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# TRANSPORTATION LAW UPDATE

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## PENNSYLVANIA/CONNECTICUT

## LOG VIOLATIONS BEFORE RESTART

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Frequently, plaintiffs bring liability claims directly against a trucking company for the negligent hiring, supervision, monitoring, instructing and entrusting of the driver of the involved tractor-trailer. More often than not, these claims go beyond the boilerplate negligent operation of the truck and are attempts to prove or bolster a claim for punitive damages. Furthermore, plaintiffs use these allegations to justify a request for a "laundry list" of company records including, but not limited to, driver's logs, "supporting documentation" which consists of positioning data, ECM information, toll receipts, fuel receipts, and other materials in an attempt to create discrepancies between the driver's record-keeping and these documents. Many times, this request is unduly burdensome and can result in significant expenditure for the company in order to comply.

Recently, it seems that judges are becoming more liberal in requiring the production of records. Some rely on the "principle" that each party should "empty their filing cabinet and provide anything and everything that it possesses relating in any way to the accident." Some jurists actually refer to the very broad standard set forth in the Federal Rules of Civil Procedure which provides that parties may obtain discovery regarding any non-privileged matter that is relevant to any parties' claim or defense and relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. ***Fed.R.Civ.P. 26(b)(1).*** In most cases, the company is required to provide the information during discovery, but it is important to remember that because it may be discoverable does not mean it is admissible evidence at trial.

We routinely file Motions In Limine based on a lack of relevancy to challenge the admissibility of documents and information pertaining to events that occurred before the driver took a 34 hour off duty period.

The Federal Motor Carrier Safety Regulations (FMCSR) regulate the number of hours a commercial driver can drive and be on duty. Specifically, they preclude a driver from driving 11 cumulative hours following 10 consecutive hours off duty (11 hour rule) or having been on duty 60/70 hours in any 7/8 consecutive days, depending on whether the motor carrier operates seven days a week. ***(49 CFR §395.3).***

However, ***§395.3 (c)(1 and 2)*** provide that any period of 7 or 8 consecutive days may end with the beginning of an off duty period of 34 or more consecutive hours. It has been routinely interpreted by DOT experts that this 34 hour off duty period operates as a "restart" for accumulated hours of service and those time periods before the restart of on duty time are then deemed irrelevant for purposes of hours of service compliance. In other words, when the driver is off duty for 34 or more consecutive hours, the "clock" resets to zero and any time utilized before this period does not count.

Recently, U.S. District Senior Judge A. Richard Caputo of the U.S. District Court for the Middle District of Pennsylvania in Wilkes Barre ruled that when the evidence is uncontradicted that the driver did in fact have a 34 hour or longer period of off duty time, "any suggested violation of the 70/8 rule prior to this time period is irrelevant given the 34 hour break…." Further, Judge Caputo determined that any theory alleging that the company should not have permitted the driver to operate "over hours" could only be supported with documentation pertaining to event that occurred after the 34 hour break. Anything before that break would not be admissible.

Thereafter, Connecticut Superior Court Judge Julia L. Aurigemma agreed that any and all evidence, records or documents with respect to a truck driver's driving and record of duty status in the time period prior to the driver's 34 hour restart was not admissible at trial.

Many times, the focus of the plaintiff's case is not the facts and circumstances involving the actual accident, especially when this is not favorable to their position, but it is rather a search for "violations" of the FMCSR or a company policy to show that the driver was "bad" or that the company was not adequately monitoring the driver's activities. Plaintiffs' attorneys routinely attempt to utilize the FMCSR as a sword against the trucking industry with the assistance of opinions from experts that could be viewed as stretching the intent and meaning of the regulations. Most of these allegations are an attempt to show that the driver is being untruthful and he or she must have been fatigued due to hours of service violations.

**Gary N. Stewart** concentrates his practice in the area of commercial motor vehicle defense and he has defended cases in Pennsylvania, New Jersey, Connecticut, Rhode Island, Massachusetts and Vermont.

Gary is admitted to practice in Pennsylvania, New Jersey, Massachusetts, Connecticut, Vermont and Rhode Island as well as before the U. S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey, the District of Massachusetts, the District of Rhode Island, the District of Connecticut and the U. S. Court of Appeals for the First and Third Circuits.

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