



Severity of Trucking Claims Present Workers' Compensation Challenges in North Carolina - Episode #131

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John Czuba: Welcome to the *Insurance Law Podcast*, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, managing editor of *Best's Recommended Insurance Attorneys*.

We're pleased to have with us today attorney Nicole Tackett from the law firm of Vernis & Bowling with 17 offices across the southeastern US. Nicole is the North Carolina workers' compensation department head for the firm. She graduated from UNC Chapel Hill School of Law in 2000 and has practiced workers' compensation law exclusively since that time.

Nicole, we are very pleased to have you with us today.

Nicole Tackett: Thank you so much. It's a pleasure to be here.

John: Nicole handles claims for a wide variety of industries, and one of her primary specialties is trucking claims. Today, we're going to be discussing trucking claims in North Carolina. Nicole, can you tell us what first generated your interest in trucking claims?

Nicole: Sure. It actually goes back to my childhood. My family is involved in all areas of the trucking industry. My father was a driver as well as my uncles and cousins. Other relatives were involved in the financial aspect of the trucking industry, providing financing for owner operators. I also have relatives that sell trucks and fix them.

It's kind of been in my blood since I was a little girl. I've always been around trucks. I've always been fascinated by them and, from a legal perspective, it's a really interesting area of the law.

John: Can you tell us what are some of the special issues that arise when handling trucking claims?

Nicole: Sure. There are a lot of unique issues that come up in the trucking area. That's mainly due to the nature of the job and the drivers that perform it.

First of all, there are a lot of jurisdictional issues that come up in claims, and that's just because of the job itself. For example, you could have a company that is headquartered in North Carolina, you could have a driver who resides in South Carolina, and you could have an accident that takes place in Georgia. All three of those states would be appropriate jurisdictions in which this particular claim could be handled. What can be a little bit frustrating about trucking claims is that maybe that exact scenario happens.

The claim, the adjuster of the insurance company, starts handling the claim out of Georgia because that's where the accident actually occurred. Then a year, a year and a half later, the claimant files a motion to move the claim to North Carolina.

That's something that can 100 percent be done provided that all the statutory requirements are met, but it can be a real surprise when you're adjusting your reserves on a claim, particularly when a claimant switches to a state where the average weekly wage limitations are much higher.

For example, I think that Georgia maybe caps off at around 350 a week, but North Carolina, it's over 940. A switch like that can really have a crazy high impact on a claim and the cost issues associated with a claim.

Also, it's important to remember too that although insurance companies can go ahead and start handling a claim in a particular jurisdiction, usually it's the jurisdiction where the accident occurred, it's always the claimant's choice to choose to file it in another jurisdiction. Sometimes those issues create some really nasty surprises well into a claim.

That's definitely one issue that particularly comes up a lot in trucking claims just because of the nature of the job, and that you've got men and women that are driving all over the United States so a number of different jurisdictions can come into play.

Also, in trucking claims, you'll see that the injuries tend to be pretty significant, particularly back claims. That's due to a variety of different reasons. First and foremost, truck drivers tend to be an aging population. A lot of drivers that I see that get injured are probably in their 50's.

They come to the table with all the problems that somebody in their 50's would have. A degenerative problem, perhaps diabetes, high blood pressure, high cholesterol, all these things contribute to a person's overall health and ability to heal from a workplace accident. That's definitely something that you see a lot in the trucking claims.

Also with being a truck driver, it's a very sedentary position for long periods of time. Oftentimes too when you're faced with work conditioning and maybe having to build up some muscle or some body strength as part of the healing process, you may be dealing with a claimant that is perhaps a little bit unconditioned and has some other health issues that just make it a little bit harder to heal and to go forward from that particular type of injury.

Also, too, it's difficult to get a claimant back into the workforce doing light duty in the trucking area.

We all know the statistics. The sooner you get somebody back to work, even if it's sorting paper clips or just doing something, the better they're going to heal and also the more likely they're going to be able to return to work full time at some time in the future.

Conversely, the longer they're out of work, the more likely it is that they're going to stay out of work. For trucking companies, there's not a lot of light duty positions that are around. You're pretty much a truck driver, and that's pretty much what you are.

Sometimes it can be difficult in those claims when you're dealing with a back injury, you might have some age and some non-work related condition factors that just make it difficult to get somebody to maximum medical improvement as quickly as possible, compounded by the fact that it's hard to even get the person back at light duty and kind of keep the claimant still in the swing of things from a business sense during the healing period. So that's often challenging in claims.

Finally, too, there's a huge wage issue, particularly in North Carolina where we have really high limitations on the average weekly wage. Truck drivers earn a great income. That's wonderful for them, but it's difficult for us.

When a claimant reaches maximum medical improvement, he or she can no longer go back to driving a truck. It's hard to get somebody into suitable employment and a different job within that same wage range.

A lot of times, you'll see trucking claims where a claimant may be at maximum medical improvement and there might not really be a lot of future medical treatment that's anticipated. Sometimes there's light or medium level restrictions that the employer can no longer accommodate.

It's our job under North Carolina law to get this particular claimant back at work in a real position within these restrictions in a close, doesn't have to be exact but in a close wage range.

