



# Understanding Indiana Truck Accidents

## Frequently Asked Questions

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Our goal in writing this book was to help people understand the numerous differences, and the potential complications in pursuing a claim for personal injuries against a truck driver, bus driver, trucking company, and/or van operator within the State of Indiana.

## Where are we headed?

I know that a certain coffee chain likes to think that America runs on them but the truth is that this country runs on trucking. The stats are amazing and alarming. According to the Federal Motor Carrier Safety Administration, in 2012 there were 8,190,286 registered single unit trucks, 2,469,094 tractor-trailers, and 764,509 buses.

In 2012, there were 30,800 fatal crashes in the United States and 3,702 involved at least one big truck or bus. Additionally, there were also an estimated 367,000 non-fatal crashes that involved at least one big truck.

Researchers at the University of Central Florida predict a 20% increase in the amount of trucking by the year 2020. The alarming trend is that the number of truck accidents and related fatalities are also on the rise.



# 1

## What problems are unique to Indiana truck accident claims?

Many people (including lawyers) make the mistake of figuring the only difference between a car accident and a truck accident is the size of the vehicles. Trucks are much longer, wider, and heavier than your average car. While commercial trucks are physically different from cars that is where the similarities end and the differences begin. The truth is that commercial truck and car accidents are different animals. Let's compare and contrast car and commercial truck accidents:

- Car accidents generally have **one defendant** (party to blame) to sue. Truck accidents can have **multiple defendants** from **many states**.
- Car accident lawsuits are typically brought in a **local State court**. Truck accident lawsuits can wind up in a local state or **Federal court**.
- Car accidents are typically rear end collisions **involving two vehicles**. Truck accidents are primarily from lane changing and can involve **multiple vehicles**.
- Car accidents are usually caused by **driver error**. Truck accidents can be caused by **driver error but additionally** there can be mechanical issues, defective equipment, loading issues, and improper repair and maintenance issues.
- Car accident cases **may or may not have sufficient bodily injury insurance** coverage (ability to compensate an injured person for injuries). Truck accidents **are covered under Federally imposed** bodily injury insurance.
- Car accidents involve **“amateur” drivers** who are held to lower standards. Truck accidents involve **“professional” drivers** who may drive over a hundred thousand miles a year, hold CDLs (commercial driver license), have endorsements to drive and haul specific trucks and cargo, are highly trained, are regularly drug and alcohol tested, have to log and document

every hour of every week they work, are responsible for daily vehicle inspections, and are certified annually to be healthy enough to drive.

- Car accident claims generally **do not require** the use of an accident reconstruction expert or an investigator. Truck accidents **require a full investigation** into all potential sources of liability (fault). This may involve hiring experts in accident reconstruction, truck equipment and operation.

## 2 *Who can I sue if I am hit by a commercial truck, van, or bus?*

An Indiana Lawyer must peel away the layers of any truck accident case to reveal the true culprits in the case. The attorney must investigate everything and everyone that has to do with the truck, trailer and driving.

In any commercial truck accident case there can be a number of **potential parties** at fault:

- ✓ **The owners** of the truck and/or the trailer may be held responsible. When there is an accident involving a truck or van, the owner of that vehicle is usually liable. For example, a company truck owned by NIPSCO, United Van lines, or UPS is generally serviced and maintained by them.  
  
They also hire the drivers so a potential claim under the theory of **negligent hiring** is also possible. The truck is the power unit but sometimes there is a different owner for the trailer. In that case, the trailer owner may be responsible as well if issues are discovered with the trailer's brakes, wheels, tires, or other equipment.
- ✓ The **renting and/or leasing company** may be liable if it was responsible for the inspection, care, maintenance, and repair of the tractor, trailer, bus or van. The truck (power unit) and/or trailer may have been **rented** (less than 30 days) or leased (more than 30 days).
- ✓ **The driver of the truck** may be held responsible. **We must determine whether the driver was** independent (self-employed) or an employee of the trucking company.

