ESTABLISHING LIABILITY & PUNITIVE DAMAGES ON THE COMPANY & SHIPPER

USING THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS

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CONTENTS

I. A Summary of the Law regarding the Liability of an Employer for Negligent Entrustment and Failure to Enforce the Federal Motor Carrier Safety Regulations.

Establishing the liability of the trucking company or shipper, especially if it can lead to a punitive damages charge, is a good way to position your case either before a jury or at trial. Juries are certainly more likely to make an award to a plaintiff if you can establish corporate indifference to safety, rather than simply relying on the negligence of the driver. Liability of an employer or master for selection of drivers or liability of a shipper for selecting a motor carrier can be based on the Restatement.

Restatement of Torts 390 states:

> One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or from facts known to him should know to be likely because of his youth, inexperience or otherwise, to use it in a manner involving unreasonable risk of bodily harm to himself and others whom the supplier should expect to share in, or be in the vicinity of its use, is subject to liability for bodily harm caused thereby to them.

Pulleyn v. Cavalier Ins. Corp., 351 Pa. Super. 347, 505 A.2d 1016 (1986), *Dempsey v. Walso Bureau Inc.*, 431 Pa. 562, 246 A.2d 418 (1968) (Adopting Restatement 390).

> It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

In *Smith v. Bethany*, 48 Pa.D&C 3rd, 359 (1988), cited *Curley v. General Valet Service Inc.*, 270 Md. 248, 311 A.2d 231 (1983), for the proposition that, while Section 390 would not apply to cases presenting isolated instances of carelessness, it would apply when there is evidence of "reckless acts occurring with such frequency and in such a manner as to put the entrustor on notice of the danger involved.

Section 317 of the Restatement sets the rule for "negligent supervision or control" of a servant.

> A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if

"(a) the servant

"…

"(ii) is using [*8] a chattel of the master, and

"(b) the master

"(i) knows or has reason to know that he has the ability to control his servant, and

"(ii) knows or should know of the necessity and opportunity for exercising such control."

See *Dempsey*, supra.
An employer may be held responsible for the torts of its employees only where the employer knew or had reason to know of the employee's unfitness, incompetence, or dangerous attribute and could have foreseen that such qualities created a risk of harm to other persons. *DiCosala v. Kay*, 91 N.J. 159, 450 A.2d 508 (1982). In the *Smith* case, the jury found that, because of the youth and inexperience of the employee and because of the failure of the employer to take steps to test, evaluate, or observe that employee before pressing him into driving duties for which he had not been hired, the employer's behavior fell short of reasonable conduct.

These issues were discussed also in *Croyle v. Smith*, 78 Pa.D&C. 4th, 196 (Centre Cty. 2005). In that case, the defendants filed motions in limine on the following basis: (1) the corporate entity should not be liable for negligent hiring or retaining of their driver because corporate liability automatically arises from vicarious liability and should not be presented as a separate issue, (2) admission of the hazard perception test should be inadmissible as unreliable. Plaintiff had argued the test showed the driver had a propensity to drive faster than what was safe, and (3) evidence of a compensation system based on miles driven is irrelevant and prejudicial. Plaintiff's argument regarding negligent hiring was based upon Restatement (Second) of Agency §213, which states:

A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless: …
(a) In the employment of improper persons or instrumentalities in work involving risk of harm to others; or

(b) the supervision of the activity; or

(c) In permitting, or failing to prevent, negligent or other tortuous conduct by persons, whether or not his servants or agents, upon premises or with instrumentalities under his control.

With respect to corporate liability, the court held there was insufficient evidence to show that the defendants were negligent in their hiring or retention of the driver. The only evidence to suggest this was the results of the hazard perception test. The evidence was that the manufacturer of the test stated that it was never intended to be a tool to determine safety habits of a driver, but it was intended as a training device. There was no evidence the driver was at fault in prior accidents, nor about complaints of dangerous or reckless driving. Without more evidence, plaintiff could not prove that the corporate defendant knew or should have known of the driver's risk to other motorists. With respect to the compensation system, the court pulled that plaintiff did not provide enough evidence to show a causal connection between the accident and the compensation plan. The plaintiff failed to show other instances where defendant's other employees drove fast in order to collect on their compensation plan. There was also no evidence that the method of compensation was out of the ordinary or other than the industry standard. With respect to the hazard perception test, the court ruled it was inadmissible because the plaintiff needed to produce an expert to show a correlation between the test results and the accident.

While Pennsylvania appellate law is noticeably thin on these issues, there is law in other states that is more detailed. For example, in *Smith v. Tommy Roberts Trucking*, 209 Ga. App. 826, 829 (435 SE2d54) (1993), the Georgia appellate court found that actual knowledge of two traffic violations by a driver after he commenced his employment was sufficient to create a jury issue of the driver's incompetence. However, in *Danforth v. Bulman*, 276 Ga. App. 531, 623 S.E.2d 732 (2005), the employer had actual knowledge of three collisions and a traffic ticket for passing in illegal zone but this was ruled insufficient. In that case, two of the collisions were relatively minor, and the driver was not cited for traffic violations as a result of any of the collisions. The only traffic violation the employer was aware of was when the driver was 16. The court concluded that these facts were not sufficient to establish incompetence and granted summary judgment on the negligent entrustment claim. In *JB Hunt Transp. v. Bentley*, 207 Ga. App. 250; 427 S.E.2d 499 (1992), the court described what practices might qualify;

> The practices of Hunt showed that it did not abide by required safety regulations. It was a "habitual violator" of the hours-in-service requirements of the Georgia Public Service Commission for its vehicles. Commission inspection of 236 of its vehicles over 3 years showed one-third (76) in logbook violations which were penalized because of driver excessive driving. It operated a "forced dispatch" system, under which drivers could be fired for refusing a load. The driver's logbook was destroyed by Hunt after its investigation of the incident had already begun. It would have given information concerning his hours of driving and his hours of non-driving and off-duty time, which would show whether he exceeded the permitted driving time. It would also show speed. Considering its destruction by Hunt, it was a reasonable presumption that the logbook showed that the driver was compelled by Hunt to drive with insufficient rest. O.C.G.A. § 24-4-22. This would be a contributing factor, or the cause, of his sustained weaving from lane to lane, failing to slow the fully loaded tractor-trailer from 65 mph despite the warnings of construction ahead and, without braking to avert collision, plowing into a readily visible vehicle parked off the roadway.
>
> The pre-trip and post-trip vehicle inspection report was also destroyed by Hunt. It shows the condition of the vehicle, according to an inspection by the driver of the tires, brakes, lights, steering, etc. Considering its destruction, and the fact that the vehicle was taken off the road the day before because of operational defects, and the absence of testimony by those mechanics

who had worked on it before it was returned to the road, it was a reasonable presumption that the report would have shown that the tractor-trailer was not in safe condition to be driven on the interstate highway. O.C.G.A. § 24-4-22. This, too, would be a contributing factor, or the cause, of the erratic driving which resulted in the collision.

