

THE REAL CULPRITS BEHIND TRUCK ACCIDENTS

AND WHY THEY'RE RARELY
HELD ACCOUNTABLE



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AN E-BOOKLET
PRESENTED BY

COKERLAW



HOW A CULTURE OF CARELESSNESS AND MISPLACED PRIORITIES LEADS TO NEEDLESS FATALITIES

We share the roads with them every day: 70-foot, 80,000-pound machines capable of pummeling 4,000-pound passenger vehicles into dust. And yet, we rarely give them much thought. We trust that drivers are well-trained and paying attention. (They're professionals, after all.)

We expect that their rigs are maintained in good working order. We believe they're equipped with the latest advances in safety technology. We assume that accidents happen only because of the rarest, unluckiest circumstances or because of a handful of drivers who are the bad eggs of the bunch.

Then tragedy strikes. A loved one is killed or catastrophically injured in a truck accident. You come to learn that the accident was not an unlucky coincidence. It was completely preventable – the result of dangerous, systemic practices that are widespread in the trucking industry and that continue to jeopardize the lives of innocent people on the roads.

Bottom line: We're completely unaware of the systemic – and often blatant – disregard for safety that contributes to thousands of preventable truck accidents every year. Until we hold all culpable parties accountable for the harm they cause, cases will be undervalued and the culprits will get away with it.

Sadly, it often takes a tragedy to shed light on this shadowy corner of the trucking industry. And it takes a savvy, in-depth investigation to uncover the real culprits in these cases.



PART I: DIGGING DEEPER: THE MANY LAYERS OF A TRUCK ACCIDENT

Truck accidents are nothing like car accident cases. In a typical car-on-car collision, you need look no further than the drivers, vehicle owners and their insurance companies. Rarely, third parties may also be partly at fault – auto manufacturers for defective vehicle parts or government agencies for poor road design, for example. But that's the exception rather than the rule.

In every truck accident case, you must dig much, much deeper. Let's look at the layers that often lie beneath the surface.

LAYER 1: THE DRIVER

Truck crashes often involve driver inattention or fatigue. Some even result from alcohol or drug use behind the wheel.

At first glance, it's easy to cast blame on the truck driver who ran a red light or fell asleep. And their role in the accident shouldn't be minimized. Yet, if you stop there, you miss the big picture of what's really going on.

Driver inattention is the No. 1 cause of truck accidents.¹ But inattention isn't just a reflection of the individual driver – it's a reflection of the company culture and a systemic disregard for safety.

LAYER 2: THE TRUCKING COMPANY

The problem rarely starts and stops with an individual driver. Often, there's a deep-seated culture of carelessness that involves:

- ➔ Incentivizing drivers to push their limits
- ➔ Pressuring drivers to falsify logbooks and spend more time behind the wheel than the law allows
- ➔ Skimping on safety training
- ➔ Hiring drivers with inadequate qualifications, poor driving records or a history of substance abuse
- ➔ Fudging maintenance records or neglecting needed repairs

Many low-budget, mom-and-pop operations don't have the resources to make safety a priority. They can barely keep their rigs in decent repair – much less install the readily available collision avoidance systems or other safety-enhancing technologies we have nowadays. And many don't have enough insurance to cover the catastrophic costs of a single fatal accident.

Far too many trucking companies neglect safety to maximize profits.

They might get away with sideling safety by avoiding interstates where random inspections and commercial vehicle patrols are more prevalent. They operate under the radar – that is, until a lawsuit shines the spotlight on their deadly practices.



Case Example:

Things Aren't Always What They Seem
Our firm represented a woman who was catastrophically injured when she rear-ended a logging truck in the early-morning darkness. On further investigation, it turned out the crash wasn't her fault. By digging deeper, we discovered that the logging truck was overloaded with logs that covered the taillights and didn't have the required lamp, additionally the trailer only had minimal and ineffective retro-reflective tape. The victim couldn't see the truck.

The result? A \$1.2 million settlement in a case that might otherwise have gotten \$0.

LAYER 3: **THE TRANSPORTATION BROKER**

Dig deeper, and you may find that it's not just the mom-and-pop truck operation that played a role in the accident. Many large shippers rely on transportation management companies to handle their loads. These companies, in turn, subcontract out the loads, acting as a broker.

