

# **A DAY IN THE LIFE OF A PREVENTABLE ACCIDENT**

**-or-**

**How I saved myself a lot of grief and money**

Just another day tippin' cans, until.....



**A DRIVER COMES BACK FROM HIS SHIFT AND SAYS...**



# I JUST WITNESSED A TERRIBLE CRASH BETWEEN A CAR AND A MOTORCYCLIST



# WHAT DO YOU SAY?



# CHOOSE ONE

- 1) Tell him to clock out
- 2) Ask him if anyone was hurt
- 3) Ask him where he was and what did he say
- 4) Ask him if he finished his route without incident

# TRUCK CRASH INVESTIGATION PRE-SUIT THROUGH VERDICT

- According to the FMCSA, two-thirds of all motor vehicle crashes are attributable to operators of other vehicles (“four-wheelers”).
- After all is said and done, we can safely say pretty much, all accidents involve a failure of perception.

- Crashes caused by large vehicles were attributable to either the truck driver's failure to recognize a potential crash risk as a result of inattention, distraction or failure to observe, or the driver's poor decision-making such as driving too fast for conditions, following too closely, misjudging the speed of other vehicles or making incorrect assumptions about the other driver's actions.



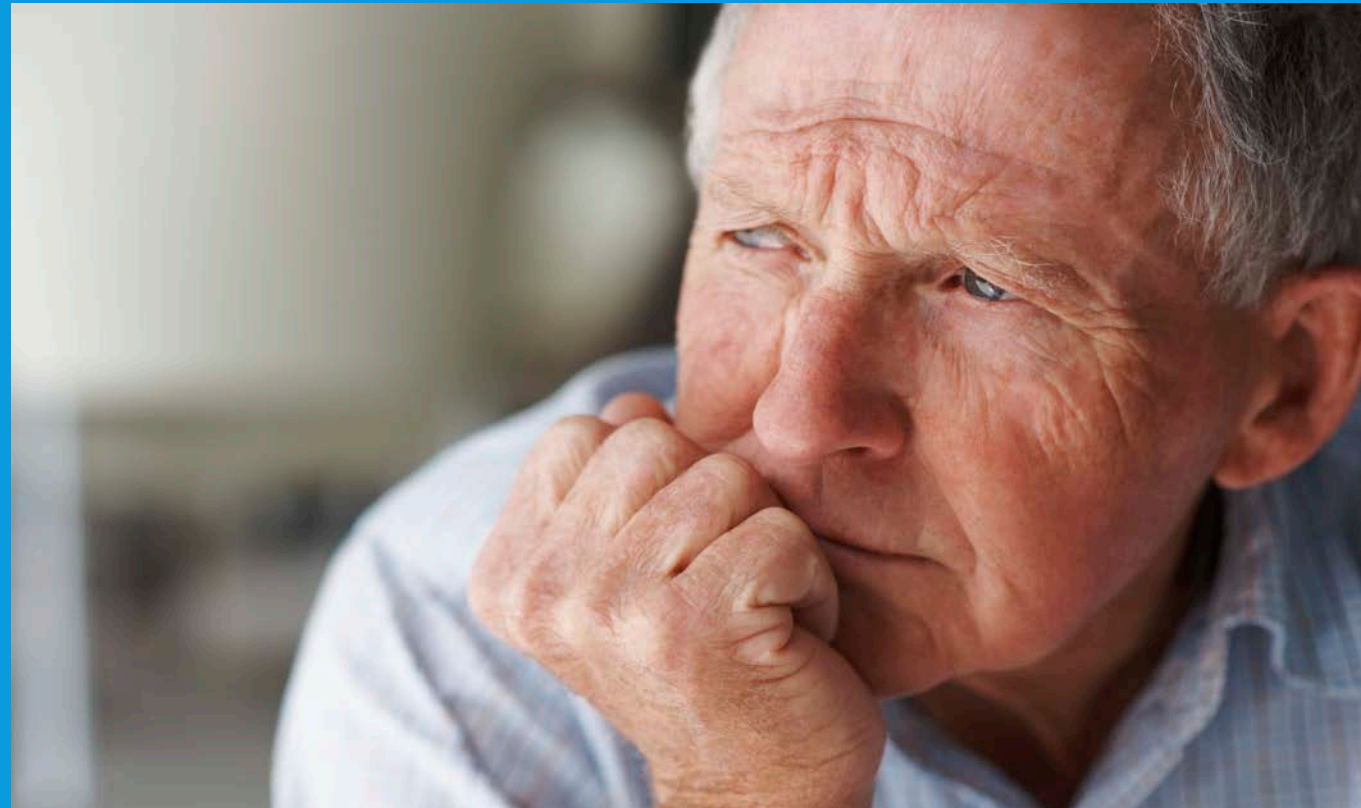
# TRUCK CRASHES ARE NOT CAR CRASHES



- In addition to the increased severity of injury when a vehicle weighing tens of thousands of pounds collides with a vehicle weighing only a few thousand pounds, truck wrecks differ from car wrecks in several other significant respects.
- Trucking companies and truckers are controlled by an extensive framework of federal and state regulation and, as a general rule, trucking companies and truckers are in violation of these regulations every day.



**WHAT DO YOU SAY?    WHAT DO YOU DO?**



So much of the focus in truck crash cases is on the applicable federal and state regulations, it is appropriate to begin any discussion of handling trucking cases with a review of the applicable regulations.

## A few incomprehensible government definitions:

*Accident* means—(1) Except as provided in paragraph (2) of this definition:

an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

- (i) A fatality;
- (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle

(2) The term accident does not include:(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or(ii) An occurrence involving only the loading or unloading of cargo.

Crash- See Accident

The preferred term now in vogue at the Agency is “crash.”

Was this driver “in” an accident?

To determine that we must parse the definition of an accident  
under the regulations

What is an “occurrence?” Well, it’s not defined in the regs.

Merriam-Webster give the following definition  
Definition of *Occurrence*

