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Injury Law Alert

Spring 2010

Big Rigs = Big Problems



We all know the feeling: that uncomfortable tightening of the chest we get when we look into our rearview mirror and see an 80,000-pound 18-wheeler truck barreling down on our back bumper. This feeling is not entirely irrational. According to federal statistics, such trucks cause thousands of collisions each year. Given a truck's size and weight, common sense tells us that a collision between a big rig and a car—or even an SUV—is likely to turn out badly for the car or SUV.

In a collision between a truck and a passenger automobile, the fatalities occur in the automobile 98% of the time. To put concrete numbers on the problem, in 2004, such crashes killed almost 5,200 people (12% of all traffic fatalities) and injured 116,000 more. This is the equivalent of 25 fully loaded jumbo jets crashing every year.

Some of the reasons are obvious: Trucks are bigger, heavier, and longer than cars; they need more room to maneuver; and they

take a lot more road to come to a stop. Many collisions involving trucks are caused by the same things that cause run-of-the-mill car accidents: poorly maintained trucks, speeding, overly aggressive driving, failure to yield the right of way, or bad driving conditions caused by rain or snow, etc. However, there are many other causes of these collisions, causes that are very avoidable.

One of the biggest causes of crashes is excessive truck size. Federal law currently limits trucks to no more than 80,000 pounds in

weight, but an 80,000-pound truck is more than twice as likely to be involved in a fatal accident as a 50,000-pound truck; furthermore it causes more “wear and tear” to the roads.

Trucks are also getting longer, with the industry-standard trailer having grown from 40 feet long in the 1960s to 53 feet long today. Longer trucks mean larger blind spots, resulting in more accidents. Additionally, many roads (including interstates) were designed

Continued on page three.

We Are Here to Help

The period of time following an accident is one of confusion and uncertainty. There are many things to take care of. Hiring a good lawyer is one of them.

Many times, people don't know where to go when they need legal help. If you or a loved one has been injured in an accident, call us. We will vigorously represent you and make sure that you are justly compensated for your injuries. That's our job.

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Nursing Home Assaults

Many of us are aware that seniors can face dangers in nursing homes. Residents can receive substandard medical care, be given the wrong medications, or simply be neglected. However, recent data show a rise in new and unexpected problems—assaults, rape, and even murder.

In 2000, there were 5,000 cases of patient-on-patient assaults in nursing homes; by 2003 (the most recent year for which statistics are available), this number had risen to 5,515. During the same period, the number of rapes increased by 51%.

Individuals whose loved ones reside in nursing homes should be aware of the potential for violent assaults.

There are a number of reasons for this increase in attacks on the elderly. As the population ages, nursing homes have become more crowded. More people suffer from dementia or mental illness, which sometimes can cause them to lash out violently. Some nursing homes house younger, mentally ill patients with older, defenseless elderly residents. Finally, some nursing home residents are criminals, elderly sex offenders, or murderers.

Usually, the person responsible for a criminal act is the criminal. However, in many cases, these assaults lead to civil suits against the nursing homes, based on the claim that the nursing home was negligent for not keeping a dangerous

resident away from the victim or for not taking the time to determine which residents are potentially dangerous. The suits argue that a nursing home should be aware of these things and that it should take steps to protect residents from assaults once it knows that a particular person presents some kind of danger to others.

Nursing homes often point to health-care privacy laws and claim that these laws prevent them from issuing warnings about other residents. They also sometimes cite in-

consistent state laws or claim that the costs of background checks and the like are too high for them to bear.

Advocates for the elderly are more likely to cite understaffing, incompetence, and an unwillingness to admit that there is a problem. Whatever the cause, individuals whose loved ones reside in nursing homes should be aware of the potential for violent assaults and should keep their eyes open and not be afraid to ask hard questions of the management and staff.

Prevent Burglary



Approximately every 15 seconds, a house is robbed somewhere in America. A few simple precautions can make your home a less-inviting target and can convince burglars to try their luck elsewhere.

- Install deadbolt locks on all outside doors, and make sure that all windows (not just those on the ground floor) have good, strong locks;
- Keep your property well lit and consider installing outdoor lights hooked to motion sensors—thieves hate it when they can't hide;
- Keep trees and shrubbery cut back from windows so thieves do not have a place to hide;
- If you are leaving town for several days, suspend mail and newspaper delivery, and ask a trusted neighbor to keep an eye on your home;
- If you are not at home, keep a light on so the house looks occupied;
- Consider an alarm system monitored by a reputable security company;
- Keep a car parked in your driveway. Like lights, it makes the house look occupied and stops burglars from backing up a van and cleaning you out.

Finally, remember that even the best precautions do not work if you don't use them! So give your home a security checkup, keep those doors and windows locked, and beat burglars at their own game.