Hunt also failed to produce the driver or the passenger as witnesses to explain the manner of driving, including the continuous swerving for 10-20 miles, raising a presumption that their testimony would have been adverse to Hunt's interest in avoiding liability for punitive damages.

From these circumstances, the jury could find, by applying the clear and convincing evidence standard, that Hunt exhibited a conscious indifference to the consequences of putting a tired driver, at the risk of losing his job if he did not comply, and/or a defective tractor-trailer out on the highway, with a schedule for delivery which prompted maintaining the maximum allowable speed even in construction areas. This constituted a sufficient basis for the "aggravating circumstances" which the jury found as the predicate for punitive damages against Hunt.

Under Pennsylvania law, an allegation that a driver operated a tractor trailer at excessive speed, failed to make proper hitch connections, failed to perform reasonable inspections, and failed to properly load and secure the lumber on the trailer, would be sufficient for punitive damages. *Ditzler v. Wesolowski*, 2006 U.S. Dist. LEXIS 62563 (W.D.Pa.). Further, under Pennsylvania law, principals are liable for the punitive damages of agents, as long as the agent's actions were clearly outrageous, committed during and within the scope of the agent's duties, and were done with the intent to further the principal's interests. Loughman v. Consol-Pennsylvania Coal Co., 6 F.3d 88 (3d Cir. 1993); Delahanty v. First Pa. Bank, N.A., 318 Pa. Super. 90, 464 A.2d 1243, 1264 (Pa. Super. 1983).

A classic case under Pennsylvania law, although an unreported decision, is *Came v. Micou*, 2005 U.S. Dist. LEXIS 40037 (M.D.Pa.). In this case, the plaintiff alleged at that tractor trailer driver violated regulations in the following ways: (1) operating the rig in violation of hours and service regulations pursuant to 49 CFR 395.3; (2) operating the rig when too tired to do so safely in violation of 49 CFR 392.3; (3) failing to properly record his duty status in violation of 49 CFR 395.8; (4) failing to properly inspect the rig prior to operation in violation of 49 CFR 396.13; (5) failing to properly report the results of the inspections in violation of 49 CFR 396.11; and, (6) operating the rig when it was in such a condition as to likely cause an accident in violation of 49 CFR 396.7. Plaintiff also asserted that the trucking company improperly supervised the driver while he violated the above-referenced six regulations. Plaintiff relied upon expert liability reports that determined the violations and opined that, in combination, these violations were precipitating factors leading to the collision at issue. These conclusions included the following: (1) the driver had been on duty for 75.5 hours in the eight days prior to and including the day of the collision in violation of 49 CFR 395.3(b)(2) and that the owner should have been aware of the hours of service violations; (2) that the driver was in a state of low mental arousal or fatigue at the time of the collision in violation of 49 CFR 392.3; (3) that the driver falsified his time logs in violation of 49 CFR 395.8; (4) that the driver failed to have an effective procedure in place to verify that the trucking company failed to have an effective procedure in place to verify drivers' hours of service and that the trucking company's flawed auditing system allowed drivers

to exceed hours of service limitations; (5) that the driver's conduct while employee defendant trucking company was outrageous, as they knew the hours of service violations were in place to prevent fatigued operators from operating large and heavy commercial vehicles; and, (6) that the trucking company's policies, procedures and actions were outrageous in that their management and employees knew the hours of service regulations were in place to protect the safety of the motoring public and knew hours of service was a problem in their operations. Plaintiff offered a second expert, who connected the accident with the collision by stating that the driver momentarily fell asleep (micro sleep) just prior to the collision.

The trucking company argued that the reports lacked sufficient factual foundation, assigned arbitrary lengths of time for the driver to perform on-duty non-driving activities, such as pre and post-trip inspections, erroneously replied upon entries in the movement records documenting the driver's travels prior to the accident, which were not entered via the GPS system and offered their own expert report in rebuttal. The court ruled that there was a genuine issue of material fact as to whether the defendant's conduct was outrageous. The court ruled that a jury could conclude that, among other things, the inability to make a decision relative to taking steps to avoid the collision with a slower moving vehicle traveling ahead, the inability to perceive the passage of time from the point when he realized the vehicle ahead was moving slowly to the collision, the failure to disengage the cruise control, combined with falsifying logs, are all in violation of Department of Transportation safety regulations, constitutes reckless indifference to the rights of others. A reasonable jury could similarly find that the trucking company's failure to monitor the driver's conduct, failure to make adequate and proper investigation and inquiry into his driving and employment record, awareness of his prior accident, failure to conduct any investigation into the driver's hours of service, his involvement in five previous preventable accidents, re-dispatching him even though he had exceeded his hours of service limitations, and failure to have effective procedures in place to verify the driver's hours of service when they knew that those hours of service regulations were in effect to protect the safety of the motoring public could constitute reckless indifference. The court specifically found that *Burke v. Maassen*, 904 F.2d 178 (3d Cir.1990) is in inapposite. In *Burke*, the plaintiff was standing on the shoulder of the road when the truck driver struck him while traveling faster than 60 miles per hour. The driver admitted he was exceeding the speed limit. The plaintiff presented uncontradicted evidence that he had driven over 14 hours that day in violation of Federal Motor Carrier Safety Regulations and falsified his log to make it appeared that he had complied. There was circumstantial evidence that the driver fell asleep at the wheel. The driver was employed by Steven Emken Trucking, which operated under a fleet contracting agreement with Malone Freight Lines. The driver had lied about his experience to get his job. Malone's department of safety performed a perfunctory verification of his application and approved it in spite of the falsehoods. The plaintiff claimed punitive damages, and the jury awarded both compensatory and punitive damages. The Third Circuit reversed the punitive damages claim. The Burke court did a detailed examination of the Pennsylvania law of punitive damages and described it as a very strict interpretation of Restatement (Second) of Torts §908. Citing Martin v. Johns-Manville Corp., 508 Pa. 154, 494 A.2d 1088, 1096 (1985) (quoting Restatement (Second) of Torts § 908(2)); Feld v. Merriam, 506 Pa. 383, 485 A.2d 742, 747-48 (1984). They ruled that, under Pennsylvania law, "There must be some evidence that the person actually realized the risk and acted in conscious disregard or indifference to it". Despite noting that the driver's false application helped put him behind the wheel of a tractor trailer, and then on the day of the accident he had driven over 14 hours in a single day, directly in violation of federal trucking regulations, that he had fallen asleep at the wheel, that he knew of the regulation, he admitted he was speeding, and that he wrote false entries after the accident and gave

