

The Effective Rapid Response to an Accident: Relationships Matter



Steven F. Stanaszak and
Andrew R. Brehm*



Motor carriers are well aware of the significant legal and financial impact caused by catastrophic accidents. As such, the goal for a motor carrier is to minimize, and ideally eliminate, the number of catastrophic losses on the road. However, no matter how much focus is put on safety, accidents happen at a substantial cost. In 2016, there were over 4,000 fatal crashes involving large trucks or buses.¹ In 2017, the number of fatalities due to large truck accidents reached 4,761—a 29-year high.² Motor carriers who have been involved in such accidents understand the significant costs. According to the Federal Motor Carrier Safety Administration (“FMCSA”), the average cost of a truck accident involving a fatality is \$3.6 million,³ but even less-serious commercial motor vehicle accidents involve significant costs. On average, an accident involving any injuries costs nearly \$200,000.

Thus, when accidents happen, the goal remains to initiate a rapid, privileged investigation into the loss and, ultimately, protect the motor carrier from financial exposure. The concept of rapid response or emergency response “teams” has been written about *ad nauseum*. Although a great plan takes time to implement, the written document created is only as good as the team implementing it.

A rapid response to a traumatic accident creates a fluid overlap of developing

issues, most of which should be overseen by your counsel to ensure the response is not only thorough, but privileged. On scene, counsel plays the role of investigator, civil litigator, negotiator, counselor, and sometimes criminal attorney, all at the same time. None of these roles are stand alone and, to effectively represent the motor carrier, each shifting role requires not only an understanding of accident-related law, constitutional law, the FMCSRs and various state statutes and case law, but also the pragmatic skill set to navigate the waters in what is often a chaotic environment. This article focuses on the relationship between the motor carrier, the motor carrier’s counsel, and the local authorities who must lead their investigation of a catastrophic accident.

Understanding the Rights and Obligations at the Accident Scene

Often one of the first thoughts of a motor carrier who is involved in a catastrophic accident is to retain nearby counsel to enable a rapid response. This is an appropriate response given what is at stake. But above and beyond just sending an attorney is the importance of being able to navigate the dynamics of conflicting or conjoining rights, obligations, and interests at the accident scene. These fluid factors are founded upon the legal regime at play. To navigate the rapid response waters, an understanding of the applicable laws is a must.

While it is common knowledge that law enforcement officers have an affirmative duty to investigate an accident, it is less known that those affirmative investigative duties may extend to the driver of the commercial motor vehicle and, in turn,

the motor carrier. For example, Wisconsin Statute § 346.67 broadly provides that the operator of a vehicle involved in an accident shall reasonably stop at the scene, investigate and provide contact information, exhibit his or her operator’s license to the person struck, and render reasonable assistance to any injured person.

Most other states place similar investigative duties upon drivers involved in an accident resulting in injury.⁴ And, most states have accident reporting statutes that require drivers to immediately report accidents and spawn various other cooperation obligations.⁵ Notably, these duties to cooperate do not automatically cease in situations where the commercial motor vehicle driver was at fault or the “accident” was intentional.⁶

The FMCSRs create further affirmative duties for motor carriers. Section 390.15 requires motor carriers to make accident records available to an FMCSA representative and provide reasonable assistance to the FMCSA in the investigation of any accident, including “providing a full, true, and correct response to any question of the inquiry.” Section 382.303 of the FMCSRs requires post-accident drug and alcohol testing of commercial drivers involved in accidents where there is a loss of life or a bodily injury requiring immediate medical transportation coupled with a driver citation. And, some legal requirements that spawn from the nature of operating a commercial motor vehicle alter what ostensibly

*Scopelitis, Garvin, Light, Hanson & Feary, P.C. (Milwaukee, Wisconsin)

might otherwise be considered the constitutional rights of the driver or motor carrier. For example, in *New York v. Berger*, 482 U.S. 691 (1987), the U.S. Supreme Court held that an administrative warrantless search may be constitutionally permissible in “pervasively regulated industries” where: (1) there is a “substantial government interest that informs the regulatory scheme pursuant to which the inspection is made;” (2) “the warrantless inspections [are] necessary to further the regulatory scheme;” and (3) “the statute’s inspection program . . . must provide a constitutionally adequate substitute for a warrant.” *Id.* at 702-03. Multiple courts have applied the *Berger* test to sustain the constitutionality of state laws that allow for warrantless searches of commercial motor vehicles.⁷

