

Legal Briefs: There Are Limits To Discovery

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A suit against your driver and your company may mean that you are open to limitless discovery. A Federal Court in North Carolina recently granted our motion to limit discovery requests from the plaintiff's attorney seeking logs, satellite tracking, and drug testing documents. The decision in that case demonstrates your rights and potential ability to limit these "standard" requests that are all too common from plaintiffs' attorneys.

It has become all too familiar. An accident involving a truck evolves into a lawsuit. You are sued and immediately served discovery. You are hit with numerous interrogatories and requests for documents.

In reviewing this discovery, you find many of the questions have little, if anything, to do with the facts of this case. You find that the documents requested are for a protracted period of time, and of questionable relation to this particular case.

They seek months of logs and satellite tracking records. They demand receipts, fuel records, delivery documents, and other "trucking documents," despite the fact that few, if any, are relevant.

This discovery is exemplary of a knee-jerk reaction by the plaintiff's bar in any case involving a "truck." The same boilerplate "truck" discovery is propounded regardless of the specific facts of the case and without any basis in law or logic. A litany of records are demanded because it is a "truck" case, blind to the irrelevance of these rote requests to the specific facts of the case.

What you have received are forms from books or seminars that are presented as "trucking discovery." Rather than expending the time and effort to familiarize themselves with the applicable regulations, plaintiffs' attorneys too often

proceed with the simplistic notion that all of this information and documents are necessary, because the books and seminars say they are.

Their lack of comprehension of the federal regulations is quickly betrayed by pressing for any relation between the voluminous material requested and the regulations that govern our industry. This was the result we achieved in Federal Court in North Carolina.

That case arose from a rear end accident. Plaintiff's attorney, true to form, propounded voluminous discovery, seeking a month of logs and satellite tracking, a week of load documents, and post-accident drug and alcohol test results.

We objected to the post-accident test results based upon 49 C.F.R. §§40.321, 40.323. We noted that pursuant to these regulations, a driver's drug and alcohol records are confidential and may not be produced without a court order and limitations upon their dissemination.

We objected to the production of driver logs or satellite tracking records beyond those we produced for the eight days before the accident. We also objected to the production of any load documents other than that which was on the truck at the time of the accident.

Plaintiff, unsatisfied that we had not voluntarily capitulated to his "standard" requests, filed a motion requesting that the Court compel us to produce these other documents. Plaintiff claimed the documents for the full 30 days were relevant to the issue of any fatigue of the driver.

We opposed the motion, noting that only eight days of logs and tracking were relevant. We asserted that Federal regulations establish the number of hours

a commercial driver may drive on a daily basis and cumulatively over an eight (8) day period, pursuant to 49 C.F.R. §395.3.

We had produced the logs for that period, documenting compliance with the regulations on a daily and eight day basis. We further provided the satellite records for those eight days, verifying the accuracy of the logs. We then argued that in light of documented compliance during the applicable period, records for the next 22 days have absolutely no relevance.

The Court agreed, and denied Plaintiff's Motion. First, the Court held that there was no relevance to the records beyond the eight days in the absence of any violations with that period or allegations of fatigue by the plaintiff.

The Court further held that we correctly objected to the voluntary production of the post-accident drug test records. The Court then, pursuant to the procedure in the federal regulations, provided for the production of the test subject to confidentiality.

You need not be subjected to limitless demands for discovery. Applying the Federal Regulations as the basis for relevance, a reasonable limit can be established and your burden can be restricted.

