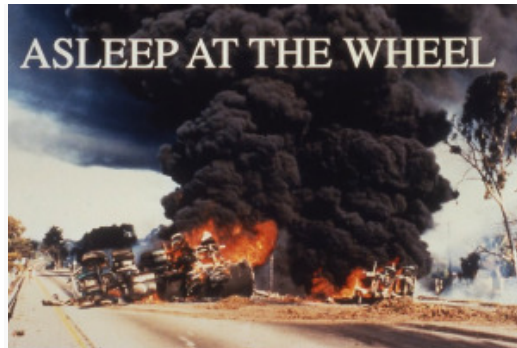


Asleep at the Wheel – What Happens When Commercial Truck Drivers Don't Rest?

By: Chris D. Glover
Beasley, Allen, Crow, Methvin, Portis, & Miles, P.C.
Montgomery, Alabama



One of the most pressing dangers for everyone on the roadway today, truck driver fatigue, is also one of the most preventable. As far back as 1995 it was found that driver fatigue was the number one safety issue in trucking.ⁱ The problem continues to plague the industry:

Fatigue is just not as simple as revising hours of service regulations. It's about compliance. It's about enforcement. It's about fatigue risk-management programs that encompass education and training... The Board sees a lack of compliance with the hours of service regulations in many of the investigations that we are involved in. And some of those are not just minor; some of them are fairly egregious.... What people in the trucking industry need to realize is they are professionals. They are professional drivers, and the standard of care and the level of expectations for them and their performance are higher. When they make poor choices it's not just a reflection on personal decision, but it impacts the entire industry because there's an expectation that there's robust training and education, oversight, enforcement. And I think that, often times in our investigations, we find that there is a lack of all of those- not just the personal discipline, but company and the carrier's oversight by the enforcement authority.ⁱⁱ

When looking at accident statistics, the numbers for truck drivers and fatigue are quite grim.ⁱⁱⁱ Of these grim statistics, it was found that fatigue in a truck driver could be compared to the impairment caused by the consuming of alcohol. A truck driver remaining awake for 17 hours had the same effect as the truck driver having a BAC of .04%, the legal limit for a commercial truck driver.^{iv} This same 17 hour time period without sleep resulted in response times 50% slower than that of a well rested driver.^v A study also showed that truck drivers with 21 hours of sleeplessness had the equivalent of 0.1% BAC which may be constituted as drunk driving.^{vi} In effect, truck drivers who fail to obtain adequate rest will likely have impaired motor skills beyond that required to operate a large commercial vehicle. These drivers are a danger not only to themselves but others that share the interstates and roadways alongside them.

In one study, it was found that fatigue leads to: increased lapses of attention; slower information-processing and decision making; longer reaction time to critical events; more variable and less effective control responses; decreased motivation to sustain performance; increased

subjective feelings of drowsiness; decreased watchfulness, and decreased alertness to danger.^{vii} There is little dispute that these problems have the potential to become deadly behind the wheel of a tractor trailer truck. Thus, it was no surprise that researchers found that driving while drowsy increased an individual's crash risk by four to six times.^{viii}



Federal regulations prohibit a driver from operating a commercial motor vehicle when impaired or likely to become impaired through fatigue.^{ix} Those same regulations prohibit a motor carrier from allowing their driver from operating a vehicle under those same conditions.^x The federal government uses the Hours of Service regulations in place to limit when and how long a commercial motor vehicle driver may operate a commercial vehicle.^{xi} These regulations are based on an exhaustive scientific review and are designed to ensure truck drivers get the necessary rest to perform safe operations.^{xii}

On December 29, 2010, the Federal Motor Carrier Safety Administration published a Notice of Proposed Rulemaking regarding commercial truck driver hours of service. The stated purpose of the new proposed Rule is “[t]o promote safety and to protect driver health” as well as “reduce safety and health risks associated with long hours.”^{xiii} The proposed rule would make seven changes from current requirements, which are designed to promote rested drivers and help insure fatigued drivers are not behind the wheel of commercial vehicles.^{xiv} The comment period for the proposed rule ended on March 4, 2011, but the agency has yet to issue final rule making. These proposed regulations are to be applauded and would help insure that fatigued truck drivers were not behind the wheel. However, lowering the hours a truck driver can drive will not alone solve the problem. Commercial drivers must follow and motor carriers must enforce those rules...a job they are currently neglecting in large numbers.