Big Rigs

Continued from page one.

when trucks were shorter, and their ramps and merge lanes were not designed to handle today's longer trucks. As a result, these trucks cross over into other lanes of traffic, increasing the danger of a collision.

Larger, longer, and heavier trucks require more braking time, meaning that they are more likely to be in a collision because they cannot stop. For example, a truck weighing 100,000 pounds can take up to 25% longer to stop than one weighing 80,000 pounds does.

Other truck-related collisions are caused by a driver's inexperience in operating a particular kind or size of truck. Still other collisions are caused by tired truckers who have been on the road for too long and are fatigued. This is an increasing problem with the deregulation of the trucking industry, changes in the ways goods are shipped to a "just-in-time" delivery system, and recent changes in the rules governing how long a trucker may drive before he is required to stop for a rest.

Suits involving truckers are often more difficult to prove than other kinds of collision suits, for several reasons. First, it may be difficult to find the trucker after the collision. The nature of a trucker's job means that he might be involved in a collision in a state far from where he lives and to which he will never return.

Trucking companies are also very skilled in defending themselves against negligence claims (which, to them, are just a part of doing business), and they can be very aggressive in denying claims, because every dollar that they pay out in compensation to accident

victims is a dollar that does not go into their pockets.

Finally, most commercial big-rig accidents involve far more parties than the typical fender bender (the driver, the trucking company, multiple other drivers, the shipper(s), the insurance adjuster, and the insurer, just to name the most common), and the legal relationships among all of these parties can be difficult to unravel.

A person who has been involved in a collision with a trucker is entitled to recover an amount necessary to compensate him for

his injuries. This amount may include compensation for such items as medical bills, time lost from work, pain and suffering, mental anguish, disfigurement, and loss of earning capacity. The complexity of these cases means that you should consult an experienced attorney and should NOT rely on the trucking company's insurance adjuster to look out for your interests.

Call us if you or a loved one has been involved in a big-rig collision. We will be happy to discuss the matter with you and work to get you the compensation that you deserve.

Drug Warning: Oral Sodium Phosphate

Having a colonoscopy can be unpleasant, but it may also be dangerous. Before such a procedure, doctors often ask patients to take oral sodium phosphate (OSP) to clean out the bowels. However, OSP (which is available over the counter) can be very dangerous.

According to the Food and Drug Administration (FDA), OSP has been linked to acute phosphate nephropathy (also known as nephrocalcinosis), a serious condition affecting the kidneys. In patients suffering from acute phosphate nephropathy, calcium-phosphate crystals are deposited in the renal tubes. The effect of this condition can be very serious: Patients may need dialysis, they may need a kidney transplant, or they may die from renal failure.

The problem often is not promptly diagnosed, because the symptoms of acute phosphate nephropathy can vary widely from victim to victim and include such common symptoms as nausea, headaches, drowsiness, pain, bleeding, dehydration, swelling (especially of the feet), and a general lethargy. Although acute phosphate nephropathy does seem to be more common in those over the age of 55 or in those already taking a medication that affects the kidneys, it can strike anyone.

The FDA has recently mandated that OSPs contain a so-called "boxed warning," which is a very serious step. If you or a loved one has used OSP and suffered a kidney injury, contact us. We may be able to help you receive compensation for your injuries.

Tired Truckers Cause Accidents

Of all of the causes of truck collisions, one of the most preventable gets the least press: driver fatigue—in other words, tired truckers.

Although federal law both limits the maximum number of hours that a truck driver is supposed to drive and prohibits truckers from driving if they are “impaired through fatigue,” the fact is that more and more big-rig drivers are taking to the highways without enough sleep. There are several reasons for this, including the relaxed industry regulation that has resulted in less-experienced truck drivers on the road.

Before 2004, the federal government allowed truckers to drive no more than 10 consecutive hours. Statistics from the Federal Motor Carrier Safety Association (FMCSA) showed that the number of fatigue-related crashes jumped dramatically after eight hours of driving and continued to increase through the 10th hour allowed. Despite this evidence, the federal regulations were changed in 2004, and truck drivers are now allowed to drive up to 11 consecutive hours, meaning that there are more tired truckers on the road than ever.

As you might guess, the number of fatalities caused by large trucks has increased, with fatigue cited as a factor in 20% more accidents than under the old law. Interestingly, the FMCSA’s failure to consider the obvious (more time driving = more driver fatigue) has been cited by at least two federal courts that are considering whether these regulations should be allowed to continue.

The deregulation of the trucking industry has also resulted in increased competition among trucking companies, increasing the pressure on drivers to complete their routes quickly. Finally, changes in the ways that goods carried by trucks are distributed, such as the increased use of “just-in-time” delivery, have resulted in tighter deadlines for truck drivers than was the case in the past.

Taken together, all of these factors mean that the pressures on truck drivers to ignore the law and complete their deliveries, even if they are too tired to drive safely, will only increase.

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

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