

## **MG+M Litigation Alert: The Critical Role of Litigators in Commercial Vehicle Accident Investigations**

In the last several months, [MG+M's Transportation Practice Group](#) has been retained to protect the interests of trucking companies whose drivers were involved in significant New England highway accidents. The recent actions of MG+M's Emergency Response teams that were deployed to accident scenes have solidified the immense utility to trucking carriers of placing litigators at a truck's location within minutes of collision. It is almost a truism that a lawsuit will follow any trucking accident that causes personal injury or property damage. Moreover, in the commercial vehicle context, government agencies (most regularly, through a police force's commercial enforcement unit or "truck squad") are required to investigate the crash, the truck's driver, and trucking company policies. Official investigative reports will issue. Those reports play an acute role in determining whether a potential lawsuit will resolve early or if litigation will be hampered by protracted discovery.

In short, when it comes to commercial trucking litigation, "the devil is in the details," and the earlier litigation counsel becomes involved, the easier it is for a defendant trucking company to meaningfully contribute to an accident's investigation by providing and preserving critical evidence. Additionally, the presence of counsel at accident scenes benefits clients by having on-the-ground resources for witness identification and management, ensuring that investigators' questions are free from ambiguity and contained to the scope of the accident, and that company employees understand their rights at the initial investigation stage.

A recent example illustrates the importance of involving litigation counsel as close to the timing of the incident as possible. MG+M defense counsel arrived on scene of a tractor-trailer highway rollover within two hours after the incident. Police investigators did not begin their survey of the accident scene until after EMS extracted victims (including the tractor-trailer operator), transported them to trauma facilities, and the fire department ensured that the wreckage was safe for investigators and did not pose any environmental risks. The necessary tasks taken by first responders to save life resulted in a very different accident scene from that moment in time immediately following rollover and collision. Here, the first responders used "the jaws of life" to extract the tractor-trailer operator from his cab. This activity displaced critical evidence. Specifically, the truck was equipped with camera systems that were mounted near the top and center of the windshield (facing both driver and roadway) to capture audio and video upon a triggering event such as a hard braking, hard acceleration, cornering, or collision. Police investigators conducted their preliminary assessment of the accident unaware of this equipment. It was not until officers surveyed the scene with counsel did this essential evidence become known because the MG+M attorney, cooperating with law enforcement on behalf of the trucking company, asked them where it was located.

In the end, this one observation by defense counsel completely changed the course of an investigation and likely litigation. The trucking company realized the benefit of its attorney knowing its business, its equipment, and the process by which officials investigate

commercial vehicle mishaps. If counsel did not advise the investigating officer that the truck was equipped with cameras, then the truck would have been released from the accident scene with “real time” video evidence lost. It was later determined that the cameras were inadvertently separated from their mounts by EMS in the process of removing the driver. Authorities later found the cameras in a pile of debris made by firefighters. Without this video evidence, the police accident report—which serves as the foundational basis for any case for civil or criminal liability—would have been very different.

Absent this video evidence, at best, the report would be inconclusive as to the cause of the accident. At worst, blame for the rollover would lie with the truck driver, and by extension, the trucking company. The complete picture, however, might show a motorcycle cutting across multiple lanes of traffic to make an exit and a truck driver doing his best to avoid collision. Tragedy may not always be avoided, but in the context of potential liability associated with the truck, early identification of evidence and prompt participation in accident investigations certainly can curtail the length, expense, and severity of anticipated litigation.