1 : something that occurs *a startling occurrence Lightning is a natural occurrence.*

2 : the action or fact of happening or occurring —often used with *of the repeated occurrence of petty theft in the locker room*



Well, what about “involving?”

Not defined in the regs, either

Back we go to the plain old  
dictionary definition

# Definition of *involve*

**involved**

**; involving**

**1.transitive verb**

*1.2a : to engage as a participant: workers  
involved in building a house*

An occurrence involving a motor vehicle.

the action or fact of happening or occurring



# WHAT IS A “PREVENTABLE ACCIDENT” AND WHY DOES IT MATTER

- The National Safety Council defines a preventable accident as:
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- **“Any accident involving an organizational vehicle which results in property damage and/or personal injury, regardless of who was injured, what property was damaged, to what extent or where it occurred, in which the driver in question failed to exercise every reasonable precaution to prevent the accident.”**



# THE IMPORTANCE OF YOUR SAFETY MANAGEMENT PROGRAM

- The concept of a **preventable accident** should be a landmark in your Safety Plan.
- The FMCSA expects that at least one person in every organization be well-versed in the FMCSA regulations – and that person should know preventables.
- It should be part of your Safety Management Plan / Progressive Discipline for your drivers.

# LIABILITY CLAIM INVESTIGATION BY DRIVER

- Drivers – remain calm; don't admit guilt
- Take photos on cell phone – nothing gruesome
- Photograph Physical evidence – 4 CORNERS !
- Get adverse info, put it on accident form; don't write your version!

# LIABILITY CLAIM INVESTIGATIONS

## Why do we investigate?

- To gather evidence preserving defenses; for actions against a responsible party(ies); to eliminate or reduce our claim exposure.
- To understand cause(s) of crashes and develop a first call strategy.
- For internal purposes and accident components – preventable or not?  
Correct acts in the field – avoid common mistakes.
- Discipline is an essential part of the FMCSA's Safety Management Program

# BEGINNING THE INVESTIGATION

- Have a “go” plan
- Have an IA on scene
- Cover the investigation
- with lawyer protection
- Obtain scene evidence
- Talk to police on scene





# EVIDENCE/SOURCES OF INFORMATION

Obtain and retain the evidence

Direct the IA as to exactly what you want

Talk to fire or police or first responder – get their “take”

Protect your driver

Obtain driver records – if confiscated, get info

Names of adverse parties and insurance

Have IA send material immediately

Commit your findings to a easy report, while it's fresh

Contact other insurers

Thank You!