



Duties and Responsibilities of Commercial Truck Drivers Driving in Fog

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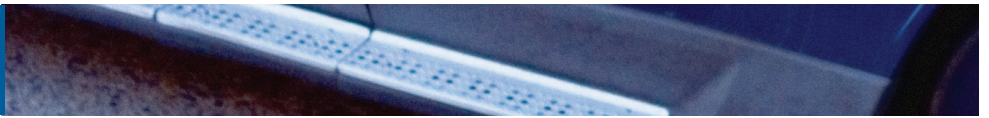
"The best advice for driving in fog is do not."

"Sometimes we need the fog to remind ourselves that all of life is not black and white." While this uplifting piece of advice may apply to some of us it certainly does not to commercial truck drivers. At least, it shouldn't. Federal and state regulations make clear that operating a commercial vehicle in foggy weather simply should not be done. And as trial lawyers helping injured victims of commercial motor vehicle collisions, it is incumbent on us to know the rules of the road that apply to truck drivers who dare to drive in the fog. Knowing these rules and understanding how they apply will help you effectively and successfully prosecute your commercial trucking case. As will be discussed below, and unlike the sage adage above, when it comes to commercial truck drivers operating their trucks in the fog, it is a matter of black and white. As the commercial driver handbook in our jurisdiction, California, makes perfectly clear: "*The best advice for driving in fog is do not.*"

CASE EXAMPLE

Let's start the discussion with a recent truck underride collision case we handled in central California. On the morning of January 20, 2022, a 30-year-old woman was driving westbound on the highway in the heart of Kings County's dairy farm community on her way to work. As she approached an intersection, she suddenly saw what she described as "a giant steel wall" in front of her. She slammed on her brakes but couldn't avoid crashing and sliding underneath the

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"...per the federal regulations, truck drivers must use extreme caution when driving in fog."

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"giant steel wall." What she did not know was that seconds before she reached the intersection a commercial truck driver who had been driving eastbound on the highway operating a giant Freightliner milk tanker truck made a left turn directly into her lanes of travel. The "giant steel wall" that she crashed into and slid under was the commercial driver's milk tank.

The driver of the tanker truck held a Class A commercial driver's license and was working for a milk and dairy logistics company in California. When interviewed by the police officer after the collision, he told the officer that it was "very foggy" at the time of the crash. These were the buzz words. After receiving the traffic collision report and reading what the truck driver told the cop, we knew that the case—at least from a liability perspective—had to be centered around



the truck driver's dangerous decision to drive his truck in the fog and how he knew, or at least should have known, that was something he should not have done.

THE "FOGGY" RULES OF THE ROAD

The first place to look for any rules and regulations when it comes to commercial trucking cases is the Federal Motor Carrier Safety Regulations (FMCSR). The FMCSR contains the minimum standards for commercial trucking companies and their drivers. If a driver does something that violates one of the regulations, or operates his or her truck in a way that is otherwise inconsistent with the expectations set forth in the regulations, you can—and should—argue that constitutes an automatic presumption of negligence.

When it comes to fog, the FMCSR sets forth specific guidance for commercial truck drivers. Specifically, Section 392.14 states that "*[e]xtreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by...fog...adversely affect visibility or traction.*"

This section of the FMCSR is very important for two reasons. First, it states that the commercial driver must use *extreme caution* when driving in hazardous conditions. This subjects the truck driver to a higher standard of care. Commercial truck drivers, like the one who caused the collision in our case, are hauling around giant trailers and tanks—in excess of 26,000 pounds—that wreak havoc if not handled in a safe and cautious manner. And second, Section 392.14 defines fog as a hazardous condition. Accordingly, per the federal regulations, truck drivers must use extreme caution when driving in fog.

Given the importance of the foregoing regulation in our case, we made sure to have a copy of Section 392.14 by our side during the deposition of the truck driver. At the deposition, we made sure he acknowledged his duty to abide by

the federal regulations in general and what his obligations in particular are as a commercial truck driver when driving in the fog. Here are some excerpts from his testimony:

Q: And as a professional commercial truck driver, you know you have to be knowledgeable of the federal motor safety regulations, correct?

A: Yes.

Q: And would you agree that it's important for professional commercial truck drivers to follow the standards and rules in those regulations?

A: Yes.

Q: Now, would you agree that fog is considered to be a hazardous condition as set forth in the safety regulations?

A: Yes.

Q: Would you also agree that when you're faced with hazardous conditions as a professional commercial truck driver, you should use extreme caution?

