance Policy was issued to Roehl Transport with up to $2 Million Dollars in liability coverage. The policy had a $500,000 deductible, meaning that Roehl agreed to pay the initial $500,000 on certain claims made against it under the policy; while the insurer was responsible for paying any damages between the $500,000 SIR and the $2 Million policy limit. Despite the large deductible, Roehl's insurer was responsible for handling the defense of any claims brought, although Roehl could provide settlement and claims handling input.

Roehl was sued after a third party was injured in an accident involving one of its trucks. Subsequently, the Jury found Roehl liable and entered an award against it for $830,400. Although the verdict was well below the $2 Million policy limits, Roehl had to pay all of its $500,000 SIR.

Roehl filed an action for bad faith against its insurer in relation to the personal injury claim. Roehl asserted that the carrier's adjustment of the matter was replete with inadequate claims handling, such as an incomplete investigation and handling by inexperienced and high-turnover staff. Roehl also argued that the carrier failed to make a good faith effort to settle the claim below the $500,000 SIR. Roehl asserted that these inadequacies resulted in the carrier's failure to settle the claim for less than the Jury's award, resulting in damages to Roehl.

The carrier moved for Summary Judgment on the bad faith claim, arguing it was not recognizable under Wisconsin law. The carrier noted there were only three instances when an insured could successfully bring a bad faith suit: (1) when the carrier failed to settle the claim when the ultimate Judgment would expose the insured to a damages **in excess of the policy limits**; (2) when the insurer unreasonably and in bad faith withheld payment of the claim of its insured; and (3) when the carrier failed to reimburse the claimant for a worker's compensation claim. Because the Jury's award in the underlying personal injury action was less than the $2 Million Dollar policy limit, the carrier argued Roehl did not meet the standard necessary to successfully bring an action for bad faith.

The Circuit Court disagreed with the carrier's assertion and ruled in favor of Roehl. It found that whether the carrier had satisfied its implied duty of good faith, and whether important facts were recklessly disregarded during its adjustment of the personal injury claim, were questions for a trier of fact to decide. Accordingly, the matter proceeded to Trial.

After Trial, the Jury found the carrier's conduct to be in bad faith and entered a $127,000 damages award in favor of Roehl. However Roehl's request for attorneys' fees and punitive damages were denied. Both parties appealed.

The case was brought before the Wisconsin Supreme Court which analyzed whether a Judgment **greater than** the policy limits was necessary for an action for bad faith to survive.

When analyzing the case, the Wisconsin Supreme Court noted that Roehl had agreed to pay part of any settlement (its SIR) and any award in excess of the policy cap. And, because Roehl had relinquished the right to negotiate third party claims, it was dependent on its carrier to protect its best interests. The Court found that all carriers have a duty of good faith, and in circumstances such as these where the insured has a significant deductible, the carrier and the insured's interests may sometimes diverge. (For example, the insurer could make settlement decisions favoring its own interests over those of its insured to avoid the expense of diligent investigation and adjustment). In the end, the Wisconsin Supreme Court ruled in favor of Roehl – noting that insureds with high deductibles need the protection of bad faith actions to help guard against the risk that the insurer will put its own interests before those of its insured.

LANGUAGE POLICY COVERING UNIVERSITY EXTENDED TO CHARTED BUS

In *Federal Insurance Company v. Executive Coach Luxury Travel, Inc.*, the Ohio Supreme Court recently held a bus service **contracted** by Bluffton University ("Bluffton") was an insured under the terms of the University's policy of insurance.

In this case, Bluffton's baseball team was scheduled to play multiple games in Florida. Bluffton's head baseball coach contracted with Executive Coach Luxury Travel, Inc. ("Executive") to transport the players and coaches to Florida for that purpose. Jerome Niemeyer, an employee of Executive, was a driver. While driving, Niemeyer apparently mistook an exit ramp for another lane on the highway and crashed the bus onto the roadway below the interstate. Niemeyer, his wife, and five Bluffton players were killed. Others were injured.