false answers at his deposition. The court stated, "The record is critically deficient of evidence showing [the driver] consciously appreciated the risk of fatigue and the potential for fatal accidents that accompanies driving for more than ten hours. The evidence showed that [the driver] was provided with a copy of the Federal Motor Carrier Safety Regulations. [The driver] admitted he read them and knew the ten-hour rule. The ten-hour regulation, itself, makes no mention of its purpose to avoid driver fatigue and accidents, nor is this purpose set forth elsewhere in the part containing that regulation. It can be argued that a reasonable man in [the driver's] position after reading the ten-hour rule may have realized the risk the regulation was designed to avoid. The record contains no evidence, however, that [the driver] himself appreciated the risk. Nor could a jury infer from the evidence that [the driver] consciously appreciated the risk of prolonged driving without relying on some conception of what a reasonable man [the driver's] position might have thought. The court points out in a footnote that the driver's knowledge might have been proved by an admission that he knew the ten-hour rule was designed to prevent fatigue and accidents or another method might have been asking the employer whether anyone had ever specifically told the driver that he drove for more than ten hours he might fall asleep and cause an accident. The court noted that other methods of proof were possible, such as proving that he should have learned this in order to get his CDL license by putting into evidence his CDL manual. The court ruled that there was no doubt the driving had behaved reprehensibly, but unfortunately, he was not conscious of his risky behavior.

There was a dissent by Judge Slovater, stating that the plaintiff had provided ample evidence from which the jury could have inferred that the driver was conscious of the risk his conduct created.

In *Came v. Micou*, the plaintiffs provided testimony that the driver was aware that the hours of service regulations were in place to prevent drivers from falling asleep. See also, *Wang v. Marziani*, 885 F. Supp. 74(S.D.N.Y. 1995) (Applying Pennsylvania Law). It was this awareness, and record evidence of it, that distinguishes *Burke* from *Came*. This evidence is easy to get. Drivers and company officials will always admit they knew the purpose of the rules. Safety officials will always say they teach it to the drivers. The CDL manual which they are all supposed to study and which they are tested on states the reasons. There are many ways to prove "awareness" as well as showing the inherent danger of big trucks because of their mass, lack of maneuverability, articulation, and other factors.

Other cases, which have considered violations of the Federal Motor Carrier Safety Regulations and Official Regulatory Guidance are *Trotter v. B & W Cartage Co., Inc.*, 2d, 2006 WL 1004882 (S.D.Ill.,2006), *Bridges ex rel Wrongful Death Beneficiaries v. Enterprise Products Co., Inc.*, 2007 WL 433242 (S.D.Miss.,2007).

In considering whether a trucking company has willfully turned a blind eye to violations by its drivers to an extent that would support punitive damages, it is useful to look at 49 CFR §392.1, which requires that "every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.

The Federal Highway Administration (FHWA) provides regulatory guidance for some of its regulations. For example, with respect to hours of service:

49 CFR §395.3, Official Regulatory Guidance:

Question 7: What is the liability of a motor carrier for hours of service violations?

Guidance: The carrier is liable for violations of the hours of service regulations if it had or should have had the means by which to detect the violations. Liability under the FMCSRs does not depend upon actual knowledge of the violations.

Question 8: Are carriers liable for the actions of their employees even though the carrier contends that it did not require or permit the violations to occur?

Guidance: Yes. Carriers are liable for the actions of their employees. Neither intent to commit, nor actual knowledge of, a violation is a necessary element of that liability. Carriers "permit" violations of the hours of service regulations by their employees if they fail to have in place management systems that effectively prevent such violations.

More about the Federal Motor Carrier Safety Administration (FMCSA)

II. A Summary of the Relevant Federal Motor Carrier Safety Regulations (not including Hazmat)

The most important regulations for our purposes are as follows:

49 CFR 390.3. The rules are applicable to all employers, employees and commercial motor vehicles which transport property or passengers in interstate commerce. Every employer is required ("shall") to be knowledgeable of and comply with all regulations which are applicable to that motor carrier's operations. Every driver "shall" be instructed regarding and "shall" comply with all applicable regulations contained in the chapter.

49 CFR 390.5. Defines, among other things, "accident", "commercial motor vehicle", "hazardous waste", and specifically "employee".

> "Employee" is any individual who is employed by an employer and who in the course of his/her employment directly affects commercial motor vehicle safety. The term includes a driver of a commercial motor vehicle, a mechanic and a freight handler.
>
> "Employer" means any person engaged in a business affecting interstate commerce who owns or leases a commercial vehicle in connection with that business, or assigns employees to operate it.
>
> "Motor carrier" means a for-hire motor carrier or a private motor carrier. The terms includes a motor carriers agents, officers and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection and maintenance of motor vehicle equipment and/or accessories. The definition includes the terms "employer".

