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In Transit

The newsletter of the Trucking Law Committee

10/20/2020

Volume 23, Issue 3

Committee Leadership

In This Issue

Leadership Note

From the Chair

By Matthew S. Hefflefinger

As 2020 draws to a close, we all look to 2021 with great hope. We've all made some adjustments dufring 2020, and it is my hope that you and your families have remained healthy throughout the year. My tenure as Chair has come to an end. It's amazing how fast two years goes by. This has truly been one of the most rewarding experiences of my thirty plus years of practicing law, and I want to thank all of you for your passion and commitment to the success of the Trucking Law Committee.

We have three excellent articles in this edition of *In Transit*. The articles touch on insurance issues applicable to trucking companies, the Federal Motor Carrier Safety Administration's emergency relief for the trucking industry, and the sometimes unexpected challenges we face when dealing with a heavier pickup truck weighing more than 10,000 lbs., a commercial motor vehicle under the Federal Motor Carrier Safety Regulations.

Patrick Foppe, our Publications Chair, has a number of writing opportunities available for anyone wishing to get published. The Trucking Law Committee has opportunities to publish in *The Voice*, *For The Defense*, and *In Transit*, our quarterly publication. We also have opportunities to get members of our committee published in *In-House Defense Quarterly*. If you have an interest in writing an article, please contact Patrick Foppe at pfoppe@lashlybaer.com.

The DRI Virtual Annual Meeting is scheduled to proceed October 21–23, 2020. We have partnered with Cybersecurity and Data Privacy, Insurance Law, and the Workers' Compensation Committees in developing a state-of-the-art CLE program. David Wilson of Wilson and Berryhill in Birmingham, Alabama will be the member of our Committee participating in the CLE entitled "Taming The E-mail Dragon Before Your Client Gets Burned." The CLE is scheduled for 12:30–1:30 p.m. CDT on Friday, October 23. If you have not registered for the DRI Virtual Annual Meeting, you can still do so for the mere cost of $99 by visiting the DRI website.

Shortly after the Virtual Annual Meeting, we will conduct the Trucking Law Virtual Seminar on Thursday, November 19. The registration rate for DRI members is $99 and $199 for nonmembers. I have included a link that will take you to the program agenda. As part of our planning activities, we took some pertinent presentations from the seminar that was set to occur in Austin during April, 2020, and packaged them together for our Virtual Seminar. We will be conducting a business meeting of the Committee from 2:45–3:15 p.m. CST as part of the Virtual Trucking Seminar. The program is scheduled to run from 12:00 p.m. CST through 5:15 p.m. CST, at which time we will have a virtual networking reception. Please plan to attend what will be another great seminar for our Committee.

We have already started our planning for 2021. We are extremely confident that the programs offered during 2021 will continue the long tradition of our Committee's excellent CLE, even if the programs remain predominantly virtual during these uncertain times. If you are interested in getting involved in helping with a webinar or a podcast, please reach out to our Online Programming Chair Melody Kiella at kiellam@deflaw.com.

One of the things we have focused on during the last several years is welcoming the addition of anyone that wants to get involved in the work of the Committee. This will continue. It is important to stress that we also have an expectation that people do the necessary work asked of them to fulfill their Committee responsibilities. DRI provides an opportunity for you to transform your career and develop lifelong friendships. Get involved!

It is with great pleasure that I pass the baton to incoming Chair Steve Pesarchick of the Sugarman Law Firm in Syracuse, New York, who will be assisted by Vice Chair Terrence Graves of Sands Anderson in Richmond, Virginia. The Committee has some extremely talented lawyers, and the depth of that talent will continue to add strength to the efforts of the Committee going forward. The Committee is in excellent hands. I am blessed to call both Steve and Terrence great friends, and I am excited to see the new heights that the Committee will achieve with Steve and Terrence heading the charge.

Matthew S. (Matt) Hefflefinger *is a shareholder in the Peoria, Illinois, office of Heyl Royster Voelker & Allen PC and is chair of the firm's Trucking Practice Group. His practice is devoted primarily to the defense of complex personal*

injury cases in the trucking and construction industries. Matt is an aggressive advocate who has tried many cases to verdict and is frequently contacted by clients immediately after a catastrophic loss to help develop the facts and case strategy. He is a frequent presenter on a variety of litigation related topics at local and national legal seminars. Matt is the currently the chair of the DRI Trucking Law Committee.