At the time of the crash, Bluffton had a commercial automobile policy with Hartford Fire Insurance Company ("Hartford), a commercial umbrella policy with American Alternative Insurance Corporation ("American"), and an excess follow-form policy with Federal Insurance Company ("Federal"). The Federal policy contained a clause stating its coverage was subject to the terms, conditions, agreements, exclusions, and definitions of its "controlling underlying insurance," which was the American policy. The American policy contained a clause stating its coverage was subject to the "Underlying Insurance," which was the Hartford policy. The Hartford policy language, in other words, controlled the extent of the coverage of all Bluffton's insurance policies.

The term "insured" in the Hartford policy was defined as "[a]nyone else while using with your permission a covered 'auto' you own, hire or borrow." [The parties referred to this clause as the "omnibus clause."]

Certain injured passengers and the administrators of the decedents' estates argued that bus driver Niemeyer was an "insured" because he drove a bus that Bluffton hired and with Bluffton's permission. Their argument was grounded in the principle that words not defined within an insurance policy must be given their natural and commonly accepted meaning.

Federal Insurance and American argued that Bluffton did not "hire" the bus because it did not exert control over and possess the bus. They argued that Bluffton simply contracted for transportation services and did nothing more than assent to Executive's authority over its own bus drivers.

The Trial Court found that Bluffton had neither hired the charter bus nor permitted bus driver Niemeyer to drive the bus, and concluded that Bluffton did not have control or authority over the bus or the driver. Accordingly, it entered Summary Judgment in favor of the insurance carriers. The injured passengers and decedents' estates appealed.

The Court of Appeals affirmed the Trial Court's ruling, concluding that Niemeyer and the bus were not "insureds" under the Hartford policy.

The issue was then brought before the Ohio Supreme Court. The high Court found that, given the language contained within the Hartford policy, the lower courts erred when determining that bus driver Niemeyer was not an "insured." It found that although a person who otherwise fit the definition of an insured could be excluded from coverage through five specifically listed exceptions, none of them applied to Niemeyer. Accordingly, it reversed the lower Court's rulings and remanded that case back to the Trial Court.

THARPE & HOWELL, LLP
www.tharpe-howell.com

15250 Ventura Blvd., 9th Floor
Sherman Oaks, CA 91403
Phone: (818) 205-9955

1226 State Street, 2nd Floor
Santa Barbara, CA 93101
Phone: (805) 962-4000

600 W. Santa Ana Blvd., Ste. 705
Santa Ana, CA 92705
Phone: (714) 437-4900

516 West Shaw Ave., Suite 200
Fresno, CA 93704
Phone: (559) 221-2670

770 L Street, Suite 950
Sacramento, CA 95814
Phone: (916) 492-6000

225 Bush Street, 16th Floor
San Francisco, CA 94104
Phone: (415) 439-8840

11622 El Camino Real
San Diego, CA 92130
Phone: (858) 764-2577

3425 Cliff Shadow Parkway
Las Vegas, Nevada 89129
Phone: (702) 562-3301

955 S. Virginia Street, Suite 116
Reno, Nevada 89502
Phone: (775) 786-6200

2425 East Camelback Rd. Suite 950
Phoenix, Arizona 85016
Phone: (602) 340-1234

2150 S. 1300 East, Suite 500
Salt Lake City, Utah 84106
Phone: (801) 337-3997

This Newsletter has been brought to you by Robert "Bruce" Salley, a Partner of Tharpe & Howell and Chair of its Transportation Law Practice Group. Tharpe & Howell has been part of the California, Arizona, Nevada and Utah business communities for more than 34 years, providing clients with experience, judgment, and technical skills. We are committed to delivering and maintaining excellent client service and case personalized attention, and to be an integral member of each client's team.