49 CRF 391.11. General qualifications of drivers includes the requirements of 21 years of age, read and speak English, physically qualify to drive, and specifically can, by reason of experience, training, or both, safely operate the type of commercial vehicle he/she drives.

49 CRF 391.23. Investigation and Inquires. Includes a requirement to inquire into the driving record for three years and employment record for three years.

49 CFR 391.25. Annual Inquiry and Review of Driving Record, including (b)(2). The motor carrier must consider any evidence that the driver has violated any applicable federal motor carrier safety regulations in this subchapter or hazardous material regulations. In subsection (b)(2), the motor carrier must consider the driver's accident record and any evidence the driver has

violated any laws governing the operation of motor vehicles and must give great weight to any violations such as speeding, reckless driving and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public. Subsection (c)(2) requires "a note, including the name of the person who performed the review of the driving record required by paragraph (b) of this section and the date of such review shall be maintained in the driver's qualifications file.

49 CRF 390.13. Aiding or Abetting Violations. "No person shall aid, abet, encourage or require a motor carrier or its employees to violate the rules of this chapter."

49 CFR 395.3. Maximum Driving Time. These are the hours of service rules, including the 11 hours driving following 10 hours off rule. The 14 hours on duty after 10 hours off duty rule, the 60 hours/7 day rule for driving, the 70 hours/8 day rule for driving.

49 CFR 392.2. Applicable Operating Rules. "Every commercial motor vehicle must be operated in accordance with the laws, ordinances and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than the law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with."

49 CFR 392.3. Ill or Fatigued Operator. No driver shall operate a motor vehicle, and a commercial motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle. However, in a case of grave emergency where the hazard to occupants of the commercial motor vehicle or other users of the highway would be increased by compliance with this section, the driver may continue to operate the commercial motor vehicle to the nearest place at which that hazard is removed.

49 CFR 392.4. Drugs and Other Substances. No driver shall be on duty and possess, be under the influence of, or use any of the following drugs or substances, and it includes any Schedule I substance, any amphetamine, or any other substance which could render a driver incapable of driving a motor vehicle. These sections do not apply to possession or use of a substance given under prescription by a doctor "who has advised a driver that the substance will not affect the driver's ability to safely operate a motor vehicle".

49 CFR 392.5. Alcohol Prohibition. No driver shall use alcohol within four hours before going on duty or operating or having physical control of a commercial motor vehicle nor use alcohol while on duty.

49 CFR 392.6. Schedules to Conform with Speed Limits. No motor carrier shall schedule a run nor permit nor require the operation of any commercial motor vehicle between points in such a period of time as would necessitate the commercial motor vehicle being operated at speeds than those prescribed by the jurisdiction in and through which the commercial vehicle is being operated.

49 CFR 392.7. Equipment Inspection and Use. No commercial vehicle shall be driven unless the driver is satisfied that every part related to safety is in good working order.

49 CFR 392.9. Inspection of Cargo, Cargo Securement Devices and Systems. Puts the obligation on both the driver and the motor carrier to assure that the cargo is properly distributed and adequately secured as specified in Section 393.100 through 393.142. The driver is specifically required to assure himself/herself that the provisions for inspection and securement have been complied with and further inspect the cargo and devices used to secure the cargo within the first 50 miles after the beginning of a trip and cause any adjustments to be made, including adding more securement devices to assure the cargo cannot shift and reexamine the cargo and its securement whenever there is a change of duty status, the vehicle has been driven for three hours, or it has been driven for 150 miles, whichever occurs first. These rules do not apply to the driver of a sealed commercial vehicle who has been ordered not to open and inspect the cargo or the driver of a commercial motor vehicle that has been loaded in a manner that makes inspection of the cargo impractical. While the driver is not required to personally load, block, brace and tie down the cargo, the driver is required to be familiar with the methods and procedures for securing cargo and may have to adjust the cargo or load securing devices pursuant to 392.9.

49 CFR 392.14. Hazardous Conditions: Extreme Caution. Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.

Regulatory Guidance §392.14 Hazardous Conditions; Extreme Caution

Question 1: Who makes the determination, the driver or carrier, that conditions are sufficiently dangerous to warrant discontinuing the operation of a CMV?

Guidance: Under this section, the driver is clearly responsible for the safe operation of the vehicle and the decision to cease operation because of hazardous conditions.

Because of the regulatory power possessed by the Federal Highway Administration, violations of the regulations could amount to almost strict liability on behalf of the carriers.

III. The Importance of Reviewing and Using Regulatory Guidance.

Pursuant to 49 U.S.C. §§ 521(b), 31133(a), the Federal Highway Administration promulgated the FMCSRs. Using the following two regulations as an example we can see the effect of the FHWA's guidance on interpretation:

§ 390.11 Motor carrier to require observance of driver regulations. Whenever …a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition. If the motor carrier is a driver, the driver shall likewise be bound.

§ 395.3 Maximum driving time for property-carrying vehicles.

Subject to the exceptions and exemptions in § 395.1:

(a) No motor carrier shall permit or require any driver used by it to drive a property-carrying commercial motor vehicle, nor shall any such driver drive a property-carrying commercial motor vehicle:

(1) More than 11 cumulative hours following 10 consecutive hours off duty; or

(2) For any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty, except when a property-carrying driver complies with the provisions of § 395.1 (o) or § 395.1 (e)(2).

(b) No motor carrier shall permit or require a driver of a property-carrying commercial motor vehicle to drive, nor shall any driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after —

(1) Having been on duty 60 hours in any period of 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

§ 395.8 Driver's record of duty status.

> (a) Except for a private motor carrier of passengers (nonbusiness), every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period using the methods prescribed [herein] …
>
> * * *
>
> (e) Failure to complete the record of duty activities of this section or § 395.15, failure to preserve a record of such duty activities, or making of false reports in connection with such duty activities shall make the driver and/or the carrier liable to prosecution.