In a bind, they might turn to subpar operations, perhaps even posting loads online for any independent trucker to pick up. These truckers are paid by the load rather than the mile, so they have an incentive to rush each job.

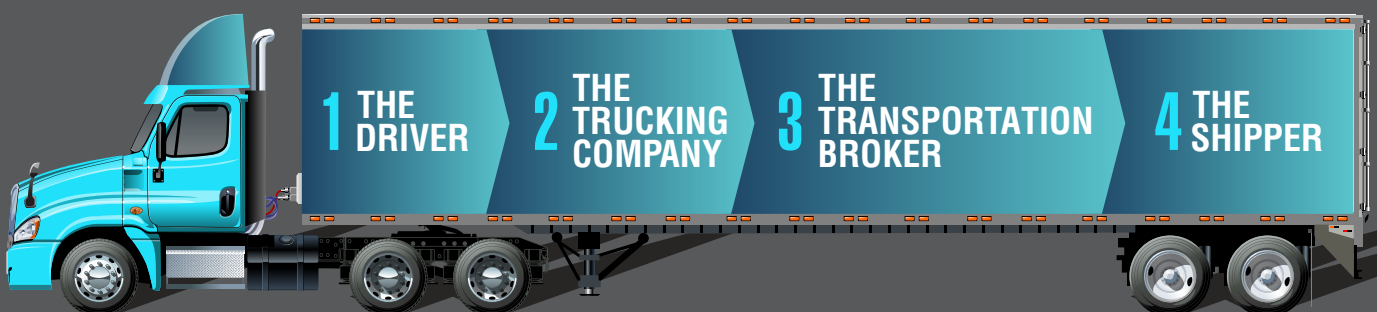
What's more, brokers rarely make any effort to vet their subcontractors. Paying out a fraction of what they

earn per load, brokers make loads of money on these deals – often at the expense of safety.

LAYER 4: THE SHIPPER

Look beyond the broker, and you may find a shipper that's a national or global corporation with high-volume distribution and perhaps even in-house trucking companies of their own. They understand what goes into shipping. They know the federal and state safety regulations. So, when they hire a subpar trucking company with sloppy standards and a poor safety record – or enlist a broker that routinely resorts to unsafe subcontractors – they're making a conscious decision to cut costs at the price of increased risk to innocent people.

THE MANY LAYERS OF FAULT IN A TRUCK ACCIDENT



THE BIG PICTURE: CULTURES OF CARELESSNESS AT EVERY LEVEL

Zoom in, and all you see is a truck driver who barely earns enough to scrape out a living or a low-budget mom-and-pop operation without enough insurance to cover a tragic crash. If you don't dig any deeper, these cases settle for pennies on the dollar. The victims are left shouldering the tremendous harm of life-altering injuries or loss, and the public is burdened with the medical and disability costs assumed by government programs.

Zoom out, and now you see a series of powerful parties who all turned a blind eye to the risks, making conscious decisions to prioritize profits over safety. These are big players – national or global companies for which seven-figure payouts are scarcely pocket change.

Now, instead of a **\$250,000 payout**, you're looking at **\$25,000,000**.

Now, you see not just one distracted, exhausted and overworked driver, but hundreds of them – ticking time bombs just waiting to go off and kill more innocent people.

Now, it's not just about the five seconds when the driver took his eyes off the road; it's about the five years of safety

violations, of overlooking unsafe practices and routinely breaking the rules.

Now, a verdict or settlement isn't just about compensating the victims. It's about **enforcing safety standards** and ensuring that **no company**, no matter how large and powerful, is **above the law**.

MAXIMIZING NOT JUST DOLLARS, BUT JUSTICE

Truck accidents have catastrophic consequences for victims and their families.

Yet the legal system can do more than compensate victims for their financial losses. Most states allow juries to award **punitive damages**, which punish the wrongdoer and deter others from unsafe practices.

Settlements can also be structured to improve safety practices – for example, by requiring companies to install collision avoidance systems, dash cams and other safety systems in their fleets or by imposing additional safety training requirements.