- ✓ **The trucking company/carrier** may be held responsible for an Indiana truck accident under multiple theories.

The company may have **negligently hired** the driver. The company may have not done the required (federally and state mandated) background checks. Under Indiana law, employers are **responsible** for any accidents caused by their employees while acting in the scope of their jobs.

Trucking companies can also be responsible for accidents for failing to properly inspect, repair, and maintain the truck and/or trailer.

- ✓ **A third party maintenance company** may be liable if inadequate, improper, negligent inspection and/or repair contributed to the accident.
- ✓ **The shipper or broker** may be held liable if inadequate, improper, or **negligent packing, loading, and securing** of the cargo contributed to the accident. The shipper or broker could also be held liable under the theory of **negligent hiring**. They can also be held liable if they **negligently hired** a driver without doing a complete and proper background investigation (as required by law) or kept a driver employed with a known history of dangerous driving, accidents, multiple violations, and/or drug/alcohol issues.
- ✓ **The manufacturer of the truck, cab, trailer, and/or any truck part** can be held liable if there was a defect in the design or manufacture of a part that contributed or caused the accident.

### **3** When is an Indiana truck case moved to Federal Court?

As the expression goes, “don’t make a Federal case out of it.” Truck cases are frequently moved to Federal Court. Truck accidents involving a company, carrier, manufacturer, driver, owner, renter, or lessor from another state or states may want to move the case to Federal court. Federal court has a different set of rules and procedure than Indiana state courts. Generally, Federal Judges and rules are much stricter than state court. Federal Court is way different than State Court. Federal deadlines (time schedules) for moving the case forward are taken very seriously. Compliance with these established Federal guidelines is necessary to for a trucking

case to succeed in these Courts. This is where attention details and a law firm familiar with Federal Court can make the difference.

## **4** How we determine who's at fault in an Indiana trucking case?

It is likely that the blame, liability, and fault for a truck, van and/or bus accident may not lie within one single solitary factor or party. It is far more likely that numerous failures and/or errors were on the part of the driver and/or company contributed to the resulting event.

**The two primary areas of fault that attorneys look to when evaluating and investigating Indiana truck accident are:**

**1. The driver and the driving;**

**OR**

**2. The Equipment.**

## **5** Was there “negligent” driving?

Looking at truck crash statistics we can see some alarming trends regarding the cause of the accident. Here are a few:

1. Driver fatigue and hours of service.
2. Vehicle maintenance and inspection.
3. Driver training and experience.

# 6

## **When is an Indiana truck driver negligent?**

### **The Amateur vs. The Professional**

The first major difference between an Indiana van, bus, and/or truck accident versus a car accident is that car accidents involve “amateur” drivers while truck accidents involve “professionals.” The “professional” driver of a truck, van, and/or bus has a great deal of trust placed in them due to the nature of the work they are undertaking. The obligations, duties and safety rules of a professional driver are heavy. This burden mirrors the potential for great harm that could result if they break or violate safety rules.

A Professional Truck, Van, and/or Bus driver is a person who is skilled, trained, specially licensed, specifically endorsed, held to strict codes of conduct, operating under state and federal law and regulations, with a mandated and certified level of physical and mental fitness, with specialized knowledge, who transports people, goods, and/or hazardous materials for profit.

# 7

## **Did the driver have a Commercial Driver’s License (CDL)?**

Drivers of Indiana large trucks, tractor/trailers, and 18- wheelers generally require a CDL (Commercial Driver’s License) if the weight is 26,001 LBS or more. What many people don’t know is that you must have a Class A CDL for driving any vehicle that is pulling a trailer heavier than 10,000 LBS of gross vehicle weight moving materials, goods, or equipment that is being used for profit (in exchange for money). These Federal laws are often violated by many small Indiana businesses doing construction jobs, landscaping, and hauling. This CDL Class A is required to drive smaller trucks, like the Ford F-250, F-350, or GM 2500, 3500 series trucks if they have any attached equipment, and/or dump trailer, and the gross vehicle weight is over 26,001 pounds.