Feature Articles

FMCSA's Emergency Relief to Transportation Industry in Response to COVID-19 Pandemic

By Sergio E. Chavez

The COVID-19 pandemic impacted every aspect of American life, and its effects reached every corner of the globe. The second and more severe outbreak of COVID-19 in mid-summer of 2020 hit the United States especially hard and resulted in modifications to requirements under the Federal Motor Carrier Safety Administration in order to facilitate continued transportation of supplies for emergency relief.

Emergency Declaration No. 2020-002

The transportation industry is not immune to the effects of the virus. In response to President Trump's declaration of a national emergency, the Federal Motor Carrier Safety Administration (Administration) issued emergency relief for motor carriers and commercial drivers. The Administration's emergency relief is contained by its Emergency Declaration (Declaration) No. 2020-002 under the authority of 49 CFR 390.25. The Administration recently extended the Declaration's emergency relief through September 14, 2020 through the most recent version of the Declaration issued on August 11, 2020, by the Deputy Administrator, Jim Mullen.

The Declaration was initially issued on March 13, 2020, to provide necessary relief for commercial motor vehicle operations engaged in the transportation of essential supplies, equipment, and persons in response to the COVID-19 pandemic. The Declaration provided an exemption to motor carriers and commercial drivers from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations (Regulations), with some exceptions. The most notable of the exempted Regulations are Part 391 (Driver Qualifications), Part 395 (Hours of Service) and Part 396 (Inspection, Repair & Maintenance).

Sectors Protected and Relief Provided by the Declaration

The original March 13, 2020 Declaration's scope of coverage included relief to the following transportation areas:

a) equipment, supplies and persons necessary to establish and manage temporary housing, quarantine, and isolation facilities related to COVID-19;

b) persons designated by Federal, State or local authorities for medical, isolation, or quarantine purposes; and

c) persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response.

The Administration expanded the original Declaration's coverage on April 8, 2020, to include transportation of liquefied gases to be used in refrigeration or cooling systems which increased the areas covered by the Declaration to a total of nine transportation sectors. These nine areas of operations were thereafter significantly curtailed by the Administration's version of the Declaration issued June 8, 2020, which left emergency relief only to following sectors:

a) livestock and livestock feed;

b) medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19;

c) supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants; and

The Administration provided guidance in its initial Declaration, regarding the termination of the Declaration's coverage once a commercial driver has delivered the cov-

ered cargo. According to the original Declaration, once a commercial driver completes delivery of covered cargo, the commercial driver continues to be exempt from Parts 390 through 399 of the Regulations if the commercial vehicle is returning empty to the motor carrier's terminal or place of business. But the Declaration's coverage terminates when a commercial vehicle is used in interstate commerce to transport cargo or provide services which do not support COVID-19 emergency relief efforts, or when a motor carrier dispatches a commercial vehicle to another location to commence operations in commerce.

The initial Declaration also indicated that a commercial driver who notifies her/his employer that immediate rest is required, shall result in the employer motor carrier allowing the driver to rest for ten consecutive off-duty hours before the driver is required to return to work. A driver who returns to a terminal, or other location must also be relieved and undergo a minimum of ten hours off-duty time if transporting property, and eight hours if transporting passengers.

The most recent version of the Declaration issued on August 11, 2020, does not apply to all motor carrier operations, but does apply to the following areas of transportation:

1) livestock and livestock feed;
2) medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19;
3) supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants; and
4) food, paper products and other groceries for emergency restocking of
5) distribution centers or stores.

Unlike the prior June 8, 2020, version, the current Declaration reinstated relief for restocking of food, paper products and other groceries at distribution centers or stores.

It is important to understand that the Declaration does not apply to all transportation operations. As highlighted above, the Declaration's emergency relief only applies to transportation operations providing direct assistance to COVID-19 relief efforts which does not include routine commercial deliveries. The exemptions do not extend to cargo with only nominal amounts of qualifying emergency relief added for the sole purpose of seeking relief under the Declaration.

Potential Effects of the Declaration in Future Litigation

The Declaration's emergency relief will affect litigation in accidents involving commercial vehicles which are operating under the Declaration. Discovery into routine matters such as hours of service, daily vehicle inspection reports, maintenance, and driver qualifications may be curtailed by showing that these regulatory areas of routine discovery have been rendered irrelevant by the Declaration's exemptions.