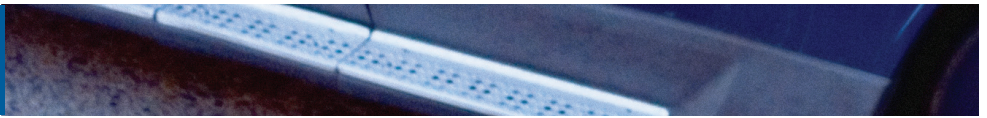
THE WITNESS: Yes.

In addition to the above, Section 392.14 packs another big punch. It goes on to state that "*[i]f 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.*" In other words, if it's foggy before the trip starts, don't drive. And if it becomes foggy during the trip, pull over and don't drive. This is a really good part of the section to commit to memory when prosecuting these cases. It's a simple rule that makes a lot of sense. And, unlike non-commercial drivers like us, this part of the regulation imputes an additional duty on the truck driver contemplating driving in foggy conditions. Whereas we are typically judged on how we were driving at the time of the collision, this section makes clear that truck drivers are not only judged on their driving at the time of the collision but



"It's a simple rule that makes a lot of sense."

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"...States also implement best practice guidelines for commercial truck drivers."

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also on whether they should have chosen to drive in the first place. Accordingly, this section will always call into question whether the commercial truck driver exercised reasonable care if he was, in fact, driving in fog.

At the driver's deposition in our case, we used this rule to establish he knew he was supposed to pull over if it became too foggy.

Q: And would you agree that if weather conditions become sufficiently dangerous due to fog, the operation of a commercial motor vehicle such as a tractor/trailer should be discontinued and pulled over to the side of the road?

A: Yes, I have understood that you can, yes. You can pull over. You can wait and you can call your boss, tell them what's going on and to hold on until the fog lifts.

Here is the full text of the section:

§ 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.

Aside from the federal regulations, states also implement best practice guidelines for commercial truck drivers. In California, the DMV's Commercial Driver Handbook has a specific section on driving in the fog. Section 2.12 provides not only a host of do's and don'ts for commercial truck drivers driving in fog but also sets forth general safety considerations about driving in fog. For instance, Section 2.12 states that:

- Fog can occur at any time;
- Fog on highways can be extremely dangerous;
- Fog is often unexpected, and visibility can deteriorate rapidly;

2.12 – DRIVING IN FOG

Fog can occur at any time. Fog on highways can be extremely dangerous. Fog is often unexpected, and visibility can deteriorate rapidly. You should watch for foggy conditions and be ready to reduce your speed. Do not assume the fog will thin out after you enter it.

The best advice for driving in fog is do not. It is preferable that you pull off the road into a rest area or truck stop until visibility is better. If you must drive, be sure to consider the following:

- Obey all fog-related warning signs.
- Slow down before you enter fog.
- Use low-beam headlights and fog lights for best visibility even in daytime, and be alert for other drivers who may have forgotten to turn on their lights.
- Turn on your 4-way emergency flashers. This will give vehicles approaching you from behind a better opportunity to notice your vehicle.
- Watch for vehicles on the side of the roadway. Seeing taillights or headlights in front of you may not be a true indication of where the road is ahead of you. The vehicle may not be on the road at all.
- Use roadside highway reflectors as guides to determine how the road may curve ahead of you.
- Listen for traffic you cannot see.
- Avoid passing other vehicles.
- Do not stop along the side of the road, unless absolutely necessary.

- You should watch for foggy conditions and be ready to reduce your speed; and
- Do not assume the fog will thin out after you enter it.

These general safety considerations should be incorporated into your questions at the deposition of the driver.

Q: In addition to the federal safety regulations, as a professional commercial truck driver, you also know you have to be knowledgeable about the California commercial driver's license handbook policies and procedures?

A: Perhaps if I understood you, then yes, yes.

Q: You agree that fog on highways or freeways can be extremely dangerous?

A: Yes.

Perhaps the most important part from Section 2.12 though is the straightforward advice it gives to commercial truck drivers: *"The best advice for driving in fog is do not. It is preferable that you pull off the road into a rest area or truck stop until visibility is better."*

Since truck drivers must read the DMV rules on commercial truck driving before getting their Class A licenses, they will have to admit to this sound advice at deposition:

Q: Do you remember reading in the California commercial driver's license manual that it says the best advice for commercial truck drivers driving in fog is to pull off the road into a rest area or truck stop until visibility is better?

A: I learned that, yes. I did learn that. I knew that. I knew that.

Q: And you would agree that the California commercial driver's license manual is a good guide for how to operate and drive a tractor/trailer?