In Indiana, these “for profit” enterprises must also have a United States DOT (Department of Transportation) license number as well. This allows the federal government to identify these companies and monitor them for safety.

**Take-away:** Professional, i.e. “for profit” Florida businesses, drivers, and companies using trucks both small and large must be in compliance with all state and federal regulations. Many of these businesses place the public at risk by using unprofessional and thus unlicensed operators.

## 8

### **Did the driver have the necessary Physical and Mental Fitness required of an Indiana truck, van, or bus driver?**

Indiana drivers with CDLs need to be certified every two years under the Federal guidelines as physically and mentally fit to drive trucks, vans, and buses. In movies and film we often see the stereotypical truck driver. He is generally portrayed as a large, out of shape man. In actuality, a truck, van, or bus driver is prohibited from driving if s/he cannot qualify under the Federal criteria, and be certified as physically safe to drive trucks.

Federal Motor Carrier Safety Regulations Section 49CFR 391.41 provides medical examiners guidance to determine and **qualify that a Commercial drivers is “fit for duty”** by using the following criteria. All businesses hiring truck drivers with CDLs are entitled under section 390.3 (d) to have more stringent health requirements for employment with their company.

1. The driver **cannot** have a “medical history or clinical diagnosis of diabetes requiring insulin for control.” This is because commercial drivers commonly have to deal with fatigue, sleep deprivation, poor diet, and stress which all add to and can exacerbate the disease. Blood sugar swings from diabetes can cause a driver to lose consciousness, become disoriented, fall asleep, and suffer neurologic symptoms making them unsafe professional drivers.
2. The driver **cannot** have a “medical history or clinical diagnosis of heart disease and/or cardiovascular condition.” This is because commercial drivers commonly have to deal with fatigue, sleep deprivation, poor diet, and stress which all add to and can exacerbate the disease and thus make them unsafe professional drivers.
3. The driver **cannot** have a “medical history or clinical diagnosis of respiratory dysfunction” which can interfere with their ability to control, drive, and operate a truck safely. All of the COPDs (chronic obstructive pulmonary diseases) from bronchitis to emphysema decrease the body’s ability to use oxygen. Commercial

drivers need to be alert all the time. An urgent driving situation can call for fast reflexes and demand increased oxygen. A driver who suffers from impaired breathing may not be able to react fast enough to a driving emergency.

4. The driver **cannot** have a “medical history or clinical diagnosis of high blood pressure” which can interfere with their ability to control, drive, and operate a truck safely. The same medication that commercial drivers use to control their pressure can also cause drowsiness, dizziness, and/or sleepiness. All of these side effects are not conducive to safe commercial driving.

5. The driver **cannot** have a “medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular and/or vascular disease” which can interfere with their ability to control, drive, and operate a truck safely. Often these diseases are chronic, progressive, and debilitating.

6. The driver **cannot** have a “medical history or clinical diagnosis of epilepsy, mental or psychiatric illness” which can interfere with their ability to control, drive, and operate a truck safely.

7. The driver **must have** the ability to see at least 20/40 (Snellen), and be able to hear with or without a hearing aid.

## 9 Did the driver follow and document the proper hours of service?

Truckers average well over a hundred thousand miles a year of driving. What is different for the professional driver in terms of TIME is that even off-duty time is logged. In other words, what they are doing when they are not driving including not even working must be accounted for.

The “hours of service” is a logbook (documentation) of all their time on and off duty. They must log (keep track) hours of sleep, rest, loading, unloading, driving, stopping, inspecting, fueling, and eating. These HOS must be in strict compliance with specific guidelines for ensuring a “well rested and attentive” driver.