Further complicating the matter, numerous state courts have struck down versions of state administrative inspection statutes based on the failure to meet the *Berger* test.⁸ Having an updated understanding of the applicable administrative inspection laws in every state where a motor carrier operates would require consistent, exhaustive legal research which motor carriers and truck drivers cannot be expected to learn. This adds a further layer of uncertainty to any accident scene, and strongly militates in favor of having expert local counsel in each jurisdiction where the motor carrier operates.

Thus, by way of operating commercial trucks in public, motor carriers face exposure to potential warrantless searches of their trucks. Of course, this exposure is not limitless. See *State v. Pompa*, 414 N.J. Super. 219, 997 A.2d 1107 (App. Div. 2010) (while an officer could perform a warrantless administrative search of a truck, searching the closet of the sleeper berth and the duffel bag of the truck driver exceeded the lawful scope of inspection); see also *United States v. Steed*, 548 F.3d 961, 974 (11th Cir. 2008) (a commercial truck search turning up marijuana was permissible, even if Alabama’s administrative inspection statute was unconstitutionally vague, because the inspecting officer had an objectively reasonable basis to rely on the statute). These “deep in the forest” intersecting legal issues further exemplify the complexity of the legal landscape at the scene of an accident

involving a commercial motor vehicle. Ultimately, under state and federal laws and the FMCSRs, almost any accident resulting in injury will give rise to an affirmative duty of the driver and motor carrier to cooperate in some fashion with law enforcement.

Like other states, Wisconsin adopts the federal safety regulations through the Administrative Code⁹ and provides the Wisconsin State Patrol with authority in this arena. As a result, the Wisconsin State Patrol has investigation units which enforce the state and federal laws. When the state reviews a carrier under federal law, it acts as an “agent” and refers the cases to the FMCSA to be prosecuted through civil actions. Given the enforcement protocol, the state agency is typically the “lead agency” to receive grants under the Motor Carrier Safety Assistance Program (MCSAP) and to work alongside the FMCSA investigators to reach the goal of reducing accidents and providing uniform commercial motor vehicle programs.¹⁰ As explained by retired Wisconsin State Patrol Sergeant Mark Abrahamson,¹¹ “For this reason, state authorities typically provide the most thorough and consistent investigations because its investigators are well-trained on all aspects of accident inquiries.” He notes, however, “If the investigating agency is not a state agency and not certified to conduct CMV inspections (very few local/county agencies are certified), it is unlikely you will find a comprehensive CMV post-crash inspection and carriers are left on their own.” Although many states have communicated to “local” agencies their desire to be contacted and dispatched to crashes involving a CMV meeting the definition of “Accident” in Part 390.5, this does not automatically happen.

The quality of the investigation lands squarely in the jurisdiction of the event and their level of training, exposure to, and knowledge of the CMV regulations. According to Abrahamson, “It is conceivable that a serious local crash unknown to a state agency could be investigated with nothing more than a basic crash report with key evidence being released without preservation. A local or county officer not trained specifically in CMV enforcement may not recognize violations of the FMCSR. In Wisconsin, for

example, only about 130 officers are trained and certified. In those local jurisdiction situations, you cannot reasonably assume they know the rules and the extent of liability a carrier may be exposed to and here is where most emphasis should be placed to be “on scene” to protect your client from lost evidence and situational awareness to defend the client in litigation.”

To muddy the waters further, a motor carrier must consider another fundamental question: What happens when a crime is implicated? Without diving too deep into the complex world of criminal law, it is important to note that individuals, including a commercial driver involved in a serious accident, have a right against self-incrimination in custodial interrogations. This right may apply in both criminal and civil proceedings.¹²

In a catastrophic truck accident, there may not be a clear line between what is a civil accident investigation and a criminal investigation. Just as worrisome for the motor carrier is that what may start as a civil accident investigation can, as more facts become known, morph into a criminal investigation.