49 C.F.R. §§ 390.11, 395.3, 395.8.

The FHWA developed regulatory guidance to assist motor carriers and other parties bound by the FMCSRs. *See* Regulatory Guidance for the Federal Motor Carrier Safety Regulations, 62 Fed. Reg. 16370 (1997). In this regulatory guidance, the FHWA explains, the agency "consolidated previously issued interpretations and regulatory guidance materials and developed concise interpretive guidance in question and answer form for each part of the FMCSRs." Id. at 16370. *See also United States v. Thorson*, 2004 U.S. Dist. LEXIS 5927, No. 03-C-0074-C, 2004 WL 737522, at * 8 (W.D. Wis. Apr. 6, 2004) ("An agency's interpretation of its own regulations is entitled to a relatively high level of deference … A court must accept the interpretation unless it is …plainly erroneous or inconsistent with the regulation."); *Hickey v. Great W. Mortgage Corp.*, 1995 U.S. Dist. LEXIS 6989, No. 94 C 3638, 1995 WL 317095, at * 5 (N.D. Ill. May 23, 1995) ("Deference is particularly appropriate when an agency interprets its own regulation.").

In interpretation of 49 C.F.R. § 395.3, the FHWA's regulatory guidance states:

> *Question 7:* What is the liability of a motor carrier for hours of service violations?
>
> *Guidance:* The carrier is liable for violations of the hours of service regulations if it had or should have had the means by which to detect the violations. Liability under the FMCSRs does not depend upon actual knowledge of the violations.
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> *Question 8:* Are carriers liable for the actions of their employees even though the carrier contends that it did not require or permit the violations to occur?
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> *Guidance*: Yes. Carriers are liable for the actions of their employees. Neither intent to commit, nor actual knowledge of, a violation is a necessary element of that liability. Carriers "permit" violations of the hours of service regulations by their employees if they fail to have in place management systems that effectively prevent such violations.

62 Fed. Reg. at 16424.

In interpretation of 49 C.F.R. § 395.8, the regulatory guidance states:

> *Question 21:* What is the carrier's liability when its drivers falsify records of duty status?
>
> *Guidance:* A carrier is liable both for the actions of its drivers in submitting false documents and for its own actions in accepting false documents.

62 Fed. Reg. at 16426. In short, "Motor carriers have a duty to require drivers to observe the FMCSRs." Id. The information above is based on the district court's opinion in *Trotter v. B & W Cartage Co.*, 2006 U.S. Dist. LEXIS 19074 (S.D.Ill. 2006). In that case the following testimony was elicited which is instructive.

> In this case there is substantial evidence of record that, at the time of the incident in which Ryan Trotter was killed, Jeffrey Wiegert was driving well outside his federally-regulated hours of service, that he was operating a B & W tractor-trailer in a manner consistent with that of a person driving in a state of extreme fatigue, and that, in the weeks preceding Ryan Trotter's death, Mr. Wiegert repeatedly submitted faked logs of his driving hours to B & W. With respect to the issue of the availability of damages for aggravating circumstances in this case, the Court finds particularly noteworthy the testimony of Francis Amiot, B & W's Director of Safety Rules Compliance since 1994.
>
> Mr. Amiot testified that B & W's primary means of preventing violations of FHWA regulations governing hours of service for drivers was through computerized scanning of driver logs. Mr. Amiot testified that, as the chief officer of B & W responsible for ensuring the company's compliance with FHWA hours of service regulations, he was aware that the log scanning program had been inadequate to prevent hours of service violations for at least five years prior to Ryan Trotter's death:
>
> Q… The log scanning program, was it inadequate for purposes of fulfilling the company's obligation with respect to reviewing driver logs to insure [sic] hours of service compliance?
>
> * * *
>
> A. Did you say antiquated or inadequate?
> Q… Inadequate.
> A. At the time of this incident I have to say, yes.
> Q. At the time of this incident, being in February of 2005?
> A. Correct.

Q. And had it been inadequate for those purposes for a period of time prior to February of 2005?
A. Probably, yes.
Q. Had that before of time been more than a year?
A. Oh, absolutely.
Q. Had — had it been — had the log scanning program been inadequate for several years?
A. That's a fair statement.

* * *

Q. Is there a point in time when, in your opinion, as the director of-of safety and rule compliance, you felt that the-that the log scanning program became inadequate for the purposes necessary to insure compliance with hours of service regulations?
A. Yes. We got too big too fast, and in my opinion, it, therefore, became inadequate.
Q. When did the company become too big too fast?
A. Over the period of the last five, six, seven years.
Q. So for a period of approximately five, six, seven years, the log scanning program has been inadequate —
A. We have increased in size, and that —
Q. Go ahead.
A. Go ahead.
Q. For a period of the last five, six, seven years, the log scanning program has been inadequate for purposes of insuring [sic] compliance with hours of service regulations?
A. Yes, to — yes, to the degree we have discussed.

Mr. Amiot testified that he brought the issue of the serious failure of B & W to comply with FHWA requirements that motor carriers maintain "management systems that effectively prevent [hours of service] violations," 62 Fed. Reg. at 16424, to the attention of the company's president, but that B & W, despite having knowledge of the compliance problem, took no action to correct it:

Q. Okay. Was that brought to the attention of anyone in the company and discussed in any way, that something needs to be done about that?
A. You know, I don't really recall. Probably, but I don't really recall. I think I — I think I did at some point in time, but —
Q. Who would you have most likely brought that to the attention of?
A. Mr. Steve Klein [B & W's President].
Q. And do you know if any corrective action or any response was made to that suggestion or recommendation?
A. Not to my knowledge.
Q. Was there a reason that the company operated with an inadequate log scanning program for a period of five or six or seven years?

* * *

A. We fell on our mistake. We made some errors. We are suffering for it, and we are correcting it.

Mr. Amiot testified that, in the absence of a reliable means of auditing driver logs, B & W's fallback measure was random "hard audits" of driving logs, in which logs were checked against supporting documentation to determine compliance with hours of service:

A… From time to time amidst other duties, as we have earlier discussed, I would have randomly selected persons and looked at other relevant documents and compared them to that individual's record of duty status. But who those individuals are. I could not address.

