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### News Story

# Death Of Teen In Truck Crash Settles For \$9.5M Her Parents Claimed Driver Was 'Over Hours'

The parents of a 15-year-old girl killed in a head-on collision with a semi tractor-trailer have settled their Jackson County lawsuit for \$9.5 million.

The settlement is believed to be the largest in Missouri history paid by a trucking company for a single wrongful-death victim.

The parents claimed that the semi driver fell asleep at the wheel and that the company knew he routinely drove over the maximum number of hours allowed by federal law. On the other hand, the defense contended that the driver lost consciousness because of a violent coughing spell — a "cough syncope" — that cut off the supply of blood to his brain.

To prove their theory, the parents subpoenaed the driver's debit card records, which showed the time and location of each of his purchase transactions around the country during the week before the accident — and, according to the plaintiffs' experts, demonstrated that he worked 20 hours more than permitted.

Grant Davis of Kansas City, who represented the parents along with Brian McCallister and Scott Bethune, told Missouri Lawyers Weekly, "Tired truckers who have driven over hours are a huge safety problem in our county, and are causing thousands of unnecessary deaths and injuries.

"This settlement reflects the devastating losses that can be caused by tired truckers. It's also a warning to trucking companies to get their act together."

An attorney for the trucking company did not respond to a request from MLW for comment.

A verdict report in *Doe v. ABC Trucking Company* appears in this issue.

### Tired, Sick Driver

The accident occurred on Aug. 26, 2001 in Saline County. The plaintiff's daughter was traveling west on Interstate 70 with four other people in a pickup truck that was pulling a horse trailer. The group was returning to Kansas City from a horse show in Louisville, Ken. The driver of the tractor-trailer was eastbound in the oncoming lanes, which were separated from the westbound lanes by a median strip.

As the tractor-trailer and the pickup approached one another, the trucker lost control and allowed his vehicle to cross the median strip into the oncoming lanes, where it slammed into the pickup truck at an estimated speed of 70 mph.

The pickup truck was all but obliterated in the fiery crash, and all five passengers were killed, McCallister said. The trucker received only minor injuries.

Lawsuits also were filed on behalf of the four other victims, according to McCallister. Three have been

settled, and the fourth is set for trial early in 2004.

### **Cold Medicine**

The heart of the plaintiffs' case was the claim that the trucker's ability to operate his vehicle was impaired because he was tired from driving over hours. The plaintiffs also claimed that the trucker's fatigue was made worse by his use of an over-the-counter cold medication about an hour before the accident.

Under federal safety regulations, truckers are permitted to drive up to 10 hours a day, and are permitted to put in up to five additional hours of non-driving work, McCallister said. But the regulations also limit the total number of hours that drivers may work in any seven-day period to 70 hours.

According to McCallister, the plaintiffs' expert was able to show that the trucker had worked at least 20 hours more in the previous seven days than is permitted under federal regulations. But to show this, the expert had to probe much deeper than the trucker's own logbooks, he added.

"When it comes to managing truckers' hours, this is a self-policing industry," McCallister said. "And it's an industry in which the truckers have powerful incentive to cheat on their log books because of the way they are paid."

Truckers are normally independent contractors who are paid by the load or the "run," McCallister explained. "Truckers don't make money when they aren't driving," he said. "Truck drivers aren't going to voluntarily pull themselves from behind the wheel."

Most trucking companies have policies in place prohibiting their truckers from driving more hours than is permitted under federal regulations, McCallister said. But those policies are rarely backed up by procedures to ensure that truckers actually obey the regulations.

The policy of the trucking company defendant in this case was to prohibit truckers from entering into their logs that they had driven more than 65 mph. But from the plaintiffs' perspective, it was important to note that the policy did not prohibit truckers from driving in excess of 65 mph; rather, it prohibited truckers from logging that they had done so.

"The unwritten rule of this industry is that truckers are encouraged to drive over the speed limit, to drive over hours and to drive when sick," he said. "The trucking companies have an obvious incentive to get their loads delivered quickly, and they do little to discourage their truckers from ignoring the rules."

McCallister noted that the bills of lading provided by the company to the driver included the notation, "Deliver ASAP."

"The meaning of this is clear," he said. "The company was interested first and foremost in having its loads delivered quickly, rather than in having safety regulations obeyed."

The plaintiffs claimed that to avoid leaving a paper trail that would establish that he was driving over hours, the trucker routinely compressed times and distances he entered into his logbooks, using minimum standards contained in the company guidelines as a template.

As a result, most of his daily logs passed the log audits performed by the company. But those audits were inescapably flawed by being based entirely on the self-reported information of the trucker, McCallister said.

"For an audit to function effectively, the audit should be checking the information reported by the trucker against objective information provided by an outside source," he said. "Otherwise, I'm not sure how you could call it an audit at all. In these audits, the auditors just take what the truckers say at face value."

The trucking company in this case had at least two tools at its disposal which it could have used to perform genuine audits of its truckers' logbooks, McCallister said.

One was a software program that the company had installed on its computers, Rand McNally Milemaker,

which would have permitted auditors to determine whether truckers were accurately reporting the distances they were traveling.

The second tool, even more powerful, was time and location data about the truckers that was generated through the truckers' use of a debit card provided by Comdata Corp.

"Comdata has marketed a debit card to trucking companies which drivers can use to buy groceries and gas, withdraw cash, and so forth," he said. "They can even load payroll onto the cards."

A typical trucker uses the cards three or four times a day, McCallister said. And because the Comdata system records the date, time and location of each transaction, the system can be used to provide a check against the logbooks kept by the drivers.

"If the trucking companies were serious about auditing the logbooks, they would use the Comdata information," he said. "But they don't do it. And that tells you a lot."

The power of the Comdata information was readily apparent from the work of the plaintiffs' expert, McCallister said. Their expert was able to demonstrate that the trucker had worked 90 hours in the previous seven days, or fully 20 hours more than allowed by the regulations.

### **Negligent Supervision**

Another important factor in the plaintiffs' case was the trucker's history of violating the company's own logbook guidelines, and the company's inadequate supervision of the trucker after uncovering his violations.

During the summer before the crash, the trucker was required to undergo a refresher course on the company's logging rules after auditors determined that he had repeatedly violated the rules, McCallister said.

"The company had a point system to track logbook violations," McCallister said. "After accumulating 25 points, the rules said the truckers had to go back for retraining on how to keep the log books. That's what the trucker in this case had to do that summer before the crash."

Despite appearances, the point system and retraining program were entirely toothless, McCallister said. "Under their system, a trucker could accumulate 25 points three separate times, and be forced to take the retraining course three times, before the possibility he might be terminated would even be mentioned.

"Each time, they just wiped the slate clean. It was a joke."

According to the plaintiffs, it should have been clear to the company that they had a problem driver on their hands, a realization that should have triggered a decision to monitor him more closely.

"You'd think that they would keep a closer eye on a driver after he came out of the retraining, to make sure that he had gotten the message. But they didn't do anything; they just sent him back out there."

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