Notably, multiple courts, including the U.S. Supreme Court, have held that state investigative duty statutes do not infringe on the Fifth Amendment right against self-incrimination.¹³ From a motor carrier liability perspective, this means that your driver must legally cooperate with law enforcement to some extent, even in an accident situation where a crime is implicated. Failure of a driver to comply with this duty may result in obstruction of justice issues.¹⁴

Of course, the motor carrier retains some rights in the immediate aftermath of an accident. Even if the motor carrier must give way to some administrative search of the tractor, it does not lose its property rights. These rights include the right to maintain and access data from the electronic control module (“ECM”) and the right to protect the property of the motor carrier and driver. The motor carrier also retains certain rights to conduct an internal investigation regarding the accident, which necessarily implicates some access to the vehicles involved in the accident, the ability

to speak with the driver, and the opportunity to search for witnesses. Moreover, from a liability perspective, the motor carrier's rights and obligations are somewhat intertwined with that of the commercial motor vehicle driver—negligence findings will likely be imputed to the employer or contracting entity—and even criminal actions by the driver may have implications on the motor carrier.

This summation of the pertinent legal regime only scratches the surface of the myriad of legal rights and obligations at an accident scene that may be in play depending on the situation. Legally, the immediate aftermath of an accident is dynamic, and the legal regime is the foundation for what can and does occur in a rapid response situation.

Facilitating the “Ground Game” at a Rapid Response

Understanding the legal rights and obligations that exist in a serious accident allows the sophisticated motor carrier to comprehend the various rights and obligations—not as clearly defined boundaries, but rather overlapping spheres of requirements. A dynamic additional layer becomes part of the equation when you consider these overlapping spheres with the varying interests of (a) the law enforcement officers investigating the accident; (b) the commercial motor vehicle driver; and (c) the motor carrier and the attorney representing them. Put differently, the law in the books informs the rapid response, but the practical application of that same law drives the rapid response. Sophisticated motor carriers will understand the interests of the actors at play in light of the legal regime in order to most effectively navigate the emergency response waters and protect their interests in serious accidents.

Conflicting and Competing Interests at the Accident Scene

At least at an initial glance, the interests of the motor carrier in a serious accident appear to be conflicting with the interests of the law enforcement officers seeking to investigate the accident. This is because

they do, in fact, have different direct interests. According to Elm Grove Chief of Police James P. Gage,¹⁵ who oversees a force of 17 officers in a suburb of Milwaukee, Wisconsin, “Law enforcement priorities start with scene safety to ensure the scene does not get any worse; cause additional crashes; or involve hazardous material that may threaten the area. Second, is rendering aid to any injured parties and coordinating fire and ambulance assistance. Third, is conducting the investigation to determine cause and any criminal implications that may be related to the cause.” He notes it is also important to understand that all police view motor vehicle accidents the same general way:

The term accident implies that they are unavoidable, when almost all accidents are avoidable. Therefore, a number of states, including Wisconsin, have moved toward referring to all accidents, as crashes. Crashes can be intentional (a potential criminal event) and not intentional, but avoidable. Not intentional, but avoidable, crashes are mostly related to a driver being under the influence of some mix of inexperience, inattentiveness, fatigue, controlled substance, alcohol, or a failure to properly maintain a mechanically safe vehicle. In some cases, true act of God events, like unexpected falling trees and roadway sinkholes, may alleviate some or all driver culpability, but bottom line, most crashes have a chain of events leading up to the crash that started due to driver incompetence, or the failure to maintain a road safe vehicle.

Although ensuring that people and property are unharmed is important to carriers, the interests of the motor carrier—and emergency response attorney derivatively—are clearly to investigate and protect against liability. It is easy to envision how these interests conflict. The law enforcement officer may have an immediate interest (and legal duty) to interview the commercial driver. However, the motor carrier has an interest in ensuring the driver does not unwittingly expose the company to liability;

that the driver is calm and receiving the proper mental health assessment; and that the chaotic situation does not give rise to further problems (for example, statements to investigators based on estimates, or even worse, mere guesses).