These cases aren't just about money. They can be a powerful force for change in the trucking industry.

PART II: HOW TO DIG DEEPER: THE KEY TO UNLOCKING THESE LAYERS

Now that you know about the many layers of unsafe practices and potential culprits that contribute to truck accidents, the next question becomes, how do you make sure you're not missing the big picture? Even uncovering the first layer – finding out what happened behind the wheel at the time of the crash – can be a challenge.

One single factor can make or break these cases: the thoroughness of your legal team's investigation. It takes time and tenacity to build a strong case. And it takes a team – not just of lawyers who understand how to handle these complex cases, but also industry insiders and experts in fields like accident reconstruction and transportation.



THE SHOCKING REALITY OF WHAT *REALLY* HAPPENS AT THE ACCIDENT SCENE

In the aftermath of an accident, the clock is ticking. Trucking companies and their insurers dispatch “rapid response” teams to the scene – sometimes even minutes after the crash. These teams often include a lawyer, insurance adjuster, engineer or crash reconstructionist. They share one goal: to protect their employer’s bottom line.

While the scene is still in chaos, the lawyer may be talking to law enforcement, distracting their attention. Meanwhile, the adjuster might be questioning the truck driver and other witnesses, noting whose stories are beneficial to their side. And the engineer is combing through the rig, gathering evidence and even removing it from plain sight – unhooking dash cams, downloading records, erasing electronic data. Within hours of the accident, the trucking and insurance companies already have a leg up, and they’re already working tirelessly to minimize their liability.



For victims and their families, meanwhile, the scene looks much different. The shock, horror and chaos may take days or weeks to dissipate. If the victim is lucky enough to survive, they may have no memory of the crash.

It’s understandably difficult to think in practical terms about building a legal case in the midst of such turmoil. Still, a rapid response on the part of the victim’s legal team can make a big difference. The team should immediately dispatch experts to inspect the vehicles, pull the “black box” of electronic data and gather the raw evidence needed to reconstruct the accident.

Even if evidence is already missing – perhaps the insurance engineer pulled the dash cam, for example – the right experts can find trails of that evidence, such as wires indicating there was a dash cam. That information alone is extremely valuable.²

PRESERVING EVIDENCE

The next step is also time-sensitive: sending a formal “notice of preservation” to all potentially responsible parties and anyone that may have some pertinent information, like nearby businesses, first responders, and service providers. This critical document puts the parties on notice that legal claims may be forthcoming. It imposes a strict legal duty on them to preserve evidence – meaning “don’t change, don’t move, don’t destroy.” This restriction is especially important for electronic evidence that might otherwise be routinely deleted or altered.

ELECTRONIC EVIDENCE IN TRUCK ACCIDENT CASES

Trucks often carry a wealth of electronic data that can shed light on what happened in the moments leading up to the accident. This data might come from a wide range of devices:

ECMs (electronic control modules) and **EDRs** (event data recorders): These function as the “black box” for big rigs. They record valuable details such as speed, steering, braking or acceleration, clutch application,

cruise control use, hazard alerts from collision avoidance systems and much more. This data can be pulled not only from the time of the crash, but from the hours, days and weeks before, illustrating a pattern of dangerous behavior that might otherwise be missed.

Dash cams: Some rigs are equipped with a forward-facing camera showing the road and another one showing the driver. Advanced technology can even track the driver’s eye movements and sound an alarm when their gaze has drifted for too long.

GPS systems: This data might reflect a poor choice of routing that increased the risk of an accident. Perhaps the driver had to execute a tricky left turn or make an illegal U-turn in a rush to stay on schedule. Or perhaps the device itself was a distraction.