For further inquiry about any of the articles discussed, please contact Mr. Salley direct at (818) 205-9955; Email: rsalley@tharpe-howell.com

For our clients and colleagues exposed to tractor-trailer trucking accidents, a special Emergency Response Program Guide and an analysis of the "primary versus excess" argument are also attached. I hope you find these materials informative, and invite any questions and/or comments you might have. Bruce

SUMMARY OF THE CALIFORNIA SUPREME COURT OPINION IN *CABRAL v. RALPHS GROCERY COMPANY, ET AL.*

On February 28, 2011, the California Supreme Court issued its opinion in *Cabral v. Ralphs Grocery Company, et al.* The primary issue considered and decided, concerned whether or not a commercial truck driver owes motorists using a freeway, a common law duty of care when choosing to stop and park a tractor-trailer on a wide freeway shoulder, approximately 13 feet away from the nearest lane of travel. The Supreme Court has provided a detailed analysis of common law duty of care, and held that a commercial truck driver has a duty not to create a risk of a collision by parking in such a fashion, in a non-emergency situation.

The underlying facts in this case are important. A truck driver working for Ralphs Grocery Company stopped his tractor-trailer at night, on a freeway shoulder, for the non-emergency purpose of having a snack. The shoulder consisted of a paved shoulder with a dirt shoulder adjacent thereto. The tractor-trailer was about 16 feet from the outer most traffic lane. Signs were posted stating "Emergency Parking Only". As discussed above, the driver's purpose of stopping was not an emergency.

Adelemo Cabral approached driving his pick-up truck. He suddenly veered out of the travel lanes and collided with the rear of the stopped trailer at high speed, resulting in his death. He was not intoxicated and experts opined that he either fell asleep at the wheel or lost control due to an undiagnosed medical condition.

At trial, the jury found both Mr. Cabral and the Ralphs' driver to have been negligent. Ninety percent of the fault was allocated to the decedent, and 10% was allocated to the truck driver. Ralphs appealed and the California Court of Appeal reversed the jury allocation of fault to the truck driver, holding that the truck driver owed no duty to the decedent when deciding to park where he did. The Supreme Court disagreed.

California law establishes a general duty of each person to exercise reasonable care for the safety of others. In determining whether duty exists in a particular situation, the court looks to the foreseeability of injury. However, this is the foreseeability of injury from "the category of negligent conduct at issue", as opposed to the detailed specifics in the case at hand. Noting that there are many circumstances when vehicles leave the freeway lanes and travel through the shoulder adjacent to the lanes, the Supreme court explained:

> *In the generalized sense of foreseeability pertinent to the duty question, that a vehicle parked by the side of a freeway may be struck by another vehicle leaving the freeway, resulting in injury to either vehicle's occupants, is clearly foreseeable. Drivers are suppose to control their vehicles and keep them on the traveled roadway, but common experience shows that they do not always do so.*

Thus, the Supreme Court concluded that a freeway driver does owe other drivers a duty of ordinary care in choosing whether, where and how to stop on the side of the road.

Interestingly however, the opinion leaves open the ability to argue that a driver who impermissibly stops on a shoulder under these types of facts, still can be found not liable. This is because the question of whether the duty was *breached* remains within the province of the trier-of-fact to determine. The Court explained:

> *Because the duty at issue is only that of ordinary care, our rejection of the exemption Ralphs seeks does not mean all parking along freeways can result in negligence liability; whether the duty of ordinary care has been breached depends on the particular circumstances, including those aggravating or mitigating the risk created and those justifying the decision to stop on the shoulder or median rather than exit the freeway.*

Notwithstanding the foregoing comments in the opinion, we expect that plaintiffs' attorneys will argue that the opinion stands for the proposition that the element of *breach* is established as a matter of law, at least when the facts are identical. This is by virtue of discussion in the opinion, regarding the designation of such areas by CalTrans as a "recovery zone", and the Court's conclusion that by parking in this area, the truck driver did "increase the risk of a collision over the risk existing when no obstacle is present".

Lastly, the opinion discusses the element of *causation*. The court found that sufficient evidence had been presented at trial, to support the conclusion that had this tractor-trailer not been stopped where it was, Cabral likely would have come to a stop without suffering a fatal collision. Thus, causation existed.

