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Anyone even loosely involved in the transportation industry is familiar with the increased demand and rapid growth of the last few years. For example, motor carriers are busier than ever. The booming economy has increased the amount of freight needing to be transported, so transportation companies report they are constantly in need of more drivers and, specifically, drivers willing to spend more time on the road. Drivers are benefiting from this booming industry as competition to hire them increases, and motor carriers offer more pay and better benefits.

Unfortunately, this increase in demand has resulted in more accidents occurring on the road that involve commercial motor vehicles. In May 2019, the Federal Motor Carrier Safety Administration released statistics on large truck and bus crashes for 2017. According to the report, the number of collisions in which commercial motor vehicles were involved between 2016 and 2017 increased across the board. The number of fatality crashes increased by 10% in 2017; the number of injury crashes increased by 5%; and the number of property damage crashes increased by 3%.

While the increase in frequency of collisions makes sense with the rising demands placed on trucking and transportation companies, it also means it is important now more than ever for motor carriers and their insurers to be familiar with how to handle the aftermath of an accident. Specifically, since the rising frequency of col-

lisions means that claims and lawsuits pursued against motor carriers will increase, the accident investigation process and the development and preservation of evidence that will help motor carriers and drivers with their defenses is of increasing importance.

POST-ACCIDENT TESTING

When you, as a trucking company representative, first get notice of an accident from a driver, there are a few things that can be put into motion before anyone else (insurance representatives, lawyers, investigators, and the like) gets involved.

First, your driver needs to undergo a post-accident test for alcohol and controlled substances as soon as possible in certain scenarios, such as when:

- There is a fatality;
- The driver gets a citation and someone receives immediate medical treatment away from the scene of the accident; and,
- The driver gets a citation, and a vehicle is towed because of disabling damage.

Testing is required by federal law under these circumstances. While you will want to have the testing completed in case of an audit, it is also important because the question of whether a driver was under the influence of drugs or alcohol before a collision can easily become an issue several years down the road if the testing was required and not completed.

ELECTRONIC CONTROL MODULE RECORDS

Second, you will want to make sure there are no accidental deletions of certain types of data from the engine of the truck, especially if it appears your driver was not at fault for the collision. Most trucks contain some version of an electronic control module (ECM) and, depending on the type of engine in the truck, the ECM may record what is known as “last stop data.” Last stop data is a compilation of typically more than one minute of data like speed, brake application, and other details, which can be particularly helpful to an attorney defending a truck driver and motor carrier in a lawsuit that concerns a collision.

While the majority of data retained on an ECM remains safely on the ECM for weeks or months after the accident (depending on the number of new events recorded), the last stop data can be easily overwritten with a simple crank of the truck after a crash. This most often happens innocently, for example, at the hands of a police officer who needs a truck moved from its position on the side of the road, but it can cause big problems later in a lawsuit even when the disappearance of the data was not the fault of anyone in particular.

EXPERTS ON THE SCENE

The best way to make sure ECM data and other evidence does not disappear in the period between a collision and a lawsuit (sometimes years) is to involve certain professionals like forensic engineers (also referred to as accident reconstructionists) and independent adjusters to aid in the data preservation after an accident. Depending on the size and structure of the motor carrier, this might be best coordinated by notifying your liability insurance carrier or retained lawyer of the accident and inquiring about the possibility of involving these professionals to aid in your defense.

The advantage of retaining an independent adjuster local to the area where the collision occurred is that they can often go to the scene of the collision (which may be


several states away from the motor carrier’s headquarters) while the driver and law enforcement is still present. They can assist with ensuring the driver complies with post-accident testing regulations and preventing important engine data from being destroyed. They can also identify the law enforcement agencies on scene, get contact information for witnesses, and determine where the damaged vehicles are going to be stored. All these are key pieces of information to get an early start on gathering evidence and building your defense.

It is usually recommended that you hire an expert in forensic engineering or accident reconstruction as early as possible after a collision. If the expert is able to get to the scene quickly enough after the collision occurs, he could complete a download of the engine, thereby ensuring the data most likely to be accidentally deleted is preserved. It is also useful to have the expert complete a full exterior and mechanical inspection of the truck, which not only records physical damage from the accident that can provide insight into how the collision occurred, but can also uncover mechanical problems (or lack thereof) that may have contributed (or may later be alleged to have contributed) to the collision.

The expert may also be able to complete an inspection of the roadway where the collision occurred, gather evidence left at the scene (including roadway marks and physical evidence), and depending on the circumstances, inspect and take measurements of the other parties’ vehicles.

ANTICIPATED COSTS

It will come as no surprise that the involvement of experts and independent adjusters isn’t cheap. Costs often run between \$5,000 and \$10,000, depending on the circumstances of the collision, to complete inspections, gather evidence, and conduct downloads. And there are some scenarios where making that kind of investment to investigate a collision is just not necessary. For example, in a collision where it is clear that your driver was at fault, it would likely be a better use of resources to compensate any injured parties for their property damages and medical expenses.

There are different considerations for every collision that will determine whether a full-fledged accident investigation is worth the cost. In the event there is any potential for a liability claim to be made against your company, an accident investigation that involves experts and adjusters who are experienced and know what to look for is a worthwhile investment that can end up carrying your defense and the defense of your driver if a lawsuit is pursued. 

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