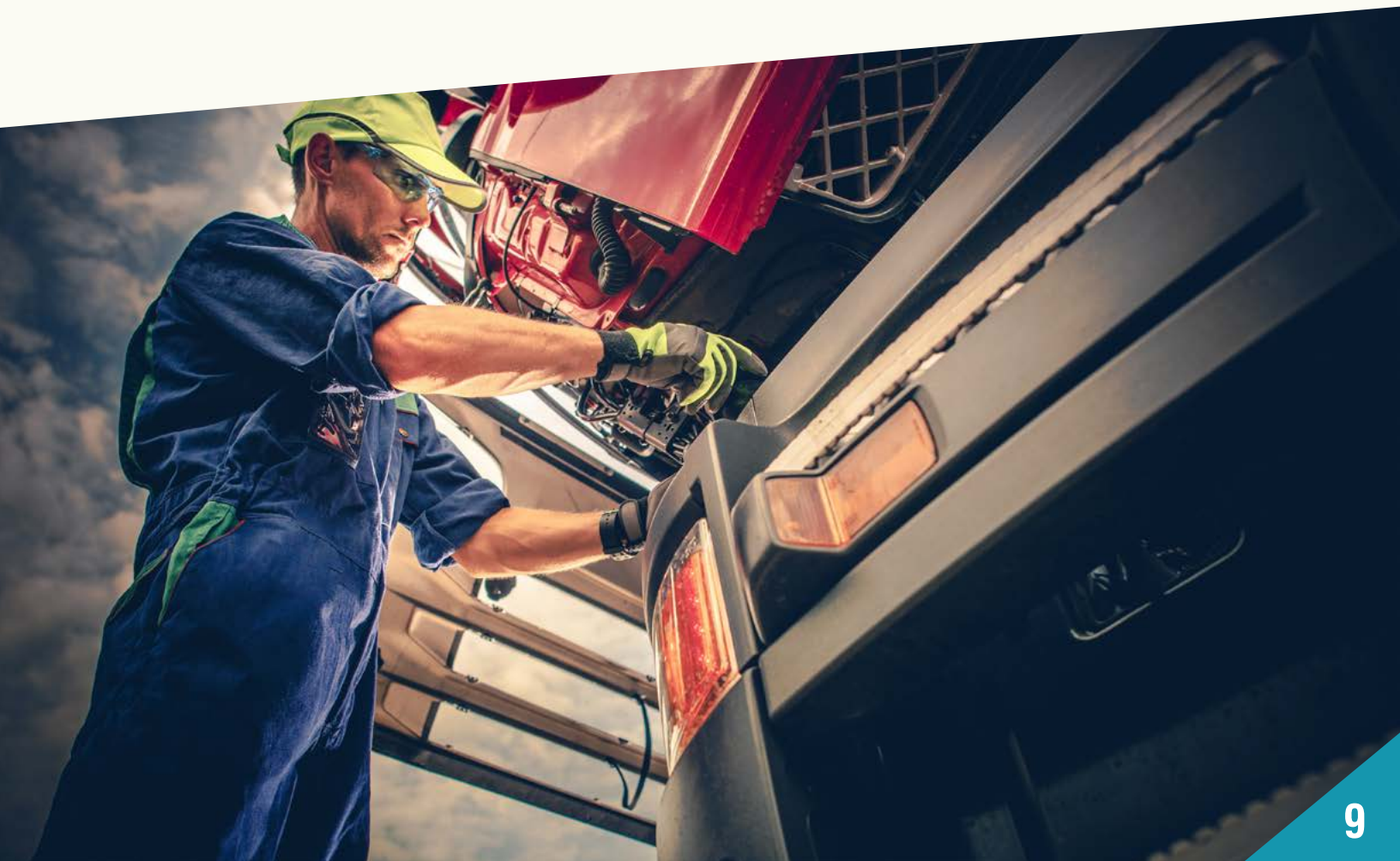
ELDs (electronic logging devices): Used to log driver hours, these devices can show whether drivers adhered to the strict hours-of-service rules established by federal regulations to reduce driver fatigue and inattention.

A forensic examination of the metadata can also reveal whether anyone tampered with the logs. Very often, systems keep track of the changes made to the hours logged after the fact, but this is not readily apparent to someone that has no experience with them.

Fuel card data can shed light on where the truck traveled and when it stopped to refuel. This information may be useful for verifying the accuracy of logbooks and other critical details. For example, if a driver is logging 500 miles a day, but the fuel consumption is more consistent with 750 miles

per day, it's likely the driver may be running the rig "on the side" with no records of the miles and hours driven.

