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TRUCK WRECKS

Anatomy of a Truck Wreck

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I. A TRUCK WRECK IS MORE THAN JUST A CAR WRECK

In my experience in trying cases for over four decades, truck wrecks are some of the most enjoyable cases to try. A close look into truckers, the trucking industry, and truck wrecks can reveal drug use, mechanical problems, lack of sleep, sketchy qualifications and dubious ethics. Trucks cram onto our highways, both day and night, jockeying for position among passenger cars, hurdling past grandmothers, challenging the temerity of commuters and travelers, and stopping at nothing to complete their runs on time. Some companies use mottos such as "On time, every time." Trucks are often loaded beyond capacity and patched together to make that final haul. The trucking industry involves not only big professional common carriers and shippers, but hundreds of small-volume, short-sighted, hand-to-mouth operators. Many of these smaller operators happen to own a tractor-trailer rig and have no policies or ethics other than to get their loads from point A to point B for the least cost and highest profit.

When the sins of the trucking industry are visited upon trusting passengers, motorists or pedestrians, you need to know what, how, and whom to attack to vindicate your clients' rights. Contrary to popular belief, a truck wreck is more than just a large car wreck. The failure to appreciate this fact can quickly turn a \$5 million case into a \$1 million case.

II. FATIGUE AS A PREDICTABLE CAUSE OF TRUCK WRECKS

There can be no doubt that fatigue and drowsiness are two of the more predictable causes of truck wreck catastrophes. Truck drivers are at special risk due long, monotonous hours spent behind the wheel. Fatigue and drowsiness negatively impact overall driving

performance, slow reaction times, decrease situational awareness, and impair judgment. See "Assessment of a Drowsy Driver Warning System for Heavy-Vehicle Drivers," NHTSA, DOT HS 811 117 (April 2009). A study by the Adelaide Centre for Sleep Research demonstrated that drivers who have been awake for 24 straight hours have an equivalent driving performance to a person who has a blood alcohol level of .10 grams per 100 milliliters of alcohol — in excess of most states' legal intoxication limit of .08 grams per 100 milliliters of alcohol.

There are difficulties in determining the precise number of fatigue-related wrecks because often there is no simple, reliable way for the investigating authorities to confirm definitively that fatigue was a factor in a wreck. This results in differing estimates of the level of fatigue-related wrecks. Nevertheless, two things are clear: 1) research based solely upon accident reports consistently produces lower estimates of the number of fatigue-related wrecks than research based upon in-depth studies, and 2) no matter what criteria are used to study and assess fatigue-related wrecks, these wrecks constitute a serious threat to travelers on the nation's roads.

The National Highway Traffic Safety Administration (NHTSA) has estimated that there are 56,000 sleep related crashes annually in America, resulting in 40,000 injuries, and 1,550 fatalities. NHTSA also has estimated that approximately twenty percent of "Safety critical events" (crashes and near crashes) include driver drowsiness as a contributing factor. *Id.* Studies of crashes on the Pennsylvania Turnpike and the New York Thruway, two of the busiest stretches of road in the country, found that about fifty percent of the fatal crashes on these roads were caused by drowsy drivers.

Due to the large impact of drowsiness and fatigue on transportation safety, NHTSA and the Federal Motor Carrier Safety Administration have partnered with the research community to study the problem. This research has included the study of potential "drowsy driver detection systems." Unfortunately, the research concerning such systems has been inconclusive due to the high number of false alerts generated by the

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systems, and difficulties with acceptance of the systems by drivers and fleet management personnel. *See* "Assessment of a Drowsy Driver Warning System for Heavy-Vehicle Drivers," NHTSA, DOT HS 811 117 (April 2009).

III. FEDERAL MOTOR CARRIER SAFETY HOURS OF SERVICE REGULATIONS

A trucker's fatigue can be caused by a lack of sleep before beginning a run, medical issues, the consumption of alcohol or drugs, or sleep disorders. More often than not, however, the fatigue is simply the product of the number of hours that the trucker has been on the road. With some exceptions, discussed below, the Federal Motor Carrier Safety Regulations (FMCSR) specifically limit the number of hours that a trucker may be on the road, depending upon whether the vehicle is a "property-carrying" or "passenger-carrying" vehicle.

A. General Rule for Property-Carrying Vehicles

The general rule for "property-carrying" vehicles is that "no motor carrier shall permit or require any driver ... nor shall any such driver drive .." -

1) more than 11 cumulative hours following 10 consecutive hours off duty, or

2) for any period of time after the end of the 14th hour after coming on duty following 10 consecutive hours off duty, except when a property-carrying driver complies with the provisions of section 391.1 (o). *See* 49 C.F.R. § 395.3(a).

The exception referenced above (section 391.1(o)) exempts the driver from the second requirement if:

1) the driver has returned to the driver's normal work reporting location and the carrier released the driver from duty at that location for the previous five duty tours that the driver has worked;

2) the driver has returned to the normal work reporting location and the carrier releases the driver from duty within 16 hours after coming on duty following 10 consecutive hours off duty, and

3) the driver has not taken the exemption within the previous 6 consecutive days, except when the driver has begun a new 7-or 8-consecutive day period with the beginning of any off duty period of 34 or more consecutive hours as allowed by section 395.3(c) *See* 49 C.F.R. § 395.1(o).

Further, motor carriers and their drivers are prohibited from driving for any period after:

1) having been on duty 60 hours in any 7 consecutive if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

2) having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week. *See* 49 C.F.R. § 395.3(b).

B. General Rule for Passenger-Carrying Vehicles

The FMCS impose shorter hours of service on "passenger-carrying" vehicles. The general rule for these vehicles is that "no motor carrier shall permit or require any driver ... nor shall any such driver drive .." -

1) more than 10 hours following 8 consecutive hours off duty, or

2) for any period of time after having been on duty 15 hours following 8 consecutive hours off duty. *See* 49 C.F.R. § 395.5(a).

Further, motor carriers and their drivers are prohibited from driving for any period after:

1) having been on duty 60 hours in any 7 consecutive if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

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