For accidents occurring during the period of the Declaration's applicability, defense counsel should determine if the motor carrier and driver were operating under the purview of the Declaration's emergency relief and ensure to maintain bills of lading or other documents evidencing the cargo triggered exemptions under the Declaration. Establishing the application of the Declaration's relief may result in court's limiting discovery in what are typical and routine areas of discovery for accidents involving commercial motor vehicles or offer a defense to hours of service violations.

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Insurance Issues for Trucking Companies (*the first of an occasional series*)

By Laurence J. Rabinovich

Rising insurance costs have figured prominently in recent news reports and studies about the losing battle many trucking companies fight to remain profitable, or even to remain in business. At the same time, commercial auto insurers, when considered as a unit, are on a ten-year losing streak with loss payouts and expenses far in excess of premium receipts ("US Companies Auto Writers: Profitability Remains Elusive," Best's Market Segments Report, http://www3.ambest.com/bestweek/purchase.asp?record_code=298738.) AM Best recently reported that 2019 was a particularly bad year, so the problem does not appear to be getting better. *See*, Insurance Journal, June 30, 2020, https://www.google.com/amp/s/amp.insurancejournal.com/news/national/2020/06/30/573912.htm. No solution to this dual problem will be offered here. We need to be mindful of these commercial realities as we examine various elements of coverage controversies from our perspective as coverage attorneys.

Many small trucking companies struggle to pay for even the most basic coverage that every motor carrier must have, such as auto liability and cargo coverage. Insurance brokers, insurance claims staff, and their lawyers can attest to how often a vehicle taken off of a policy, or never added in the first place ends up being involved in an accident (for example where an insured continues to utilize a vehicle at least on occasion in its business after removing it from a policy to save on costs). The result, of course, is the opposite of cost saving.

A full list of appropriate coverages for even a mid-sized company would start with the obvious: commercial auto (trucking) liability and general liability coverages plus an excess or umbrella layer. These coverages primarily protect the motor carrier from claims by third parties. General liability policies for motor carriers will typically apply to losses arising out of premises issues. Such coverage is similar to a homeowner's policy for a commercial entity. While auto losses are not completely excluded under general liability policies, for the most part auto type risks are covered by commercial auto policies. Broadly speaking, the motor carrier needs to make certain that any vehicles used in its business are covered. The motor carrier forms give the insured the option to shape its coverage to ensure that result. Commercial auto forms also provide coverage to various other players that interact with the motor carrier, though not the company's principals.

The liability limits of these policies dwarf the limits of typical personal insurance policies. On the auto side, federal and/or state statutes or regulations mandate limits that in some cases reach $5 million. More commonly, motor carriers require coverage with limits of at least $750,000 or $1 million. There is talk that the Department of Transportation may increase the mandatory insurance coverage limits. But even under the existing regulations, carriers with a requirement to maintain $1 million in auto liability coverage may be well advised to purchase at least another $1 million in excess liability coverage.

The typical motor carrier auto policy will include several other coverages aside from third party liability. The ISO form includes, for example, trailer interchange coverage (Section III). Many of the trailers that are attached to the motor carrier's semis in the course of a year are owned by other entities. The interchange coverage will cover the insured for claims for damage to or loss of such trailers. Of course, the policy should also provide physical damage coverage for the trucker's own vehicles. Since the amount that can be recovered under this coverage is often dependent upon "stated value" the company should be sure to accurately represent the value of its vehicle and be aware of any deductibles. (Section IV of the ISO form).

The motor carrier should consider if it wishes to purchase uninsured motorists coverage. Many companies reject the coverage (at least in those states which permit rejection) almost instinctively when it is offered, because it involves an additional premium. However, the premium is generally quite modest. This type of coverage can offer significant protection if one of the company drivers is hurt in an accident caused by a driver of a vehicle that is not insured, or for which only a policy with low limits is in effect. The policy likely includes no-fault (P.I.P.) coverages according to requirements that vary from state to state. A carrier of property for hire also needs cargo coverage. The cargo insurer needs to know the value of typical cargoes it hauls, so that it can secure the correct per-shipment limit of coverage. A motor carrier for hire should also remember to make arrangements with its insurer, as needed, for shipments valued in excess of its cargo limits. Shippers, of course, should be given the option to declare the full value

of their cargoes in exchange for paying a higher freight rate. If the insurer and the motor carrier have not set out procedures for expanding coverage limits in cases of high value goods, the claims process may be distressing to all involved.