A motor carrier does not get to pick where an accident occurs. Sergeant Abrahamson notes that accident scene investigations can vary based on the agency involved and the community you are in. For example, state agencies generally are the most efficient and consistent investigators due to frequency and knowledge base. In the Wisconsin State Patrol, the chain of command at the scene is important and seeking out the Incident Commander (IC) is a key to any access whatsoever. According to Abrahamson, “The IC will typically step back and oversee the crash scene and all communications. They are the ones to build confidence with to gain access early into the event.” He also points out, “Any access may be very limited at first as they are processing the scene. However, they will know the motor carrier obligations and understand why you are on scene.”

In contrast, smaller agencies may provide only superficial “local treatment” wherein the crash report is written, and the agency is then done with the investigation. Chief Gage notes, “Twenty years ago, every accident was diagramed, photographed statements collected. Now, if we weren't notified in a timely manner, drivers are directed to complete a self-report crash form on their own. If it is timely (vehicles still on scene), we will respond and take down the basic information of name, address, insurance carriers and collect statements. No photographs are taken, and the diagrams are very rudimentary. We are basically screening these events for any offenses (operating while impaired, other traffic violations, etc.). If there is no injury, death or underlying crimes, it is impractical to be proving causation for the insurance carriers. Many large and busy police departments may not even respond to property damage only accidents and will direct drivers to report to an area police station or direct them to complete a self-report crash form.”

With no photos, statements or other documentation, Abrahamson remarks, “This

is where I advise a driver to document the scene immediately after and perhaps keep a recorder in their pocket going to record conversation and 'excited utterances.'" He also points out that in addition to the varying investigation levels described above, many DOT agencies have set up accident investigation sites for not only safety, but to avoid the perceived economic cost of keeping roadways closed for certain investigations. He presumes that this also adds to the evidentiary nightmare for carriers and their counsel.

Scene Interaction

Counsel for carriers at the scene of a catastrophic accident encounter numerous levels of on-site access. From local authorities openly treating counsel as a part of the investigation process, to accident locations being restricted from any access for two city blocks, the right of entry will vary significantly depending on the agency involved.

Chief Gage explains the thought process regarding public access as follows:

Large complex scenes may have officers establishing inner and outer perimeters. As a result, outer perimeter officers may not allow anyone into the scene who is not emergency personnel, leaving family and legal counsel in the position of having to wait for information and access to their client. The outer perimeter officer may not even know who is involved and may not have any specific information about the incident. In these cases, the officer may advise interested parties where to go to wait for more information, or they may collect contact information to have investigating officers contact interested parties at a later time. Maintaining the integrity of the crime scene and catering to the needs of family and counsel can be conflicting and emotional. Unfortunately, you rarely have more than one shot to get it right at the crime scene, so feelings may get hurt.

According to Abrahamson, "Family is often allowed *towards* the scene, but

certainly not on it. The IC will make a judgment call and allow family to be nearby and acknowledge loved ones. This can be a very difficult call to make given the need to follow death notification protocol, complete scene evidence preservation and ensure proper chain of custody."

When it comes to lawyers on scene, Abrahamson indicates it is less common. Personally, Abrahamson believes that because counsel have a higher standard of ethics to follow and they are one of the gatekeepers to the judicial system, they should be viewed more favorably if they identify who they represent and what their role is for the carrier. Chief Gage notes, "I've had counsel show up on-scene at the same time as my officers on occasion. The process of sorting out who is present and why will always be a part of our job, but ultimately, if a representative can be of assistance in the gathering of information, we will generally accept the input as long as it doesn't hinder our investigation."

Reality-Based Evidence Preservation

Carriers and counsel know too well that sometimes it is the seemingly "minor" accident which becomes a significant injury claim years later in the form of difficult to defend brain injury, PTSD, and medical claims where a plaintiff is out to get paid. Moreover, it always seems that *these* cases are the ones which were poorly documented up front with limited preservation efforts because no one—including both the carrier and local police agencies—thought it was a serious accident. This problematic case is made worse when the driver no longer has a relationship with the carrier. All of this results in both a liability and damage nightmare for carriers and their counsel.