* * *

Q… . You have talked about this random process. Was there any — any procedure that you followed with respect to this randomness? Did you pull —
A. No, but —
Q. — five files a day? Did you pull ten logs a day? Did you pull 20 logs a day? What — what was done? How did you — or was this just kind of haphazard, and whenever you got a few minutes you might have pulled a log?
A. I think that's a fair statement. By definition, it was random.
Q. Okay. But in what manner was it random? Did you have any — did you do — did you do a log review, at least one, every day?
A. I would say within certain realms I did at least one — at least one log every day.
Q. All right. Did you have any set number that you tried to accomplish per day?

* * *

A. I did one log a day as a — as an average, I think, is a fair statement.
Q. I'm sorry. One a day, did you say?
A. I may have done five a day, I may have done one every other day, I may have done two every other day. I think a fair — a fair average would be one a day.

A reasonable inference to be drawn from Mr. Amiot's testimony is that B & W operated for a substantial period of time, possibly as much as seven years, in conscious indifference to its duties under the FMCSRs governing driver hours of service.

Mr. Amiot also described resistance within B & W's corporate structure to improved hours of service compliance:

Q. So there were issues with terminal and operation managers resisting the recommendations of the safety department?

* * *

A. No, I don't — I don't think — I don't think I recall any general resistance. Well, no, I can't say that. A person at a facility [in Clayton, Ohio,] was very hesitant to accept recommendations of the safety department in regard to hours of service. And gut reaction, again, my own gut reaction, if you will, was that money took precedent over safety.
Q… I'm sorry, what was the last?
A. Money took precedent over safety.

Importantly, Mr. Amiot specifically testified to questionable hours of service practices by the manager of B & W's terminal in Gary, Indiana, out of which Jeffrey Wiegert operated:

A. I believe there is a person who — at the facility you mentioned, that, in my opinion, stretch — that stretches the regulations to the limit of being still within the law.
Q. The facility —
A. But very questionable.
Q. The facility I mentioned, you are referring to the Gary, Indiana, facility?
A. In my opinion, yes.
Q. And who is that person?
A. Mr. George Drain.
Q. And he is the operations manager or terminal manager in Gary, Indiana?
A. I believe that's his title, yeah.
Q. And you say that in your opinion he — he stretches the hours of service limitations? What do you mean by that, if you can give me an example.
A. Nothing to the point of being illegal, but it doesn't give the time — the driver a chance to eat. Mileage distances are figured point A to point B at almost the exact allowable driving time, which disallows any excessive time for perhaps a random drug screen, perhaps a — well, let's — let's leave it at a random drug screen. The runs — the runs are figured so tight that there is no excessive time to be able to — to do that without expediting the load and causing the driver to lose a day's work.
Q. Did you —
A. Personal opinion.
Q. I assume it's also your professional opinion, too; wouldn't that be correct?
A. I think that's a fair statement.
Q. Did you ever have any discussions with Mr. Drain about his stretching of the hours of service rules and regulations?
A. Yes.

> A reasonable inference to be drawn from Mr. Amiot's testimony is that B & W ignored its duties under FHWA hours of service regulations, put drivers in positions where they would likely be forced to violate such regulations, and telegraphed to drivers its approval of violations of the hours of service regulations.

Based on the above the Court concluded that reasonable jurors could find that the imposition of damages for aggravating circumstances was warranted. The evidence of record showed that for five years or more prior to Ryan Trotter's death B & W operated with conscious indifference to its regulatory duty to maintain management systems effective in preventing hours of service violations by drivers. The evidence of record also showed that the conduct of B & W employees like the managers of the company's terminals was such as to send a message to drivers that hours of service violations were acceptable conduct. In fact, "money [taking] precedent over safety" is virtually the definition of the kind of corporate behavior warranting an award of punitive damages.

Other examples of cases where violations of the FMCSR's has led to punitive damage claims are as follows: *Perez Librado v. M.S. Carriers, Inc.*, 2004 U.S. Dist. LEXIS 12203, No. Civ.A.3:02-CV-2095-D, 2004 WL 1490304, at ** 3-6 (N.D. Tex. June 30, 2004)(denying summary judgment as to a request for punitive damages against a motor carrier in a suit arising from a car-truck collision allegedly caused by violations of FMCSRs); *Osborne Truck Lines, Inc. v. Langston,* 454 So. 2d 1317, 1326 (Ala. 1984) (in a personal injury action arising from a car-truck collision at the gate of a metal plant, evidence that the driver of the truck, who had an unobstructed view of oncoming traffic, acted with reckless disregard of the presence of other vehicles in making a left turn at the gate at night, that the driver was fatigued due to the inordinate length of time he had driven the truck, and that the driver continued to drive with knowledge of his fatigue, was sufficient to sustain a claim of wantonness against the driver and the carrier who employed him); *Torres v. North Am. Van Lines*, Inc., 135 Ariz. 35, 658 P.2d 835, 839 (Ariz. Ct. App. 1982) (the issue of punitive damages may be properly submitted to the jury on the theory of a carrier's failure to police and enforce FHWA hours of service regulations where the employer had been put on notice that drivers were not complying with the regulations, with no attempt being made to take corrective measures, so that it could be implied that the carrier authorized sloppy logging of on-duty time with the concomitant risk of exceeding the time limitation, thus causing fatigue); *Briner v. Hyslop*, 337 N.W.2d 858, 867-68 (Iowa 1983) (in a wrongful death action arising from a car-truck collision, holding that the jury should decide the question of whether a carrier owed punitive damages, since there was evidence that the carrier knew or should have known of its drivers' sleeping habits from their phone calls and their gas and motel slips, that it had no set schedules or guidelines for its drivers, that it did not have any established time for reviewing the logs kept by its drivers, that 120 days could pass before the drivers' logs were reviewed, that the carrier knew that the driver in question had not kept a log for the three weeks prior to the collision and that he had previously failed to keep a log, and that the carrier provided drivers with an incentive to work long hours without getting sufficient sleep); *Smith v. Printup*, 254 Kan. 315, 866 P.2d 985, 1007-08 (Kan. 1993) (in a wrongful death action by the survivors of victims killed in an accident with a truck seeking punitive damages against the truck driver's employers, holding that ratification and authorization are broad enough to encompass evidence that the driver's employers knew or should have known about employee misconduct in violation of FHWA regulations, and evidence of corporate policies, procedures, or managerial behavior that a jury reasonably could infer implicitly authorized or ratified the questioned conduct); *Elbar, Inc. v. Claussen*, 774 S.W.2d 45, 48-50 (Tex. App. 1989)

(the jury's finding that a trucking firm was guilty of gross negligence in connection with an accident in which a truck entered a motorcyclist's lane, causing him to lose control, was supported by evidence that the firm's policy of requiring its drivers to operate their trucks for long, continuous periods of time lent itself to fatigue).