I was recently involved in a wrongful death case that occurred in Auburn, Alabama that highlighted the need for driver's to adhere to the regulations currently in place.^{xv} The driver of that vehicle operated her truck from approximately 6 a.m. in the morning till 3 a.m. the next day resulting in excess of 21 hours on duty time. Shockingly, this was after only being off duty less than the required amount and only having a window of 6 hours to sleep. This fatigued truck driver killed a stranded motorist who was standing beside his parked vehicle. The trucking company was forced to ultimately admit that their driver had violated the Hours of Service regulations that were designed to keep fatigued drivers off the road. That same company had internal documents stating that fatigue kills. The document was sadly true.

Unfortunately, many trucking companies do not have the procedural safeguards in place to reduce the likelihood of driver fatigue and prevent violations of the Federal on duty hour regulations. The same case where the driver operated her vehicle for 21 hours revealed that the trucking company had in excess of one hundred fatigue related Federal regulation violations.^{xvi}

Perhaps more egregious was the fact that the trucking company took the truck from the driver and then gave it back within 6 hours grossly violating the 10 hour off duty rule.^{xvii} It was only a matter of time before this corporate culture of law breaking resulted in someone getting seriously injured or killed.

Truck driver fatigue and violations of the hours of service regulations can result in punitive damages to the trucking industry. This was the case in Sheffield, Alabama when a truck driver that had been on duty for over 16 hours, which was over the HOS regulations at the time, had an accident with a van that was carrying children; luckily there were no fatalities but a verdict for \$2.5 million was awarded to the plaintiffs.^{xviii}

Though it was not the case in *Osborne*, sadly, fatalities can be a very real result of fatigued truck drivers. In 2009 a horrific accident in Miami, Oklahoma occurred when a truck driver began driving at 3am and was in his 10th hour of consecutive driving. The truck driver failed to notice traffic was stopped on the interstate and, at 69 mph, slammed into the back of an SUV and continued to drive over three additional vehicles.^{xix} The accident resulted in the death of 10 people and injured 5 others.^{xx} After an investigation the NTSB found the cause of the accident to be fatigue due to acute sleep loss, circadian disruption associated with his work schedule, and mild sleep apnea.^{xxi} The truck driver had slept for only 5 hours before starting the drive.^{xxii}

As stated in a study directed by a leading human factors/ergonomics scientist, driver's fatigue leads to, among other things: 1) Increased lapses of attention 2) Slower information processing and decision making 3) Longer reaction to critical events 4) More variable and less effective control responses.^{xxiii} Each of the aforementioned consequences may have been a factor in the Texas case of *Ashton v. Knight Transp., Inc.*^{xxiv}

In *Ashton*, an accident occurred when a minor under the influence of alcohol ran a stop sign and collided with the plaintiff's vehicle; allegedly, Mr. Ashton survived the crash and crawled out of the vehicle at which point he was struck and killed by an eighteen-wheeler driven by the Defendant.^{xxv} Records indicate the Defendant Driver had driven over the federally mandated hours of service.^{xxvi} The records showed that Muthee (the truck driver) had been driving in violation of legally permissible hours in the days leading up to the crash and that Knight (the driver's employer) was aware of this fact *before* the accident.^{xxvii} The record also indicated that the Defendants attempted to conceal or destroy various pieces of evidence. A witness stated the truck drove through the debris of the accident at a high rate of speed, made impact with the victim, slowed down and stopped, then drove from the scene.^{xxviii} The Court went on to rule the Defendants spoliated evidence, granted the Plaintiff's Motion for Sanctions, and allowed a claim for punitive damages.^{xxix} The accident shows signs of potential truck driver fatigue and some of the known impairments of truck driver fatigue. If the truck driver stayed within the HOS, it could be argued that the life of Mr. Ashton may have been saved.

It was reported during the writing of this article that a fatal collision in South Carolina involving a tractor trailer was the result of a truck driver who fell asleep at the wheel.^{xxx} The truck driver fell asleep drifted off the road and awoke jerking back onto the road.^{xxxi} It was found this driver suffered from a sleep disorder.^{xxxii} At least three people were killed as a result of the South Carolina incident.