How does a carrier balance a cost-effective accident program when faced with varying investigation levels and the risk that even minor accidents will become nightmare litigation? Abrahamson's advice is simple: "A carrier should always get law enforcement involved no matter how minor the accident seems. Even if the agency does not write a formal crash report, there will at least be an incident report most likely noting minimal damage and no injuries." This

can minimize fraudulent claims to some extent. Likewise, Chief Gage indicates, "Our job is to protect the community. A key part of it is to assist with accidents because regardless of the severity, tempers can flare when both drivers are faced with what becomes a major disruption in their day and both parties think the other is responsible. Once the emergency is handled, everyone needs to understand that these accidents by and large become a civil matter outside the scope of our mission."

The reality is that the investigation done on any accident will vary based on the agency involved, the particular officers involved, the time of day and, ultimately, the perceived severity of the accident by both the carrier and the local agency. Thus, a carrier is largely relying on a driver and a company representative on the phone to make decisions on necessary preservation efforts. This is a prudent time for carriers to consider reaching out to counsel in the area to, at a minimum, consult on the accident facts, use local contacts to explore additional information and, ultimately, make preservation and investigation decisions based not on the inconvenience of the accident, but on the factors already described and the reality that each carrier is very much a target.

The Expanding Use of Technology

Cloud-based data maintained by carriers has been a game-changer for counsel handling rapid responses. The immediate access to engine and location data, and even front and rear facing cameras, allows counsel to sometimes have more information than the agencies arriving on the accident scene. Likewise, the expanding use of body cameras for local agencies enhances the investigative process and many times verifies basic facts of an accident in real time.

New technology comes with opportunity and costs as illustrated in a recent situation where attorneys for a motor carrier were called to perform a rapid response investigation of a fatal accident. The accident was factually unique, especially from a reconstruction perspective, as it was not immediately clear to law enforcement what had happened. Within minutes of

being retained, the transportation attorney received and analyzed outward and inward dash camera footage from the commercial motor vehicle. The attorney then arrived at the accident scene with a good understanding of what had occurred while law enforcement officers remained confused. In this example, counsel was able to communicate with the lead agency and share the video from an iPhone at the scene.

Abrahamson notes, "It is situations like this that support my opinion that the relationship between law enforcement and carriers needs to be one of cautious cooperation. Law enforcement should welcome any evidence like this which focuses the investigation." From counsel's standpoint, the ethical issues which arise when the video is negative to the carrier is the downside to this technology and requires thoughtful advice on how and when to disclose the information given the carrier's duty to cooperate. Chief Gage agrees and ultimately welcomes the interaction for obvious reasons:

Representatives from the carrier are critical in preserving and obtaining technical information contained in data and video systems. The incident may start out being perceived as adversarial, but in the end all parties are looking for the truth. Initially, preservation orders may be issued for cell phone, vehicle diagnostic data, in-cab video, etc., but in the end it is not uncommon to have company representatives, legal counsel and law enforcement investigators working side by side in collecting this information. Often there is professional objective cooperation among the parties and an understanding that the information "will be what it will be" in establishing the facts of the case.

On the other side of enhanced technology, body cameras are now commonplace and an open records request for accident information should include the request for the video. Although the video is typically redacted, a great deal of information can be gained regarding the individual officers' thoughts, analysis, and impressions as the investigation develops. Counsel and

carrier representatives need to be cognizant that these cameras are recording them. Drivers should be educated on the issue as well. Although access to the video is not immediate due to the need for review and redaction and sometimes criminal holds on "evidence," the video will eventually be produced in some form to be used not only in the initial investigation, but in litigation as well.

Ultimately, all the new technology changes the nature of rapid response investigations and should serve to minimize fraudulent claims and allow for a quicker analysis of liability in certain scenarios. Although a carrier never wants to see data with negative implications, it ultimately helps direct how potential claims are managed from the very beginning. Carriers should therefore welcome the idea of counsel being involved early on in the investigation process for the purpose of ultimately triaging claims and providing meaningful advice on how to move them through the claims process efficiently and effectively.