Another example of how past unrelated violations of the FMCSR's can relate to the reckless indifference on the Trucking Company is to establish how the company should be accountable for assuring driver compliance and a pattern and practice of not enforcing the regulations prevents the company from being alerted to a driver who does not follow the regulation and the concomitant failure to anticipate the hazard such drivers represent. First establish the importance of the safety policy and mission. Then establish that the drivers are taught the importance of safety and the mandatory nature of the regulations. Third, establish that drivers are taught to anticipate hazards. Fourth, establish that the company had reason to anticipate that a given driver was not following regulations but took no action. An example from a current case:

Q. Now, the manual on page 188 has a safety mission statement. Does this represent the philosophy that you try to instill in all of your drivers and employees?
A. Yes, sir.
Q. Would you agree that safety of employees and the general public was the No. 1 priority?
A. Yes.
Q. XXX Transport will strive to be the safest motor carrier in the industry?
A. Yes, sir.
Q. Would it be fair to say that every motor carrier should strive to be the safest?
A. I believe that 100 percent, sir.

Establishing that not only was safety the number 1 goal of that company, it should be the number one goal of all companies.

Q. And the method by which you were going to obtain this goal according to the mission statement is you were going to take a comprehensive approach; correct?
A. Yes.
Q. And that approach would include accountability, education, reward and recognition. Now, you mentioned before how you tried to make the approach comprehensive by making it standardized for all of your different terminals; correct?
A. Yes, sir.
Q. All right. Now, another way that you wanted to achieve the goal was by accountability. What does the mission statement mean when it says accountability?
A. We work very hard to address any issues, accident issues especially because something that may be a simple fender bender could in theory many times be that far away from a catastrophic event or a critical crash, so we try to look at accidents not on the face value, but what did we almost get involved in and address that with our — drivers.

Establishing that the company safety program should be comprehensive and stresses accountability of the drivers, but later we will establish that the company too should be accountable. This sets the table.

Q. If I understand that correctly, XXX Transport emphasized the importance to looking into all accidents because there could be lessons learned from all accidents; is that right?
A. Yes, sir.
Q. And that some accidents where there might only be minor damage could have been near misses of a fatality or something very serious, and you wanted to correct it before you got to the fatality; is that right?
A. Yes, sir.

Establishing the importance of addressing problems before there is a serious accident

Q. As part of accountability, did you also hold the drivers accountable for their conduct?
A. Yes, sir.
Q. And how did you enforce that? How did you enforce that accountability?
A. Defensive driving classes that they were charged for, and in the process maybe put on a final notice or a watch list in which they — disciplinary action, up to termination could result in any further events.
Q. So as part of your program, drivers were made aware that they should follow the knowledge and skills that were taught in the training program; is that right?
A. Yes, sir.

Driver's awareness of the regulations and knowledge requirements established through employer. The driver's specific deficiencies in knowledge established elsewhere not shown here.

Q. And if they failed to do so, there would be penalties?
A. Yes, sir.
Q. And they were aware that there would be review of all incidents?
A. Yes, sir.
Q. And that they would be accountable for their actions while they were behind the wheel of one of your vehicles?
A. Yes, sir.
Q. That applied not only to driving skills but also important things like hours of service record?
A. Yes, sir.
Q. Those hourly service records referred to federal motor carrier safety regulations, doesn't it?
A. Yes, sir.
Q. As part of your comprehensive program, did you try to enforce the federal motor carrier safety regulations all across your company?

A. Yes, sir.

A motor carrier safety official has to answer "yes."

Q. And can you think of any reason why any other company in the industry would not have a system of accountability for their drivers that was similar to the system set up at XXX Transport?
MR. 4: Just objection to form, You can answer.
A. No sir.

Again, using this safety official to establish standards for the whole industry in a multi truck crash.

Q. What about the elements of the XXX Transport program that are not contained in the regulations. The elements of your safety program for accountability of your drivers, was there any reason why other trucking companies should not have a similar accountability program for their drivers?
MR. 6: Same objection.
Q. I believe that all companies should have an accountability policy, yes?
Q. Another way XXX Transport would achieve its goal is through education. We talked about some of that, but could you just give us a little more detailed answer of how XXX Transport would achieve that goal through education?
A. Well, we are constantly creating ways to touch drivers. A counseling session, for example, we've been hitting hard for the past few years is the speed of a truck, what about a phone call, a driver gets a speed ticket or is known to speed, we get them on the phone and do a verbal counseling session. To me that's education, that's explain to go the driver what this is all about when he's in the truck and then we have ongoing development training modules that we continue to put together. We institutionalize the driving value training piece approximately two hours long which emphasizes the importance of decision-making by the over the road truck driver. So that we are constantly trying to build our arsenal so to speak of educational opportunities to get to — to get to drivers.
Q. And is it your belief based upon your training and experience over the past eight and a half years that every trucking company in the industry should make efforts at education the way XXX Transport does?
A. I'm a believer in education and training.
Q. Can you think of any reason why a trucking company would not have a program for educating their drivers?
A. No, sir.
Q. And do you believe that what XXX Transport does meets a reasonable standard of the way safety policy should be handled in the industry?
MR. 5: Objection to form. If you can answer it, go ahead.
A. My experience is at XXX Transport. I believe that we do a good job at this, but the strength of our policies is that we are not willing to accept everything we've got today and walk away. We are going to make it better all the time. I believe in what we do.