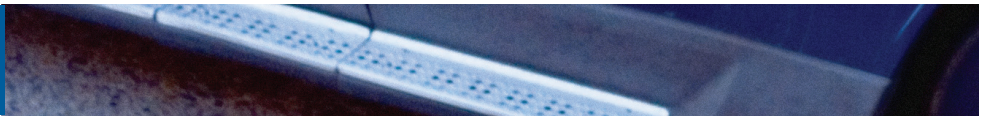
A: Yes, yes.

Finally, even if the facts of your case do not justify the truck driver pulling over to the side of the road because, for instance, the fog did not reduce visibility, he still needs to comply with certain elevated duties of care pursuant to Section 2.12. Those include:

- Obeying all fog-related warning signs;
- Slowing down before entering fog;

"...even if the facts of your case do not justify the truck driver pulling over to the side of the road because, for instance, the fog did not reduce visibility, he still needs to comply with certain elevated duties of care."

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"Despite knowing all of this before he got behind the wheel of his truck...he decided to 'go for it.'"

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- Using low-beam headlights, even in daytime;
- Turning on 4-way emergency flashers; and
- Avoid passing other vehicles.

PUTTING IT ALL TOGETHER

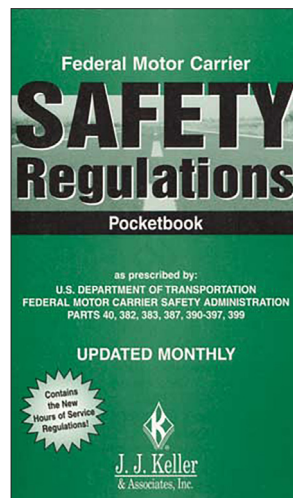
In our case, the truck driver was driving a massive Freightliner milk tank truck in fog on a freeway with limited



visibility. Pursuant to his own testimony, the driver knew that as a professional truck driver he had a heightened standard of care operating his truck on the morning of the crash in those conditions. Further, despite testifying that he did not receive driving safety training from the trucking logistics company he was working for, he knew that he was to abide by the standards and regulations set forth in the California Commercial Driver Handbook and in the Federal Motor Carrier Safety Regulations. Indeed, he testified that he knew he had to use extreme caution when

driving his truck in hazardous conditions caused by foggy weather. He testified that he was aware of the federal safety regulations stating that "[i]f conditions become sufficiently dangerous, the operation of a commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated."

He also testified that he knew fog on highways can be extremely dangerous as a professional truck driver. He knew that the guidelines set forth in the California Commercial Driver Handbook are the best practices for professional truck drivers operating trucks like the one he was driving at the time of the collision.



Despite knowing all of this before he got behind the wheel of his truck on the morning of January 20, 2022, and despite him knowing that it would take him several seconds longer to clear his tank across the eastbound lanes of the highway, he decided to "go for it" and made an extremely unsafe and dangerous left turn into oncoming traffic. What is perhaps even more startling, and is contrary to what he told the police officer at the scene, is that he testified that he never even came to a complete stop before turning left. This is extremely dangerous under any condition, let alone in the "very foggy" weather conditions that existed at the time of the collision.

Based on the above, we were able to establish that the driver was solely to blame for causing the collision. Not only did he violate the CVC by making an unsafe left turn and failing to yield to oncoming traffic, but he also violated the standards and regulations relating to driving in fog set forth in the best practice

guides for professional truck drivers. At the end of the day, there was no question that his actions on the morning of the incident fell way below the standard of care for professional truck drivers.

OTHER CONSIDERATIONS

In addition to knowing the applicable federal and state regulations in a fog case, you'll also want to check the weather reports for the day prior to the collision to determine if fog was in the forecast. This is something that commercial truck drivers should be checking for prior to starting their routes. And if fog is in fact in the forecast, certainly ask the driver at his deposition what adjustments, if any, he made to his planned route in light of the inclement weather conditions.

As in any other commercial trucking case, you'll also want to be sure to retain the appropriate experts. In the case above, we hired not only an accident reconstruction expert but also a trucking standard of care expert. These professionals provided a wealth of information to us about the specific issue in our case—what obligations the commercial truck driver had when driving his truck in the fog.

And finally, it's always good practice to send FOIA requests to the FMCSA and DOT relating to the trucking company's compliance with federal and state regulations and history of accidents. Be sure to identify the trucking company in the requests by its DOT and MC numbers, and be as specific as possible regarding what documents and information you want.

In conclusion, driving in fog is extremely dangerous. Unfortunately, we see commercial truck drivers doing it all too often despite best practices guidelines and regulations in their industry telling them not to. When they do and someone gets injured in a collision that they cause, plaintiff lawyers need to be prepared to diligently prosecute the case for their injured clients. Knowing the rules of the road and how to use them effectively in your case will help you achieve fair and just results for your clients.

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