Harmonized Interests of the Actors

While law enforcement's direct interests may be immediate in nature, such as protecting from immediate harm and property damage, the motor carrier's more long-term liability interests frequently will provide an avenue for cooperation and aligned efforts. Both the motor carrier and the investigator have a strong interest in ascertaining the truth about what happened in the accident, and the investigator cannot fully protect against harm and property damage without knowing the basics of how the accident occurred. Similarly, a motor carrier cannot protect itself and its driver from liability without an understanding of what happened. This overlapping interest provides ways to further synergies in the immediate aftermath of an accident, including the goals of documenting and preserving evidence, accessing and reviewing evidence, and ensuring the accident scene and related property are protected.

In former times, these goals could easily be accomplished independently by law enforcement investigators who would close off the accident scene, take witness

statements, and document and preserve evidence. This could be done and was done exclusive of assistance or cooperation from the motor carrier or its representatives. As trucking technology has increased, this investigative monopoly has become less realistic.

Moreover, like law enforcement agencies which hone their skills by regular training and frequent investigations, counsel on scene also hone their skills, knowledge base and, equally important, relationships with the agencies. As explained by Abrahamson, "Carriers and counsel that share information openly on scene help save valuable time and energy in a stressful process. Agencies are dealing with fatalities, including difficult suicide attempts and incidents involving young drivers. It is human nature that law enforcement will gain trust and confidence in the relationships formed over time with both carriers and their counsel on scene. Ironically, that trust is not forgotten and the word spreads amongst the other officers that, 'that's a good carrier' or 'that attorney can be trusted.' Reputation in the motor carrier industry is not just customer specific but also plays a large role in law enforcement interaction."

Conclusion

All of this begs the question—given the legal complexities and the dynamic interests that intersect in an emergency response situation, how does a motor carrier ensure that its interests are best protected? In a single word—access. Nothing can be done by standing on the outside looking in. Having access allows the lawyer who understands the interplay of the legal rights and obligations to effectively navigate the legal landscape to protect the motor carrier's interests. Access, in turn, also opens the door for attorneys to:

- Ensure that evidence is documented and preserved;
- Identify and interview witnesses;
- Interview the driver, educate him or her on discussions with law enforcement, counsel him or her psychologically, and assist him or her in communicating with law enforcement; and
- Ensure that the motor carrier's property is protected, including ECM and camera data.

The importance of access may be a no brainer. But, simply knowing that you need access is significantly different than understanding how to gain it or actually gaining it. Law enforcement officers have complete control of any accident scene to which a motor carrier's attorney wants access. Conversely, the motor carrier and its rapid response attorney may have access to proprietary data that is beneficial to the police investigation. This presents the opportunity to trade cooperation for cooperation.

The high—and increasing—costs associated with serious truck accidents has placed a rightfully heightened interest in privileged

rapid responses by attorneys in order to protect the motor carrier's legal and financial interests. However, serious accident scenes are complex situations with fluid interplay between various legal issues (civil law, property rights, criminal law, negotiator, and counsel) and practical issues of trading cooperation for cooperation and managing interpersonal and psychological issues. The sophisticated motor carrier will be aware of these issues and retain representation who can navigate the consistently changing, chaotic situations.

In today's litigious atmosphere, an understanding of the shifting legal rights

and obligations is not sufficient to protect the interests of the motor carrier. Rather, the necessities of an effective emergency response cannot be achieved without access. And now, more than ever, motor carriers involved in serious accidents possess instant, valuable information that can be used by their attorneys to facilitate cooperation. It is the knowledge gained, the experiences with local agencies and, probably most importantly, the relationships formed which lead to the access and allow counsel to effectively navigate the legal and interpersonal dynamic to most effectively protect the motor carrier's interest. 