Q. And you wouldn't accept anything less than that, would you, sir?
A. No, sir.
Q. Nor would your company?
A. No, sir.
Q. Should any other company accept something less than that?
Fouler: Objection.
Q. In your opinion.
A. As for safety, sir.
Q. Could you repeated your answer, I'm sorry?
A. I have high standards for safety.
Q. Do you believe that there is another company that should not have standards so high?
A. No, sir.
Q. Bring up Exhibit 5. Am I correct that this document records violations for Driver Smith for his hours of service logs from October 1st through January 20th, 2004.
A. Yes.
Q. What's the purpose of the document?
A. Well, at the time, we were trying to get more and more into a formalized log review program, heavier — heavier than we had ever done before, so we were improving the system so we had instant access, almost instant access to logs.
Q. So this is a document maintained in your department to try to ensure that drivers do not violate the hours of service regulations?
A. Yes.

Establishing a program that provides awareness of violations to the company

Q. And the hours of service regulations are part of the federal motor carrier safety regulations and they are mandatory for drivers; correct?
A. Correct.
Q. Now, Mr. Smith had missing logs from January 1st through January 6th, 2004; correct?
A. Yes.
Q. And he had a number of other listed violations; correct?
A. Yes.
Q. Including at least five 10-hour driving violations; correct?
A. Yes.
Q. What action was taken against Mr. Smith for these violations?
A. Well, when — as far as the defensive driving class, the log violations would have been reviewed and whether it was something he misunderstood or was doing wrong, it could be corrected in that defensive driving process.

Q. Was there any discipline or penalty assessed separate from those assessed related to the collision?
A. No, It was part of the same defensive driving class.
Q. Was this report generated because he had been in an accident?
A. Yes.
Q. Based on this report, it looks like you have a computer system which reads the logs and determines the violations; correct?
A. Yes.
Q. What's the name of your system?
A. At that time it was RAIR technologies, R-A-I-R,
Q. Did drivers filled out their logs by hand?
A. The logs are all filled out by hand.
Q. And the computer system is designed to read the logs that are filled out by hand?
A. Yes
Q. On the standard log form that we've all seen many times; correct?
A. Yes, sir.
Q. Is the purpose of this program to alert you when drivers have violations?
A. That was the intent of the program, yes.
Q. Was the program working so poorly that he could have this many violations over a three month period without safety people being alerted?
A. When he had — there are violations and then there are violations. Some in here no manifest number is found on the form, that's —
Q. No manifest number was written on the log form, that's a very technical violation that doesn't affect safety; right?
A. Right, that's filling in a box.
Q. But 10-hour driving violations, those are safety violations; correct?
A. Yes
Q. Are each of those violations a safety violation?
A. Well, it's an issue, there are safety violations, we need to find out what's causing them.
Q. Did you need to find that out before they continued for almost three months?
A. We need to find out as soon as possible, yes.

They "need" to find out "as soon as possible."

Q. Because in your own operations manual, it says if you are driving more than 5 hours, you should take a break and you should add a second to the space around your vehicle for safety; correct?
A. Yes.
Q. Because you said you are never as good at the end of the trip as you are at the beginning; correct?
A. Yes, sir.

Q. There are specific rules about how much you can drive with rest or no rest in a given period of time and these were violations of those mandatory rules; correct?
A. Yes.
Q. And is it a fact that if there were violations of the 10 hour rule, those are serious safety violations?
A. Yes.
Q. Did you ever find out if these violations were mathematical errors or if they were, in fact, hours of service violations?
A. They were treated as hours of service violations.
Q. So then there really wasn't any consideration that they were mathematical errors because they were treated by your department as actual 10 hour driving violations; correct?
A. Yes.
Q. Why was it no action was taken when a driver has 10 hour driving violations on October 1st, October 22nd, October 24th, November 30th, and December 9th, in any of that time?
A. I don't know, sir.

They "need" to find out "as soon as possible" using a system they put in place to "ensure" there were no violations yet this driver could go on for 3 months with "serious violations" and nothing is done, and he does not know why..

Q. Does that meet the standard that you wanted to set for CRST in their safety reviews?
A. No, sir.
Q. Should a driver who does something like this be disciplined?
A. An action should be taken against the driver, yes sir.

Liability established

Q. Okay. Let's look at the other document you mentioned associated with this accident review. It says "I'm not sure he understands the seriousness of his accident, and I reminded him and explained to him how many dollars we have lost?" Is the seriousness of the accident related to how many dollars the company has lost?
A. You know, Dan — Dan probably — I'm assuming Dan talked about the possibility this is a costly accident.

Is safety the number 1 priority?

Q. Then he goes on to say he has some serious logging issues. His logbook burnt up in the truck, so I am going over his RAIR files. That's the computer program you mentioned; correct?
A. Yes.
Q. In three months he has 16 over 10's. Over 10 is a 10 hour violation?
A. Yes.

Q. Lots of missing information and other issues. Correct?
A. Yes.
Q. Now, wasn't this evidence that this driver had problems well before this accident?
A. He had some logging issues.
Q. Well, when you trained him, you told him how important the motor vehicle safety regulations were, didn't you?
A. Yes, sir.
Q. He was required to be familiar with them; correct?
A. Yes.
Q. And the training he is specifically taught how to fill out the form; correct?
A. Yes, sir.
Q. He's told never to violated the 10-hour rule; correct?
A. Yes.

Again, awareness of driver.

Q. He has 16 violations in three months. Isn't that evidence the driver is not following the rules?
A. He's not following the rules and the root cause of that may be a mathematical error or some other problem we can fix.
Q. Did you ever determine that?
A. I'm not sure that we did.
Q. So shouldn't we now be able to look back and see if there was some record whether this was a math error or just a guy that didn't follow the rules?
A. He was breaking the rules. We tried to address it.
Q. After the accident, you tried to address after the accident?
A. Yes.
Q. But like a driver, you are supposed to take the high view and anticipate hazards. Shouldn't the company where they have a serial safety regulation violator, try to anticipate that this driver might be a problem, might be a hazard?
A. Yes, sir.

Company ignored enforcement of the rules, and did not anticipate the hazard this driver created. This is a classic case repeated over and over in the industry. It is easy to establish in the drivers deposition that he did not really understand the regulations or the safety requirements when operating a large truck. This all falls into the same description of conduct warranting punitive damages.