# 10

## Was the driver under the influence of any alcohol and/or drugs?

Truck, van, and bus drivers are prohibited from consuming any alcohol up to 4 hours before beginning their duties. These duties include “sensitive-safety” functions. When driving, a trucker is not allowed to have any substances in their system which could potentially impede or impair their ability to drive safely and/or perform any “sensitive-safety” functions.

“Sensitive” safety functions include but are not limited to the following: inspecting truck lights, brakes, tires, reflectors, suspension parts, and the securing of the load and cargo.

### **OWI (Operating While Intoxicated)/Under the Influence Commercial Drivers**

State law mandates that drivers are intoxicated (drunk) when they have blood alcohol levels of .08 or more. Truck drivers are held to an even stricter standard. A CDL holder found to have a BAC of .04 in any state will lose their commercial driving privileges for one year. This is true even if they are NOT driving a bus, van, or truck at the time of their arrest.

Further, even though the truck driver with a .04 BAC (blood alcohol concentration) is not drunk under state law they are drunk under federal law. Federal law section 49 CFR part 382.201 states that “no driver shall report for duty or remain on duty requiring the performance of safety sensitive functions (inspection and driving) while having an alcohol concentration of 0.04 or greater.”

### **Questions to ask:**

√Were there any driving violations?

√Were there any State and/or Federal law violations for “hours-of-service and/or duty status?” Truck drivers have to log and account for all their hours both on and off the job.

√Was the driver properly licensed?

√Was the driver properly endorsed?

√Was the driver qualified, trained, and experienced to drive that type of truck?

√Did the driver have their Medical Examiner's certification proving "physical and mental fitness" to drive?

√Did the driver have all necessary medical waivers for his/her medical conditions?

## **11** Was there an equipment problem?

In 2012, the Northwest Indiana Times ran an expose' on trucking violations in Northwest Indiana. The probe looked at six years of truck inspections. In Lake and Porter counties, from 2003-2008, inspectors checked just under 35,000 semis, buses and heavy commercial vehicles and found violations in just under 9,000 vehicles.

The top ten heavy truck violations include:

- ✓ Lights & lighting
- ✓ Brakes
- ✓ Log Book Violations/ Hours of Service
- ✓ Speeding
- ✓ Emergency equipment
- ✓ Size/weight
- ✓ Tires

### **All Trucks and equipment need to be Inspected, Repaired, and Maintained Systematically**

Drivers and carriers are responsible for regular (systematic) inspection, repair, and maintenance of their trucks and trailers. Carriers have to have a written policy or plan in place for keeping up with the mechanical systems of every truck they own and operate. This scheduled maintenance has to be in relationship to amount of driving (wear and tear) placed upon the truck and equipment. Trucks that get more activity require higher levels (more frequent) inspection, repair, and maintenance.

## **The Government's Role in Safety checks**

The purpose behind the Federal government enacting more stringent rules for those driving trucks, vans, and buses than cars was to ensure the safety of the state roads, U.S. Highways, and Interstate Highways in Florida. These laws are enforced by special agents of the Florida Department of Highway Safety and Motor Vehicle Transportation's Office of Motor Carrier Compliance which are now a division of the FHP. They are authorized by law to enter any and all commercial trucks being operated within the state of Florida at any time and place. They will inspect the truck and driver to determine whether they are in compliance (see what is compliance) with law. They will review driver logbooks, inspect the truck, and check for any violations of Indiana and Federal law. An inspection report called a Form MCS 63 or Driver Compliance Check will be used to record all information gathered from these inspections.

If the truck is found to be out of compliance mechanically, for example because it's brakes, tires, lights, reflectors, and/or suspension parts (mechanical condition) and/or load is likely to cause an accident, a breakdown, or is to create a hazardous condition on the road then the special agent will use Form MCS 64, and take the vehicle "Out of Service." This is a serious violation. This violation will be reported and logged into the CDLIS (Commercial Driver License Information System). The driver of a truck that has been declared OOS (Out of Service) can have his/her CDL suspended as well because drivers and their companies are both responsible and accountable for the Inspection, Repair, and Maintenance of all trucks operated under section 396.3. The truck will not be allowed back into service until all noted problems are repaired. This record of repair will become a permanent part of the truck and carrier's file. It must be logged and certified before the truck will be allowed back into service.