The court additionally rejected an argument that causation did not exist, because the truck driver *arguendo could have* stopped where he did legally under different circumstances; for example, if he had had an unanticipated emergency mechanical issue. In rejecting the argument, the Court explained:

> *The counterfactual question relevant to but-for causation, therefore, is what would have happened if Horn had not stopped his tractor-trailer rig there, not what would have happened if Horn had had a better reason to stop.*

It is very important to note that the foregoing argument about causation could have succeeded, if the plaintiff's theory of liability had been limited during the course of litigation, to a statutory violation only, whereby the "illegal status" of the stopped tractor-trailer, parked for a non-emergency reason, was the only basis of liability pursued. Had plaintiff been limited during litigation to such a theory, then there is strong case law standing for the proposition that mere "illegal status" of a stopped vehicle, at a location where it *could* be stopped *legally*, does not cause any harm. Accordingly, it is critical in these types of cases, to try to steer the plaintiffs away from a common law negligence cause of action.

ANALYSIS OF "OTHER INSURANCE" COVERAGE DISPUTES RE STANDARD ISO "TRUCKERS COVERAGE FORM" [CA 00 12 03 06]

Tharpe & Howell, LLP, has provided defense and coverage opinion services to insurers of trucking businesses for over 34 years. The following coverage analysis of "other insurance" is offered to assist those carriers who insure trucking companies which enter into "sub haul" agreements for the leasing of tractors and the hauling of property for hire. We hope this analysis will provide a better understanding of the coverage arguments typically asserted by the respective carriers once an accident has occurred; and will offer some guidance to those carriers involved in primary versus excess coverage disputes.

TYPICAL FACTUAL BACKGROUND

Customarily, these claims involve a named insured that owns a tractor described and listed in a "motor vehicle liability policy" as a covered tractor. The tractor, in combination with a non-owned trailer, is involved in a multi-vehicle traffic collision on a date within the policy period – and bodily injury or property damage has occurred. At the time of the accident, the tractor was leased out to a company engaged in the business of hauling property for hire - under a sub-haul agreement which had been entered into between the two. The company which was hauling property via the leased tractor is insured under a different "motor vehicle liability policy" that affords coverage for the operation of the tractor either as a "hired auto" or "any auto" in the Schedule of Covered "Autos" section of the policy. Arguably, under applicable Federal regulations and case law, these relationships make the tractor operator a "statutory employee" of the company he is hauling property for.

A dispute arises between the two insurers as to which "motor vehicle liability policy" affords primary coverage for the damages and injuries sustained: the policy that describes the tractor as a "covered auto," or the policy that insures the hauling company (lessee).

CARRIER ARGUMENTS

Usually, the tractor owner's carrier relies on *Insurance Code* §11580.9(h) to argue that its policy is not primary and is instead excess on the theory that the driver of the tractor was a "statutory employee" of the company he was working for, and that company was the company engaged in the business of a trucker for hire. However, the insurer for the lessee hauling company typically contends this code section has been held only to apply to a loss where one policy affords coverage to a tractor and the other affords coverage to a trailer or trailers. *U.S. Fire Ins. v. Williamsburg National Ins.*, 2008 WL 5054107 (E.D. Cal). Since neither policy affords coverage only to a trailer or trailers, this carrier argues that *Insurance Code* §11580.9(h) does not apply.

The insurer of the hauling company lessee generally relies on *Insurance Code* §11580.9(d) to contend that since the involved tractor is described and rated in the tractor owner's policy in the Schedule of Covered Autos, that policy provides primary coverage for the losses sustained. The carrier for the tractor owner responds that *Insurance Code* §11580.9(d) by its terms cannot be applied to the facts of this claim because that code section is limited to disputes involving "automobiles" as that term is defined in §11580.06, Article 2 "Actions on Policies Containing Liability Provisions," which specifically provides definitions for §11580.9(d).

LEGAL ANALYSIS

California Insurance Code Section §11580.06(d) defines the term "automobile" to mean "any self-propelled motor vehicle, with neither more than nor less than four wheels…" Since the tractors involved in these claims have more than four wheels, they do not meet the definition of "automobile" as that term is used in this code section. Instead, that section only applies to a policy in which a "motor vehicle is described or rated as an owned **automobile**." While the tractor is described and rated in the tractor owner's policy, it is not an "**automobile**" and thus cannot be described and rated as an "**automobile**" any more than can motorcycles that have less than four wheels.