In addition, truck drivers employed by the trucking company need to be protected in case they are injured on the job. Direct employees will usually be covered under a workers compensation policy. How to handle coverage for injuries to owner-operators is a more controversial question these days, as misclassification of employees is often a focus for state and federal regulators (sometimes dependent upon which political party is in control). Many companies opt to purchase Occupational Accident Insurance for their owner-operators as a lower cost alternative to workers compensation insurance.

Speaking of owner-operators, it may be a good idea to secure, or otherwise make available to the owner-operators, physical damage coverage, and non-trucking coverage. This is a useful service for many owner operators who may not have easy access to an agent; and the company can usually secure a better rate for such insurance. Providing this service is quite common. If the company does not make this option available, then it may be able to arrange with its insurance agent to have its owner-operators added to a group policy. If the service is offered, the premiums are then charged back to the owner-operators. The motor carrier needs to list this along with other charge-back items in the lease agreement to comply with federal law. One important note here — While providing liability for owner-operators under the trucker's own policy was once the norm, various policies these days, including the ISO motor carrier coverage form, companies can no longer rely on to cover the owner-operator. (This depends in part on the language of the lease agreement. We will discuss this in a future article in this series). If a trucking company has a policy which does not cover owner-operators in most cases, the company may wish to advise its owner-operators that non-trucking coverage would be a poor choice and that the owner-operators should consider purchasing full liability policies.

Motor carriers that work at a port and thus interact with cargoes that have been carried by water carrier may be asked to become a signatory to the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA). The UIAA was created by a umbrella group largely devoted to protecting the interests of shipping lines (*i.e.*, ocean carriers) and other equipment providers. The terms of the agreement are, in places, a bit tough on land carriers. motor carriers that refuse to sign on, though, will find certain corners of the industry closed to them. The group has also created an insurance endorsement, Truckers Uniform Intermodal Interchange Endorsement (IANA Form UIIE-1), which is meant to be attached to the truckers commercial auto policy. In signing the UIAA, the motor carrier assumes responsibility, among other things, for the container which generally is owned by the steamship company. If the carrier declines they will likely find it difficult to secure this kind of work. The terms of the agreement, which are modified periodically, create additional exposure for the trucker. For carriers that sign on it is important that their policies be endorsed to include the Uniform Intermodal Interchange Endorsement (Form UIIE-1).

Depending on the size of the trucking company and its cash flow, some other coverages may also be a good idea. Cyber coverage comes to mind. Trucking companies have become targets for cyber criminals because the industry deals with large amounts of money and truckers often have centralized financial records. With so many other issues keeping trucking executives up at night, they have traditionally have not focused on safe cyber practices or spent much money on cyber security. Christina Commendatore, "Trucking Remains a Top Target for Cyberattacks," *Fleet Owner,* May 12, 2020. The thieves are apparently well aware of the systemic weakness of the industry's cyber defense structure.

I mentioned earlier that the auto liability policy does not cover individual executives; and while the general liability does to some extent, the types of claims being filed these days (such as misclassification claims) may fall outside traditional GL coverage parameters. A well-structured Officers and Directors policy will protect the executives from such claims. While one does not usually find smaller companies availing themselves of D&O coverage, such policies may well be worth considering if the company has an active class of executives.

Finally, if a trucking company is engaged in brokering loads or warehousing, there are additional categories of insurance coverage the company should strongly consider purchasing to protect against claims related to those activities. Running a trucking company is not an easy task. But it certainly helps if one has a well thought out and well-managed insurance program in place. Future articles will examine various coverages described here.

Laurence J. (Larry) Rabinovich *has focused on transportation coverage and regulatory issues since he joined the*

Schindel Farman trucking law boutique in 1986. After that firm closed, Larry brought his practice to Barclay Damon where he became the leader of the firm's transportation team. His clients include many of the leading transportation insurers. He works with underwriters on risk assessment and policy forms, and with claims managers and adjusters. Among the services Larry and his insurance coverage colleagues provide are opinion letters, reservation of rights letters and declinations, declaratory judgment actions and appeals. He is also a frequent lecturer and CE provider offering classes in handling truck claims, commercial UM/UIM, the MCS-90, non-trucking risks, UIIA/UIIE and other topics.

Don't Get Trucked by Plaintiff's Counsel: Is Your Client's Pickup Truck Really a Commercial Motor Vehicle?

By Mitchell Hedrick

You receive a complaint that alleges your client motor carrier is liable for the plaintiff's injuries because a driver-employee was operating a 11,500 pound pickup truck and caused an accident. The plaintiff alleges that the driver and motor carrier violated federal trucking regulations because that pickup truck is a "commercial motor vehicle." Is the plaintiff right?