### **Questions to ask:**

√Was the truck properly inspected, repaired, and maintained?

√Were periodic inspections of equipment documented?

√Were the brake systems on both tractor and trailer in proper working order?

√Were the rims, wheels, and hubs within Federal guidelines for safety?

√Were the tires within Federal guidelines for safety?

√Were the coupling devices within Federal guidelines for safety?

√Were the suspension parts in safe working condition?

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## **If I suffer injuries from an Indiana truck, bus or van accident am I covered by insurance?**

There are different types of auto insurance coverage in Indiana.

- ✓ Insurance that covers property damage (pays to fix or replace a car).
- ✓ Insurance that pays for medical bills.
- ✓ Insurance that pays for injuries (bodily injuries, pain and suffering).
- ✓ Insurance that pays for injuries if the other driver doesn't have insurance.
- ✓ Insurance that pays for injuries if the other driver doesn't have enough insurance.

To drive a car in Indiana you only have to have \$10,000 of property damage insurance and \$25,000 of bodily injury insurance coverage.

Quite often multiple insurance companies may be involved with an Indiana truck, van, or bus accident case. Fortunately under Federal and state law bus, van, and truck companies must have B.I. (bodily injury) insurance coverage.

Companies that have commercial vehicles must comply with minimum levels of Federal Financial Responsibility. Required coverage can range from \$750,000 to \$5,000,000 depending on the type of load and number of passengers.

Mandated insurance coverage is fairly extensive for all commercial vehicles. The limits of coverage are dependent on the type of vehicle and the specific cargo it is moving.

If a number of sources (i.e. driver, maintenance, equipment) are found to be at fault then multiple insurance policies may provide compensation for the same event. However, each party will only be responsible for their individual percentage of fault.

# 13

## How are we going to prove responsibility (fault)?

### Investigating a claim for damages.

The First Step in any truck, van, bus accident case begins with the preservation of all the evidence. The attorney must send out a notification letter, called a preservation of evidence letter. These letters should be sent ASAP to all known and involved parties.

### A typical preservation of evidence letter will demand the following and more:

We specifically request that the following evidence be preserved and not be destroyed, altered, or changed in any manner:

1. The tractor, trailer, and equipment involved in this collision.
2. Bills of lading for any shipments transported by the motor carrier, for the day of the collision and the for thirty (30) day period preceding the collision.
3. Any oversized permits or other permits or licenses covering the vehicle and/or load on the day of the collision.
4. The driver's complete driver qualification file, as required by 49 C.F.R. 391-51, including but not limited to:
  - a) Application for employment
  - b) CDL license
  - c) Driver's certification of prior traffic violations
  - d) Driver's certification of prior collisions
  - e) Driver's employment history
  - f) Inquiry into driver's employment history
  - g) Pre-employment MVR
  - h) Annual MVR
  - i) Annual review of driver history
  - j) Certification of road test