Insurance Code §11580.9(d) has been construed in three California cases, none of which involve tractors that were described as having more than four wheels. In *Northwestern Mutual Ins. v. Farmers Ins.*, (9178) 76 Cal.App.3d 1031, the vehicle in question was described as a Chevrolet pickup truck. In *Ohio Casualty v. Aetna Ins.* (1978) 85 Cal.App.3d 521, the vehicle was described as a "truck." And in *Mercury Ins. v. Hertz*, (1997) 59 Cal.App.4th 414, the vehicle was a rented automobile. In none of these cases was it necessary for the Court to decide whether this code section applied to a vehicle having more than four wheels, so the issue was never raised.

However, the selection of the term "automobile" in *Insurance Code* §11580.9(d) as opposed to "motor vehicle" must be viewed as intentional, since §11580.06(a) provides a separate definition of the term "motor vehicle" as "any vehicle designed for use principally upon streets and highways and subject to motor vehicle registration under the law of this state." Thus, the term "motor vehicle" includes the term "automobile," but the term "automobile" does not include all the types of vehicles that meet the definition of the term "motor vehicle."

Insurance Code §11580.9(d) is the only paragraph of this code section that uses the term "automobile." While one may argue that the use of this term was a mistake by the Legislature, Courts are not allowed to make such a presumption without substantial evidence. Courts must assume that the Legislature used terms intentionally and thus it appears that 11580.9(d) has no application to a loss involving a "motor vehicle" that is not an "automobile," meaning one that has more than 4 wheels. Similarly, this code section would have no application to a loss involving a motorcycle since such a motor vehicle has less than four wheels and does not fit the definition of the term "automobile."

Further legal support for the argument that *Insurance Code* §11580.9(d) cannot be applied to a loss involving a "motor vehicle" that is not an "automobile" can be found in the case of *Empire Fire v. Bell*, (1997) 55 Cal.App.4th 1410, 1416, wherein the Court stated: "The Legislature has distinguished in the Insurance Code and the Vehicle Code between an automobile liability policy and a motor vehicle liability policy." (*State Farm Fire & Casualty Co. v. Superior Court*, (1989) 215 Cal.App.3rd 1455, 264 Cal.Rptr. 512.) An automobile liability insurance policy is essentially defined by *Insurance Code* §11580.1, which lists various provisions which must be contained within an automobile liability policy. (215 Cal.App.3rd 1465, 264 Cal.Rptr. 512.) Expressly excepted from compliance with *Insurance Code* §11580.1 are those policies to which *Vehicle Code* §§16450 et seq. apply. (*Insurance Code* §11580.05.) *Vehicle Code* §16450, in turn, defines a "motor vehicle liability policy.""

The Court in *Empire v. Bell* went on to cite *State Farm v. Superior Court* to explain the key differences between a "motor vehicle liability policy" and an "automobile liability policy." It is thus clear that the use of the term "automobile" in *Insurance Code* §11580.9(d) was intentional and that the Legislature did not intend that statute to apply to losses involving a "motor vehicle" that is described or rated as an insured "motor vehicle" in a "motor vehicle liability insurance policy" which is what the tractor owner's policy is. The tractor owner's policy is not an "automobile liability insurance policy" as those terms are defined and used in the *Insurance Code* – which is why its policy includes the MS-90 Endorsement required of all "motor vehicle liability insurance policies." It is also the reason the policy defines "auto" as "any land motor vehicle or trailer," consistent with the definition of "motor vehicle" as found in *Insurance Code* §11580.06(a). Thus, when the tractor owner's policy lists the tractor as a "covered auto" this is not the equivalent of stating the tractor is described and rated in the policy as a covered "automobile" as that term is defined in the *Insurance Code.*

When analyzed together, these respective coverage arguments cancel out *Insurance Code* §§11580.9(d), and (h), and leave the insurers with their respective standard "California Changes Endorsement" to the Truckers Coverage Form "Other Insurance" provisions of the policies. However, the same argument that eliminates application of *Insurance Code* §11580.9(h) would also in effect eliminate application of the "Other Insurance" provisions of these Endorsements that are based on, or are designed to comply with, this code section.