Photo of devastation caused by fatigued driver in South Carolina

Abiding by the regulations set forth by the FMCSA, especially the HOS, can save lives. Since the last major change to the HOS that was done in 2004, the National Highway Traffic Safety Administration (NHTSA) said the trucking industry has never been safer. There was a twenty percent reduction in fatalities involving large trucks from 4,245 in 2008 to 3,380 in 2009. This is the lowest number of annual truck related fatalities in recorded Department of Transportation history and represents a 33 percent decrease in fatalities since the improved hours-of-service regulations first became effective in January 2004.^{xxxiii} The transportation of commercial goods via trucks has benefitted and transformed our country; it has effectively provided Americans with the convenience of goods from across the nation and other countries. The safety of those that operate the CMVs and those they share the road with is paramount. Countless studies and statistics show that a strict enforcement of the HOS is necessary to save lives and increase efficiency of the commercial trucking industry. Accidents involving large trucks will happen, but many, especially those related to fatigue, can be avoided by following the regulations set forth by the FMCSA.

ⁱ March 1995 Federal Highway Administration, National Truck and Bus Safety Summit (U.S. DOT, 1995).

ⁱⁱ NTSB Chairwoman Deborah Hersman American Trucking Association newspaper interview *Transport Topics* (July 12, 2010)

ⁱⁱⁱ Abrams, C., Shultz, T., and Wylie, C.D. *Commercial Motor Vehicle Driver Fatigue Alertness, and Countermeasures Survey*. Santa Barbara, CA: Decision Research, 1997

^{iv} Arendt JT, Wilde GJS, Munt PW MacLean AW. How do prolonged wakefulness and alcohol compare in the decrements they produce on a simulated driving task? *Accident Analysis and Prevention* 2001; 33:337-344

^v Williams, A.M. and Feyer, A-M. Moderate sleep deprivation produces impairments of cognitive and motor performance equivalent to legally proscribed levels of alcohol intoxication. *Occupational and Environmental Medicine*. 57:649-655 (2000).

^{vi} Arendt, et al. (2001)

^{vii} Wylie, C.D., Shultz, T., Miller, J.C., Mitler, M.M., and Mackie R.R. *Commercial Motor Vehicle Driver Fatigue and Alertness Study: Project Report*. Federal Highway Administration Office of Motor Carrier Safety Report No. FHWA A-MC-97—002. Santa Barbara, CA: Essex Corporation, 1997.

^{viii} Klauer, S.G., Dingus, T.A. neale, V.L., Sudweeks, J.D., and Ramsey, D.J. *The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data*. DOT HS 810 594. Washington, D.C.: National Highway Traffic Safety Administration, 2006.

^{ix} 49 C.F.R. 392.3

^x *Id.*

^{xi} 49 C.F.R. 395

^{xii} <http://www.fmcsa.dot.gov/rules-regulations/topics/hos/index.htm>

^{xiii} <http://www.fmcsa.dot.gov/rules-regulations/TOPICS/hos-proposed/HOS%20NPRM.pdf>

-
- xiv *Id.*
- xv *Ed Parish, Jr., as administrator ad litem of Timothy Ndegwa v. Bulkmatic Transport Company, Inc., et al.* 3:09-cv-00762-WKW (U.S. Dist. Ct. MD Dist. Ala.)
- xvi *Id.*
- xvii *Id.*
- xviii *Osborne Truck Lines v. Langston*, 454 So. 2d 1317, 1321 (Ala. 1984)
- xix *NTSB Press Release* (September 28, 2010, ntsb.gov)
- xx *Id.*
- xxi *Id.*
- xxii *Id.*
- xxiii *Wylie, et al.*, (1997)
- xxiv *Ashton v. Knight Transp., Inc.*, 2011 U.S. Dist. LEXIS 17569 (N.D. Tex. Feb. 22, 2011)
- xxv *Id.*
- xxvi *Id* at 67.
- xxvii *Id* at 74.
- xxviii *Id* at 62.
- xxix *Id* at 94.
- xxx http://www.msnbc.msn.com/id/43973325/ns/local_news-greenville_sc/43972173
- xxxi *Id.*
- xxxii *Id.*
- xxxiii *Highlights of 2009 Motor Vehicle Crashes* (August 2010, NHTSA Traffic Safety Facts)



Chris has dedicated his practice to protecting the rights of survivors of catastrophic personal injury and victims of wrongful death. He has represented injured individuals and their families in a wide range of serious injury and death claims, including those that were the result of defective products, car, commercial truck, and workplace accidents.