- k) Medical examiner's certificate
  - l) Drug testing records
  - m) HAZMAT or other training documents
5. The driver's post-collision alcohol and drug testing results.
  6. The collision register maintained by the motor carrier as required by federal law for the one (1) year period preceding this collision.
  7. All OmniTRAC, Qualcomm, MVPc, QTRACS, SensorTRACS, JTRACS, and other similar systems data for the six (6) months prior to the collision and the day of the collision, for this driver, truck, and trailer.
  8. Cargo pickup or delivery orders prepared by motor carriers, brokers, shippers, receivers, driver, or other persons, or any other businesses for thirty (30) days prior to the date of the collision and the day of the accident.
  9. Accounting records, transportation bills, payments, and/ or other records indicating bills for transportation or payment for the transportation of cargo, copies of cancelled checks for cargo transported by the driver and/or truck involved in the collision for thirty (30) days prior to the date of the collision and the day of the accident.
  10. The entire personnel file of the driver involved in this accident.
  11. All letters, reports, and written material from a government entity involving safety, and safety ratings for the company and driver to include, but not be limited to, Department of Transportation audits by the state or federal government, the Federal Motor Carrier Safety Administration, or material generated on your company or driver pursuant to SAFERSYS or CSA 2010.
  12. The front and back of the driver's daily logs and his co-driver's logs (if any) for the day of the collision, and the six month period preceding the collision, together with all material required by 49 C.F.R. 396.8 and 395.15 for the driver(s) involved in the above matter together with the results of any computer program used to check logs as well as all results of any audit of the logs by your company or a third party.
  13. All existing driver vehicle inspection reports required under 49 C.F.R. 396.11 for the vehicle involved in the above collision, to include all existing daily inspection reports for the tractor and trailer involved in this collision.

14. All existing maintenance, inspection and repair records or work orders on the tractor and trailer involved in the above collision.
15. All annual inspection reports for the tractor and trailer involved in the above collision, covering the date of the collision.
16. Photographs, video, computer generated media, or other recordings of the interior and exterior of vehicles involved in this collision, the collision scene, the occurrence, or relating to any equipment or things originally located at or near the site of the occurrence.
17. Any lease contracts or agreements covering the driver or the tractor or trailer involved in this collision.
18. Any interchange agreements regarding the tractor or trailer involved in this collision.
19. Any computer data from the tractor-or trailer to include but not be limited to: any data and printout from on-board recording devices, including but not limited to the ECM (electronic control module), any on-board computer, tachograph, trip monitor, trip recorder, trip master or other recording or tracking device for the day of the collision and the six (6) month period preceding the collision for the equipment involved in the collision.
20. Any post-collision maintenance, inspection, or repair records or invoices in regard to the tractor and trailer involved in the above collision.

The importance of gathering and preserving evidence early in any truck, van, or bus accident case cannot be emphasized enough. Proving fault on behalf of the carrier, shipper, broker, maintenance company, owner, lessor, manufacturer or renter may hinge on this evidence. A driver or company that is not in compliance with Federal and/or State law points to negligence.

As is typical with many large businesses that focus on the bottom line, truckers and trucking companies get paid for results. When profits are placed ahead of safety the result can be great human loss.

# 14

## What types of compensation is available for an Indiana truck accident case?

Typically there are three areas of compensation:

- ✓ Medical bills and expenses (past and future)
- ✓ Wage loss (past and future)
- ✓ Human losses (physical and mental pain and suffering, emotional distress, disfigurement, and loss of enjoyment of life)

If you are pursuing a wrongful death claim on behalf of a loved one killed in a commercial accident case then you may also receive compensation for the following:

- ✓ Funeral expenses
- ✓ Loss of care and companionship
- ✓ Lost economic support

If you have any questions about your Indiana truck, bus or van accident claim give us a call at 219.874.4878 or go to our main website <http://michigancityinjurylaw.com/>

## **Our Disclaimer:**

Lawrence A. Newman, DC, Esq. is a New York, Pennsylvania and Florida licensed attorney. He does not practice law in Indiana. Guy S. DiMartino, DC, JD is an Indiana and Florida licensed attorney.

Our website, blog, videos, and articles are filled with lots of useful information about Indiana Personal Injury and Medical Malpractice cases, trial procedures, rules of evidence, the Court process, hearings, motions, and case results.

Obviously, the fact that someone achieved a particular result in the past in THEIR case does not mean that YOU will achieve that same result in your case. Each and Every case is different. Past results do not guarantee future results. Indeed the "very same" case in one town or county may result in a very different outcome in another town or another county. We don't win all our cases. No one wins all of their cases.

We encourage all our web visitors to consult with other experienced and knowledgeable attorneys in their area to talk about their case. I also encourage everyone to visit my website and to download our free books.

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