CONCLUSION

The end result of the respective coverage arguments of both insurers (the carrier for the tractor owner and the carrier for the tractor lessee) is that *California Insurance Code* §§11580.9(d), and (h) **do not apply**, and the "California Changes Endorsement" of the respective policies **do not apply**. Accordingly, the only means of determining liability between the respective policies is through the standard ISO Truckers Coverage Form "Other Insurance" provisions of form CA 00 12 03 06 – **making the tractor owner the primary insured**.

As a note aside, we acknowledge that many transportation companies that haul property for hire enter into a "Transportation Agreement" with the tractor owner which states the owner is not an employee of the hauling company but is instead an independent contractor. However, these Agreements usually acknowledge that *49 C.F.R. 390.5* includes independent contractors within the definition of "employee." Obviously, the insurers of the tractor owner and/or the hauling company lessee are not parties to that Agreement and its terms are not controlling with regard to any "other insurance" dispute. Instead, this issue is controlled by the Truckers Coverage Form, "Other Insurance" provisions of the respective policies.

Additionally, it is not unusual for the "sub haul" agreement to include an indemnity agreement whereby the tractor owner agrees to indemnify and hold the transportation hauling company harmless for injuries or damages arising out of the use of the tractor. It is important to note however that the definition of an "insured contract" in each of the standard policies, at paragraph 6.,c., states as follows:

> An 'insured contract' does not include that part of any contract or agreement
>
> c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.

Thus, the existence of an indemnity agreement between the tractor owner and the hauling company does not constitute an "insured contract" which might otherwise make the insurance afforded to the tractor owner primary under the "Other Insurance" provision of the Truckers Coverage Form. This is consistent with the concept that the liability insurance issued to a "trucker" that hires the tractor is primary over the insurance afforded to the tractor owner.

Since no California case law definitively provides guidance to resolve the primary versus excess insurance dispute, and in light of the legal research discussed above, we conclude the **strongest position is that the tractor owner's policy is primary** in cases such as this. By this analysis we do not mean to imply that all insurers readily accept our conclusion and simply throw in the towel. Insurers of transportation hauling company lessees can be expected to continue to argue that the insurance issued to the owner is primary based on *Insurance. Code §11580.9(d)* since those insurers are familiar with the application of this statute to insurance disputes involving "automobile liability policies." Conversely, insurers of tractor owners will continue to argue that *Insurance Code* §11580.9(h) and/or the Truckers Coverage Form "Other Insurance" provision provides that their policy is merely excess. By no means is it pre-determined how any given Court will ultimately decide in this type of dispute. Accordingly, our analysis is, at best, something to consider when starting settlement negotiations. Obviously, the presence of underlying facts different than those outlined above may alter our analysis and lead to a different conclusion.

I hope that you have found this article interesting and informative. Should you have any questions or comments on this, or any other type of coverage matter, please feel free to contact me at (818) 205-9955; or email tlake@tharpe-howell.com.

THARPE & HOWELL, LLP

Tim

Timothy D. Lake, Esq.

THARPE & HOWELL

PROBLEM SOLVERS — WORKING HARDER FOR YOU

TRUCKING ACCIDENT
EMERGENCY RESPONSE PROGRAM

Promptly obtaining the right information and evidence following an accident can be the difference between a catastrophic trucking claim and a claim which *becomes* a catastrophe. In recognition of this, Tharpe & Howell has developed an "Emergency Response Program" with a team of transportation lawyers, investigators and experts available to assist you and your insureds 24/7 immediately following any major collision. Please contact Team Leaders Shawn Elliott or Robert B. Salley at (818) 205-9955 for more information about our Program, including how you and/or your insureds can access this valuable tool. With or without our assistance, the following checklist will help identify items you may wish to obtain from your trucking insureds in the event they are involved in a major crash.