What Is a "Commercial Motor Vehicle," Anyway?

The term "commercial motor vehicle" ("CMV") has multiple definitions from various sources. While it is very clear that a vehicle which weighs more than 26,000 pounds is a CMV, the law is less settled (and more confusing) when it comes to light trucks, large vans, or other sizable vehicles. The Federal Motor Carrier Safety Administration ("FMCSA") rules contain three distinct and, in some respects, inconsistent definitions of "commercial motor vehicle." So which one applies to the vehicle in your case?

Federal Statute and the Regulation Defining "Commercial Motor Vehicle"

A "commercial motor vehicle" is defined by federal statute as a motor vehicle used in commerce to transport passengers or property which either:

1) Has an actual or rated gross vehicle weight of at least 26,001 pounds, *or*, if so prescribed by regulation, an actual or rated gross vehicle weight between 10,001 and 26,001 pounds;
2) Is designed to transport at least 16 passengers, including the driver; or
3) With some exceptions, is used to transport hazardous material.

See 49 U.S.C. §31301(4).

The Federal Motor Carrier Administration ("FMCSA") has promulgated regulations which define the term "commercial motor vehicle," but to paraphrase Tolkien, one rule "rules them all."

> Commercial motor vehicle means any motor vehicle that meets the definition of "commercial motor vehicle" found at 49 CFR 382.107 concerning controlled substances and alcohol use and testing, 49 CFR 383.5 concerning commercial driver's license standards, or 49 CFR 390.5 concerning parts 390 through 399 of the FMCSRs.

49 CFR 381.110.

Part 390 – Federal Motor Carrier Safety Regulations; General

The most general definition states that "[u]nless specifically defined elsewhere," a commercial motor vehicle is a self-propelled or towed motor vehicle used in interstate commerce to transport passengers or property which:

1) Has an actual or rated gross vehicle or gross combination vehicle weight of 10,001 pounds or more.
2) Is designed or used to transport more than 8 passengers—but is not for compensation;
3) Is designed or used to transport more than 15 passengers for compensation; or
4) Is used to transport hazardous materials.

See 49 C.F.R. §390.5.

Thus, in general, a CMV is a vehicle which weighs more than 10,000 pounds. But, not so fast! A CMV is more specifically defined in two other parts of the FMCSA rules.

Part 383 – Commercial Driver's License Standards, Requirements and Penalties

The rules of Part 383 [49 C.F.R. §383.101 – 155] are applicable to every person who operates a CMV in interstate commerce, as well as their employer(s). 49 C.F.R. §390.3(b); 49 C.F.R. §383.3(a). In Part 383, a CMV is defined as a vehicle used in interstate commerce to transport passengers or property, if the vehicle meets one of the following three descriptions:

1) Group A (commonly known as "Class A") Combination Vehicles consisting of a power unit with a gross combined combination weight rating ("GCWR") or gross combination weight ("GCW") of 26,001 pounds or more, whichever is greater, and a towed unit(s) with a GVWR or GVW of 10,000 pounds, whichever is greater;
2) Group B ("Class B") Heavy Straight Vehicles which have GVWR or GVW's greater than 26,001 pounds; or
3) Group C ("Class C") Small Vehicles which do not meet Group A or B requirements, but are either designed to transport 16 or more passengers or are used for the transportation of hazardous materials.

See 49 C.F.R. §383.5.

So, unless it is being used to transport Hazmat or 16 or more passengers, a vehicle which weighs 26,000 pounds or less is *not considered a CMV* under Part 383.

Part 382 – Controlled Substances and Alcohol Use and Testing

Again, a specific definition of "commercial motor vehicle" is found in Part 382, which prescribes how, whether, and when motor carriers must drug and alcohol test their employees. In Part 382, a CMV is defined as a vehicle used in commerce to transport passengers or property if the vehicle:

1) Has a GCWR or GCW of 26,001 pounds or more, inclusive of a towed unit(s) weighing 10,000 pounds;
2) Has a GVWR or GVW of 26,001 or more pounds;
3) Is designed to transport 16 or more passengers, including the driver; or
4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

See 49 C.F.R. §382.107.

So, unless it is being used to transport Hazmat or 16 or more passengers, a vehicle which weighs 26,000 pounds or less is *not considered a CMV* under Part 382.