Endnotes

- 1 <https://www.fmcsa.dot.gov/safety/data-and-statistics/large-truck-and-bus-crash-facts-2016>.
- 2 <https://www.trucks.com/2018/10/04/large-truck-fatalities-29-year-high/>.
- 3 <https://www.fmcsa.dot.gov/safety/good-business/safety-good-business>.
- 4 See 625 ILCS 5/11-403; Indiana Code 9-26-1.1; Cal. Veh. Code. § 20000, et seq.; N.Y. Veh. & Traffic Law §§ 600, 603.
- 5 See Wis. Stat. § 346.70; Cal. Edu. Code §§ 20004, 20008; 625 ILCS 5/11-40; N.Y. Veh. & Traffic Law § 605.
- 6 See, e.g. *State v. Harmon*, 2006 WI App 214, ¶ 14 (the term "accident" in Wisconsin's duty to investigate statute means an unexpected, undesirable event "is not limited to unintentional acts or events.").
- 7 *United States v. Ponce-Aldona*, 579 F.3d 1218 (11th Cir. 2009) (sustaining Georgia law on administrative warrantless searches of commercial vehicles); *United States v. Delgado*, 545 F.3d 1195 (9th Cir. 2008) (evaluating Missouri law); *United States v. Castelo*, 415 F.3d 407 (5th Cir. 2005) (evaluating Mississippi law); *United States v. Maldonado*, 356 F.3d 130 (1st Cir. 2004) (evaluating Maine law); *United States v. Vasquez-Castillo*, 258 F.3d 1207 (10th Cir. 2001) (analyzing New Mexico law); *United States v. Fort*, 248 F.3d 475 (5th Cir. 2001) (evaluating Texas law); *United States v. Dominguez-Prieto*, 923 F.2d 464 (6th Cir. 1991) (analyzing Tennessee law).
- 8 See *State v. McClure*, 74 S.W.3d 362, 373-76 (Tenn. Crim. App. 2001); *State v. Landrum*, 137 Ohio App. 3d 718, 739 N.E.2d 1159, 1165 (2000); *State v. Hone*, 177 Ariz. 213, 866 P.2d 881, 883 (Ct. App. 1993); *Com. v. Bizarria*, 31 Mass. App. Ct. 370, 578 N.E.2d 424, 429 (1991).
- 9 Wis. Admin Code. Trans Ch. 325 - Wis. Admin. Code Trans. Ch. 327.
- 10 <https://www.fmcsa.dot.gov/grants/mcsap-basic-incentive-grant/motor-carrier-safety-assistance-program-mcsap-grant>.
- 11 After 27 years on the force, Mark Abrahamson retired from the Wisconsin State Patrol in 2017 as the State Patrol Northeast Region Inspector Sergeant. He served on the FMCSA Passenger Technical Advisory Committee, was a Motor Carrier Enforcement Investigation Unit Supervisor and is a Certified Passenger Vehicle Instructor for FMCSA Training Center. He currently works as a Risk Advisor for HNI Risk Advisors with offices in Milwaukee, Chicago and Minneapolis.
- 12 See *Graham v. Durr*, 433 P.3d 1098, 1100 (Alaska 2018) (involving parallel criminal action for second-degree murder against intoxicated commercial driver and civil action against driver's employer.)
- 13 *California v. Byers*, 402 U.S. 424 (1971); *State v. Harmon*, 2006 WI App 214; *People v. Samuel*, 29 N.Y.2d 252, 277 N.E.2d 381 (1971).
- 14 See *City of Sunnyside v. Wendt*, 51 Wash. App. 846, 851 (1988) (upholding obstruction of justice conviction of vehicle driver who refused to provide identification after accident); *State v. Graveran*, 188 N.C. App. 166, 654 S.E.2d 832 (2008) (upholding obstruction conviction where driver involved in accident left scene and refused to cooperate with police once found).
- 15 James P. Gage started his career with the Elm Grove Police Explorer Post in 1983. In 1986, Gage was hired as an Elm Grove Patrol Officer and certified as a Nationally Registered Emergency Medical Technician. He was promoted to Corporal in 1989, Sergeant in 1992, Captain in 2001, and Police Chief in 2005. He is a graduate of Northwestern University's School of Police Staff and Command, Class #82, and the Federal Bureau of Investigation's National Academy, Class #252, in Quantico, Virginia. In 1998, he joined Elm Grove Emergency Medical Services as a crew member. In 2000, Gage completed his paramedic training and has since completed additional certification as a Tactical Emergency Medical Service (TEMS) provider, allowing for the delivery of advanced medical care in hostile environments.