DOCUMENTARY EVIDENCE

☐ All documents re ownership of tractor and trailer involved in accident including, but not limited to, title and registration.

☐ All existing maintenance, inspection and repair records or work orders on the tractor and trailer.

☐ The collision register maintained by the motor carrier (federal law) for the 1 year period preceding the collision.

☐ Any post-collision photos, maintenance, inspection, or repair records/invoices re the tractor and trailer.

☐ All existing driver/vehicle inspection reports required under 49 C.F.R.396.11 for all vehicles involved, as well as pre-trip/daily inspection reports for said vehicles for the 6 months preceding the date of the incident.

☐ All annual inspection reports for the tractor and trailer covering the date of the collision.

☐ Any weight tickets, fuel receipts, hotel bills, or other records of expenses, regardless of type, re the driver and/or tractor or trailer for the day of the collision and the 30 day period preceding the collision.

☐ All lease contracts or agreements covering the driver and/or the tractor or trailer involved in the collision.

☐ Any interchange agreements regarding the tractor or trailer.

☐ Copies of all truck driver daily logs for the day of the collision, and for the 6 month period preceding the collision, together with all materials required by 49 C.F.R.396.8 and 395.15 for the driver.

☐ All bills of lading, shipping receipts, dispatch records and other similar documents.

☐ Cargo pickup or delivery orders prepared by motor carriers, brokers, shippers, receivers, driver, or other persons, or organizations for 30 days prior to the date of the collision and the collision date.

☐ All settlement/expense sheets for driver of truck re trips taken on collision date and 30 days prior thereto.

☐ All communications via CB radio, mobile or satellite communication systems, e-mail, cellular phone, pager or other cab communication device including bills for 7 days before, the day of, and 2 days after the collision.

☐ Data and/or printouts from on-board recording devices including, but not limited to, the ECM (electronic control module), on-board computer, tachograph, trip monitor/recorder/master or other recording or tracking device for the day of the collision and the preceding 6 month period for the equipment involved in the collision (**NOTE**: ECM (or "black box") data can be overwritten if the vehicle is driven. To best preserve this evidence, consider having the vehicle towed from the scene on a flatbed, even if drivable, and having the ECM information downloaded immediately thereafter.)

☐ All OmniTRAC, Qualcomm, NVPc, QTRACS, OmniExpress, TruckMail, TrailerTRACS, SensorTRACS, JTRACS, and other similar systems data for the 6 months prior to the collision for the driver and truck.

☐ Any and all communications with the involved driver and/or about the incident via CB radio, mobile or satellite communication systems, e-mail, cellular phone, pager or other cab communication device to include the bills for the devices for the seven (7) days before, the day of, and the two (2) days after the collision.

☐ Any e-mails, electronic messages, letters, memos, or other documents concerning the collision.

☐ Any drivers' manuals, guidelines, rules or regulations given to drivers (including operator, safety and training manuals).

☐ All materials reflecting the training and testing of the involved driver.

☐ The truck driver's complete personnel and driver's qualification file, as required by 49 C.F.R.391.51, including, but not limited to:

- ☐ Employment Application.
- ☐ Inquiries into driver's employment history.
- ☐ Responses to inquiries into driver's employment history.
- ☐ Driver's employment history.
- ☐ CDL License.
- ☐ Driver's Certification of Prior Traffic Violations.
- ☐ Driver's Certification of Prior Collisions.
- ☐ Pre-employment MVR.
- ☐ Annual MVR for last 2 years.
- ☐ Annual review of driver history.
- ☐ Certification of road test.
- ☐ Medical examiner's certificates for last 2 years.
- ☐ Drug testing records.
- ☐ HAZMAT or other training documents.

Federal law (49 C.F.R. 382.303) requires all truck drivers to be tested for controlled substances (drugs/alcohol) promptly (typically within 2 hours) after an accident involving death, bodily injuries requiring immediate medical care, or vehicular damage requiring a vehicle to be towed. If the claim is reported to you immediately, you will want to ensure that the insured is complying with this requirement. If the accident is not immediately reported, you will want to ask the insured for the results from his/her post-accident controlled substance test.