Communication systems are used by the company to relay information to the driver and communicate back and forth. It's not uncommon to find messages from the company pushing the drivers to rush a delivery or complete a run despite being "out of hours". There are also instances where the company is maintaining communications with the driver while he is driving – distracting him from his primary job.



KNOWING WHERE TO LOOK

Beyond the immediate aftermath of an accident, the legal discovery process provides an invaluable opportunity to dig deep.

The trucking industry produces volumes of detailed records that can shed light on all aspects of operations – provided you know *where to look*.

This means securing the bill of lading, master transportation agreements and other relevant documents to identify *all* potentially responsible parties: the trucking company, the owner of the equipment, the actual co-signee on the load, the transportation broker and the shipper, to name a few.

Your legal team should then obtain and examine all relevant records concerning these parties³, including:

 Inspection records	 Past crash data
 Penalty histories	 Fleet and driver information
 SMS (safety measurement system) profiles	 Hiring policies
 Maintenance logs	 Driver Qualification Files
 Insurance documents	 Employee handbooks

These records contain a treasure trove of information. They paint a vivid picture of how a company's long-term disregard for safety can create a situation ripe for tragedy – one that was bound to result in the deaths of innocent people sooner or later.

DON'T LEAVE INSURANCE MONEY ON THE TABLE

Insurance limits are a big deal in truck accident cases. They're the primary source of recovery for victims.

Unfortunately, in an effort to reduce payouts and premiums, defendants aren't always forthcoming about their insurance coverage. They might fail to disclose – or even actively conceal – insurance policies.

By knowing where to look, your legal team can ensure that valuable sources of coverage don't get overlooked. The result could mean **millions** or even **hundreds of millions** of dollars that would otherwise be left on the table.

LATER IS BETTER THAN NEVER

What if days or months have already passed since the accident? While swift legal action is ideal, it's not too late to get an attorney involved – or to seek a second opinion.

At Coker Law, we are nationally recognized leaders in pursuing justice for victims of truck accidents. We have the team, staff, resources and know-how to not only conduct a thorough investigation, but to take these cases to trial and see them through to the end. Opponents know this about us – and because they know we won't hesitate to go to a jury, they have a stronger incentive to take a more favorable stance at the bargaining table.

Whether through settlement or jury verdict, our team is committed to fighting for justice on behalf of innocent victims and their loved ones.

Read on for more information about our legal team, and **contact us** to learn more.



ABOUT COKER LAW

Based in Jacksonville, Florida, Coker Law is proud to have a team of nationally recognized trial attorneys with track records of success measuring in the **hundreds of millions**. Our attorneys routinely serve as counsel, consultants and co-counsel for victims of truck accidents nationwide.

Thirteen of the firm's attorneys have been selected to **Super Lawyers** or **Rising Stars**:



STEFANO PORTIGLIATTI

Super Lawyers®

RISING STARS 2017-2019

Stefano Portigliatti is an accomplished attorney founder of the **Trucking Litigation Academy**, which educates plaintiffs and their attorneys with the goal of maximizing recoveries and making roads safer. He is also a member of the Trucking Litigation Group of the American Association for Justice and the Academy of Truck Accident Attorneys. He frequently speaks and teaches seminars on commercial vehicle accidents and has authored numerous publications on the subject.



HOWARD C. COKER

Super Lawyers®

2006-2019

Howard C. Coker is a founding partner at the firm. An accomplished trial lawyer, he has been recognized in Who's Who in America, Florida Trend's Legal Elite and The Best Lawyers in America. He was named Jacksonville's Personal Injury Litigator of the Year and has received numerous other prestigious awards.

SUPER LAWYERS • 2019

Super Lawyers is a patented rating service of outstanding lawyers who have attained a high-degree of peer recognition and professional achievement. This exclusive honor is awarded to only the top 5 percent of attorneys per state.

SOURCES

¹ Federal Motor Carrier Safety Administration, “[CMV Driving Tips – Driver Distraction](#).”

² Stefano Portigliatti, “[What Steps Should I Take After A Florida Truck Accident?](#)” SuperLawyers.com.

³ Stefano D. Portigliatti, “[How to easily and quickly obtain a company safety history from the USDOT FMCSA’s Safety and Fitness Electronic Records \(SAFER\)](#).”



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