If There Are Three Definitions of "Commercial Motor Vehicle," Which One Applies?

Unfortunately, this requires the typical (and frustrating) lawyer answer: It Depends. Specifically, it depends on what is alleged in the complaint. Plaintiffs must specifically allege which FMCSA rule(s) have been broken. General allegations that defendants "violated FMCSA rules at 49 C.F.R. §350.1 *et sequitur*" will not suffice, especially if negligence per se is alleged. If plaintiff fails to specifically identify the rule(s) broken, alleges violation of Part 383 (operating a CMV without a CDL), or alleges violation of Part 382 (operating a CMV without proper drug & alcohol testing)—then the specific definitions of those parts apply and you will want to consider dispositive motion practice.

The rules of Part 383 require a CMV operator to have a CDL for the type of commercial vehicle being operated. *See* 49 C.F.R. §383.23(a). Operation of a Class A or Class B vehicle without a Class A or Class B CDL *is* a violation of §383.23. However, operation of a Class C vehicle which weighs between 10,001 and 26,000 pounds without a CDL is *not* – though notably, many states require operators to have a non-CDL/Class C license in such instances. See *Frohardt v. Bassett,* 788 N.E.2d 462 (Ct. App. Ind. 2003). Likewise, Part 382 requires motor carriers and drivers to engage in pre-employment, random, post-accident, and reasonable suspicion testing for drugs and alcohol. *See* §382.301–307. Operation of a Class A or Class B vehicle without proper drug & alcohol testing *is* a violation of Part 382, while operation of a Class C vehicle which weighs between 10,001 and 26,000 pounds without such testing is *not*. Plaintiffs, generally, must allege and prove that the vehicle weight exceeded 26,000 pounds to prevail on a theory of negligence for violation of Parts 382 and 383. There is no "trucking" case here.

However, if the complaint alleges violation of almost any other FMCSA rule, then the definition in §390.5 will apply. *See e.g.,* 49 C.F.R. §381.110 ("Commercial motor vehicle

means any motor vehicle that meets the definition of "commercial motor vehicle" found at… 49 CFR 390.5 concerning parts 390 through 399 of the FMCSRs"); *Knutson v. Schwan's Home Serv.,* 870 F. Supp. 2d 685, 691-692 (D. Minn. 2012) ("The definition of commercial motor vehicle for purposes of the CDL requirements [Part 383], however, does not control other regulations."); *Midwest Crane & Rigging, Inc. v. Fed. Motor Carrier Safety Admin.,* 603 F.3d 837 (10th Cir. 2010) (applying §382.107 to regulations pertaining to drug and alcohol testing [Part 382], and §390.5 to Part 396 – Inspection, Repair, and Maintenance). Parts 390–392 apply the general definition of CMV found in §390.5. *See Highsmith v. Tractor Trailer Serv.*, No. 2:04-CV-164-WCO; 2005 U.S. Dist. LEXIS 46156; 2005 WL 6032882 (N.D Ga. Nov. 21, 2005). Part 393—Parts and Accessories Necessary For Safe Operation—specifically adopts §390.5. *See* 49 C.F.R. §393.5. Part 395—Hours Of Service Of Drivers—also apply the definition in §390.5. *See Cerutti v. Frito Lay, Inc.*, 777 F. Supp. 2d 920, 927 (W.D. Pa. 2011).

Thus, if the complaint alleges violation of Parts 390–399, plaintiff is right. Your client may be perplexed (or apoplectic) as to how a pickup could possibly be subject to trucking regulations, but the fact is that an 11,500 pound pickup truck *is* a CMV. Bear in mind that the motor carrier and driver may be exempt from some aspects of those regulations, but you'll have to argue the exemptions. You would be unlikely to prevail if you argue the truck is not a CMV or that the FMCSA rules do not apply to the vehicle. You will need to prepare the client and driver to shift into high gear and put the hammer down on this trucking case.

Mitchell Hedrick *is an associate of Heyl Royster Voelker & Allen PC, in Peoria, Illinois, who focuses his practice in the areas of trucking, construction, employment law, and general tort defense. Mitch is also active in commercial litigation. He serves clients in many diverse industries, including a heavy focus on transportation, construction, and manufacturing. Mitch frequently appears in state and federal courts, administrative agencies, and arbitration panels. Mitch handles all aspects of litigation, ranging from pre-suit accident investigations to representing clients at trial—where he has successfully tried multiple cases to verdict.*