Sometimes that is really difficult to do if you've got somebody that lives in a rural area of North Carolina, may have been driving a truck for 30 years and really hasn't done much else other than that.

That person is earning \$1,500 a week per injury wages. It's hard to come up with a job for that type of person with restriction and that same kind of wage bracket. You'll see that trucking claims can sometimes be really, really expensive, not from a medical perspective but from a wage replacement perspective and what it costs to settle those claims.

John: Nicole, are trucking claims investigated any differently from other types of claims?

Nicole: I wouldn't say that they're investigated any differently. However, trucking claims provide us with a real unique opportunity to take advantage of some things that you wouldn't see in a normal claim.

For example, drivers are required to have their annual DOT physical. In a normal claim, that might happen in an office. We're not going to have access to that particular claimant's regular annual physician visit or physical or anything like that. We're not going to have that information, but with a driver, you are going to have the DOT physical.

You're going to have a really good idea of what that particular claimant's problems are or aren't or at least what the claimant has reported to the DOT. That can be a very useful tool to kind of figure out what the person's pre injury status is and how it's changed if at all following a workplace injury.

It also is a good tool to kind of understand what pre injury conditions may be that you're looking at that are going to have an impact on the workers' compensation claim. Also, too, there's other tools available that can really be useful investigating a claim. For example, the cameras that can be installed either inside or outside the truck.

I just had a recent case where, due to the driver cameras that were located inside the cab, we were able to see what that looked like. Based on what witnesses could see from the outside of this truck crashing in a guardrail, it looked like it would have been a compensable accident.

However, the driver camera showed us that the driver actually had a seizure while he was driving which was a non-compensable event or ended up being so. In any event, it gave us some real insight and enabled us to deny a claim, to have a defense to a claim where otherwise we wouldn't have been able to do that.

Also, there are other tools if there is a bad crash – you've got the black box. You've got all kinds of tools to find out if what actually happened in an accident, what was the cause of it.

Also, if you can kind of replay the accident, does that mechanism of accident cause a particular type of injury that a driver is claiming? A lot of times you'll see too, was this guy driving when he was supposed to be driving? Was he actually driving? Was he on the road? Or was he not supposed to be on the road?

The travel logs can be real useful in obtaining that information as well. The driver claims really kind of give us a lot more investigative tools than other claims would normally do.

John: Is occupational accident insurance a good substitute for workers' compensation insurance?

Nicole: It depends on the state that you're in – definitely not in North Carolina.

In fact, a few years ago, a statute, 9719.1, was especially enacted to basically ensure that pretty much all truck drivers are covered under workers' comp insurance. The purpose was to specifically exclude OCAC insurance policies from acting as a substitute or a replacement from true workers' comp insurance.

Under that statute, it says that sometimes a trucker can be considered to be an independent contractor. That's typically the scenario where you will see an OCAC policy come into play. When maybe somebody is driving under a lease or a lease purchase option, they're not considered an employee of the trucking company.

Instead of providing workers' comp for the individual, they're given the option of an OCAC policy. Those premiums are taken out of any type of paycheck or wages. That's typically the scenario in which this type of insurance comes into play.

Under the North Carolina statute...I could go on for hours about 9719.1. It's a very intricate and interesting statute, but the gist of it says that even if you determine that a driver is in fact an independent contractor versus an employee, the driver is still going to be covered under the employer's workers' comp insurance policy unless the driver is driving under his or her own DOT number.

In 99 percent of the cases, the driver is not driving under his or her own DOT number. Under the lease situations, typically it's the company who has the DOT number.

Pretty much, if you're driving a truck in North Carolina, you're probably going to be considered to be somebody's employee and covered under some type of workers' comp insurance policy, which in fact is the purpose of this statute.

Those are claims that we can settle, and usually that's what people want to do. They don't want those claims litigated. They want to go ahead and settle that, and they want to make sure that the injured driver is taken care of and the situation is resolved.

During those settlements, any issues under the OCAC policy can be resolved at the same time as the pending workers' comp claims as well. They can get a little bit complicated in our state, but they're definitely something.

It happens quite frequently where OCAC policies are in play in the trucking industry. They're definitely something that can be settled and resolved in our state, although it's a little bit tricky.



In North Carolina, whether a truck driver is an independent contractor or not, there is no substitute for workers' compensation insurance in our state. You either have it or if you don't and the AG's office gets wind, then you're going to get in trouble.

John: Nicole, do you have any cautionary advice for trucking companies operating in North Carolina with respect to their handling of workers' compensation claims?

Nicole: I would say the most important thing that companies can do is to have really consistent policies. Have consistent policies towards reporting and handling claims.

Also, companies need to think about injuries before they happen and have really good health and safety preventative measures in place. Have safe trucks, have safe loading docks, and have a real plan in place for medical treatment and how that's going to be handled and, if possible, to have maybe a light duty program in place with a third party vendor so that those drivers can heal well and quickly and be out on the road again.

John: Nicole, thank you so much for joining us today.

Nicole: Thank you very much.

John: That was Nicole Tackett from the Vernis & Bowling law firm with 17 offices across the southeastern US. Special thanks to today's producer, Frank Vowinkel.

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I'm John Czuba, and now this message.

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