

A red semi-truck is shown from a front-three-quarter perspective, driving on a road. The truck's large black windshield and side mirrors are prominent. The background features a bright blue sky with scattered white clouds and a green field on the right side. The overall scene is brightly lit, suggesting daytime.

Asleep at the Wheel Truck Driver Fatigue

By Kent Emison and David Brose

Driver fatigue has long been considered a danger to the motoring public. Studies by the National Transportation Safety Board (NTSB) and the Insurance Institute for Highway Safety (IIHS) found that driver fatigue is a factor in 1/3 of all truck crashes.

If the truck driver in your case was “fatigued” to any degree, you need to establish whether the fatigue contributed to causing the crash. Usually this “causation” will need to be established with expert testimony (typically medical testimony). A major truck company has told their drivers that while “driver fatigue” will not guarantee a plaintiff’s verdict, evidence that fatigue contributed to causing a collision, will result in fault being assessed to the driver.¹

RECOGNIZING THE DANGER OF FATIGUE-

In 1991, the Office of Crash Avoidance Research, a part of the National Highway Transportation Safety Administration (NHTSA), issued a report identifying driver drowsiness as one of the leading causes of car accidents.² In 1994, NHTSA issued a report summarizing national statistics on the incidence of crashes involving driver fatigue from 1989-1993.³ The NHTSA General Estimates System statistics showed that 56,000 crashes occurred annually in which driver fatigue was cited as the primary cause on police accident reports.⁴ Although passenger vehicles accounted for 95.9% of these crashes, the study found that the problem of driver fatigue was relatively greater for drivers of commercial motor vehicles. The study also found that drowsy truck driver crashes were generally more severe, with a fatality-to-crash ratio 1.7 times greater than passenger vehicles. Fatigue presents a danger not only to the motoring public, but also to truck drivers and their passengers. Fatigue has been estimated

to be involved in 15% of all single vehicle fatal truck crashes. Fatigue has also been identified as the most frequent contributor to crashes in which a truck driver is fatally injured. That fatigue would create such a danger is not surprising, as studies show that being awake for more than 20 hours results in an impairment equal to a blood alcohol concentration of 0.08%, the legal limit in all states.⁷

Despite decades of recognition of the problems caused by driver fatigue, this issue still presents great peril to the motoring public. In 2009, as many as 1.9 million drivers had a car crash or a near miss due to fatigue.⁸ The National Sleep Foundation’s 2009 Sleep in America poll also found that 54% of drivers had driven while fatigued at least once that year, while 28% had done so at least once per month.⁹ The National Highway Traffic Safety Administration estimates that 100,000 police-reported crashes are the direct result of driver fatigue each year, resulting in 1,550 deaths, 71,000 injuries, and \$12.5 billion in monetary losses.

Driver fatigue continues to haunt not only the general population, but also the truck transportation industry. In 1995, the first National Truck and Bus Safety Summit was held in Kansas City, Missouri. The participants in this summit developed a list of 17 priority ranked safety issues facing the transportation industry, with driver fatigue listed as the number 1 issue.¹⁰ Yet, over 20 years later, crashes continue to occur at an alarming rate due



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to fatigued truck drivers. The Federal Motor Carrier Safety Administration (FMCSA) estimates that up to 585 fatalities occurred each year because of fatigued truck drivers.¹¹ In fact, truck drivers reported falling asleep as the critical reason for a crash 7% of the time.¹²

THE CAUSES OF DRIVER FATIGUE - As may be expected, the most common cause of fatigue is lack of sleep. There are also additional factors which can influence driver fatigue, including greater daytime sleepiness, difficult schedules, more hours of work, time of day, age, driving experience, cumulative sleep debt and the presence of a sleep disorder.¹³ For example, according to one study, driving performance among truck drivers starts to decline after 5 hours of driving for those with irregular schedules, compared to 8 hours of driving on a regular schedule.¹⁴

SLEEP DISORDERS/SLEEP APNEA - At least 40 million Americans suffer from chronic, long-term sleep disorders.¹⁵ Doctors have described more than 70 sleep disorders, most of which can be managed effectively once they are correctly diagnosed.¹⁶ One such sleep disorder that is prevalent among truck drivers is sleep apnea. Sleep apnea is a breathing-related sleep disorder that causes brief interruptions of breathing during sleep that can last at least 10 seconds or more, and can occur up to 400 times a night.¹⁷ Some jurors will be aware of sleep apnea. Sleep apnea significantly lowers blood-oxygen

levels and is directly related to driver fatigue. Many truck drivers could be the "poster child" for a sleep apnea patient. The FMCSA has reported that sleep apnea is a major contributor to daytime drowsiness—a condition that could prove deadly for commercial truck drivers and everyone sharing the road with them. The FMCSA has also reported:

"How can sleep apnea affect your driving? Because sleep apnea affects your sleep, it also affects your daytime alertness and performance. Untreated sleep apnea can make it difficult for you to stay awake, focus your eyes, and react quickly while driving. In general, studies show that people with untreated sleep apnea have an increased risk of being involved in a fatigue-related motor vehicle crash. ...you don't have to fall asleep to have a crash. You simply have to be inattentive or less alert - and with untreated sleep apnea; you are not as sharp as you should be.

What level of sleep apnea (mild, moderate, severe) disqualifies a CMV driver? The disqualifying level of sleep apnea is moderate to severe, which interferes with safe driving.

What are the obligations of a motor carrier regarding employees with sleep apnea? A motor carrier may not require or permit a driver to operate a CMV if the driver has a condition – including sleep apnea—that would affect his or her ability to safely operate the vehicle."¹⁸

In any truck crash, discovery should be done as to whether the truck driver had sleep apnea and if so, the severity of the condition and whether he or she had received treatment. Some truck companies have been actually screening their drivers for sleep apnea for several years. However, some drivers who have been identified as high risk for sleep apnea have been allowed to continue driving, without treatment, for years after the determination that they are high risk for sleep apnea.

If sleep apnea is involved in your case, you should have expert testimony to establish that the sleep apnea contributed to causing fatigue in the driver; and further that the fatigue contributed to causing the crash.

The FMCSA states that as many as 28% of individuals holding a commercial driver's license suffer from sleep apnea.¹⁹ Risk signs for sleep apnea include being overweight (body mass index of 31 or more), a neck size 17 inches or greater, daytime sleepiness, falling asleep at inappropriate times, loud snoring and lack of concentration.²⁰ Sleep apnea is much more than an inconvenience to the individual affected. One study found that drivers with untreated sleep apnea did worse on performance tests than healthy alert subjects whose blood alcohol concentration was above the federal limit for driving a commercial motor vehicle.²¹ Another study found that individuals with moderate to severe sleep apnea had an up to

15-fold risk increase of motor vehicle accidents.²² Yet another study found that approximately 1,250 fatal truck crashes that occurred in 2005 could have been attributable to sleep apnea or other sleep disorders affecting commercial drivers.²³

FMCSA EFFORTS TO BATTLE FATIGUE-RELATED ACCIDENTS: Hours-of-Service Regulations

- Another obvious cause of driver fatigue is violation of hours-of-service (HOS) regulations. The Interstate Commerce Commission (ICC) promulgated the first federal hours-of-service regulations (HOS) in the late 1930s.²⁴ The HOS limit the amount of time that a truck driver can both work and drive in a given 24 hour period. The HOS require that truck drivers record their duty status for each 24 hour period of time, including days not spent driving.²⁵ The driver has only 4 choices in recording his/her duty status: off duty/OFF, sleeper berth/SB, driving/D, or on duty not driving.²⁶

Off duty means when the driver is not on duty, he/she is not required to be in readiness to work, or is not under any responsibility for performing work.²⁷ Sleeper berth means time off duty resting in a sleeper berth.²⁸ Driving means time spent actually driving a commercial vehicle. On duty not driving means all time from the time a driver begins to work (or is required to be in readiness to work) until the time the driver is relieved from work and all responsibility for performing work, such as time spent loading/unloading freight, inspecting/repairing/fueling

the vehicle, meals and rest.²⁹

The HOS remained largely unchanged for a period of more than 60 years from 1940-2003. In April of 2003, the FMCSA enacted the first significant change to the HOS in more than a half a century. Under the HOS as amended, a driver could not operate a property-carrying commercial motor vehicle without first taking 10 consecutive hours off-duty.³⁰ A driver could then be on duty for up to 14 consecutive hours, driving consecutively for up to 11 consecutive hours during that time.³¹

Beyond limiting the daily activity of a driver, the HOS also restrict total driving and on duty time, stating a driver may not drive after 60/70 hours on duty in 7/8 consecutive days.³² The application of a 7 or 8 day period depends on whether the motor carrier operates its vehicles every day of the week.³³ A driver may only restart a 7/8 consecutive day period after taking 34 or more consecutive hours off duty.³⁴

The latest amendments to the HOS took effect on July 1, 2013, designed to improve safety of the motoring public by reducing truck driver fatigue. It is estimated that these regulations will save 19 lives and prevent approximately 1,400 crashes and 560 injuries per year, resulting in \$280 million in savings in fewer crashes. Although the new regulations retain the current 11-hour daily driving limit and 14-hour work day, they limit the average work week for truck drivers

to 70 hours (reduced from 82 hours), further requiring truck drivers to take a 30 minute break during the first 8 hours of their shift.³⁷

INDUSTRY EFFORTS TO BATTLE FATIGUE

- The American Transportation Research Institute recently announced that it has launched a commercial driver fatigue management site, in connection with the FMCSA, Transport Canada and various motor carriers.³⁸ The North American Fatigue Management Program website, www.nafmp.com, provides free information available to the trucking industry on screening sleep disorders, fatigue management technology and developing a corporate culture to reduce driver fatigue.

In addition, certain motor carriers have enacted programs to identify drivers who may be subject to fatigue. For example, in 2006, Schneider National initiated a program to screen and treat drivers for sleep apnea.³⁹ In accepting the National Sleep Foundation's 2007 Healthy Sleep Community Award a Schneider safety executive stated:

"Ideally, we expect our program will serve as a model for the entire truck industry. The industry needs to generate awareness of this problem, educate drivers to the dangers of untreated sleep apnea, provide resources to help them get treated and ultimately make the roads safer for everyone."⁴⁰

Other efforts in the industry to combat fatigue include a pilot test program of various fatigue management technologies in conjunction with the FMCSA. These technologies included the use of a wrist worn SleepWatch®, an infrared system monitoring eyelid closures known as the Copilot® system, a lane tracker system known as SafeTRAC®, and a power steering system used to reduce physical work of a driver known as Howard Power Center Steering.⁴¹

CONCLUSION:

If there is a potential that driver fatigue was involved in your case, do aggressive discovery to evidence the fatigue and get qualified experts to make the fatigue admissible. This will go a long way to getting your client a fair recovery in their case.

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