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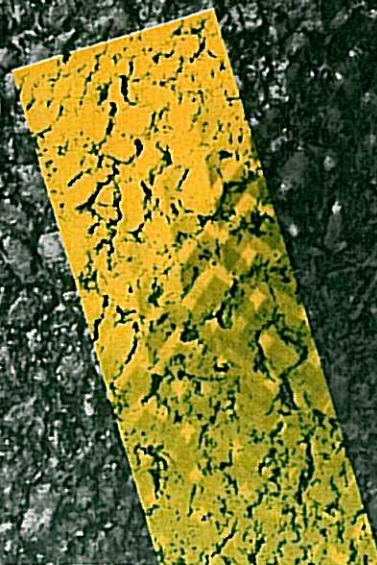
ROAD



Are Child Seats
Crashworthy?

The New
Trucking Rules

Beyond
Black Boxes





BY Courtney L. Davenport

Courtney L. Davenport is an associate editor with AAJ's Law Reporters and a contributing writer for *Trial*.

spotlight]

Driver Fatigue Is Key to Trucking Case

Hayes v. Alf, No. CJ-2009-2205BH (Okla., Cleveland Co. Dist. Oct. 6, 2010).

It's one of the most basic rules of driving: Never get behind the wheel when you're fatigued. But on a summer day in 2009, two tired drivers caused a highway pileup that killed 10 people and injured several others.

The victims' counsel faced a sympathetic defendant and possible juror prejudice in a case that involved plaintiffs of diverse backgrounds. By focusing on the trucking company, which should never have handed its sick, fatigued driver the keys, they were able to obtain a settlement before trial.

Shortly after 1 p.m., college student Erin Alf was driving east on a four-lane Oklahoma highway when she fell asleep at the wheel. Alf sideswiped a tractor-trailer that was parked on the shoulder so the driver could check his cargo. As she swerved back onto the road, her car spun around and came to rest in the left eastbound lane, blocking traffic.

As a long line of traffic began to form, Donald Creed—a 76-year-old truck driver who had recently been released from the hospital and had been driving since 3 a.m.—crested a hill in his Associated Wholesale Grocers (AWG) tractor-trailer, approaching the line of traffic. He was driving 70 mph and didn't apply his brakes.

Creed first struck an SUV, pushing it off the shoulder where it came to rest after rolling. He next drove over two passenger cars. His truck came to rest on

top of those cars and a portion of a minivan, which had struck another vehicle, creating a chain reaction. The scene was chaotic as emergency personnel tried to rescue people trapped in their vehicles and screaming for help.

In the SUV, 12-year-old Andrea Reyes heard her mother, Ernestina Reyes, screaming but heard nothing from her father, Ricardo Reyes. Andrea suffered moderate injuries, but both of her parents died at the scene.

The first passenger car held Randall and Shelby Hayes, both in their 30s; their 7-year-old son Ethan; and Shelby's mother, Cynthia Olson, 55. Randall, Ethan, and Cynthia died at the scene, and Shelby died the next morning at the hospital.

Oral and Earlene Hooks, both in their 70s, and their two adult sons, Antonio and Dione, died instantly in the second passenger car.

Several occupants of the other vehicles suffered injuries, and many were trapped in their vehicles for hours.

When police questioned Creed, he said he had slowed down and stopped, and the cars drove under him. He denied falling asleep. But the National

Transportation Safety Board (NTSB) later concluded that Creed had been fatigued, noting that the crash occurred on his first day back to work after a recent hospitalization for cardiac problems.

The injured and the families of those killed sued Alf, the truck driver who was stopped on the shoulder and his employer, Creed, and AWG. The plaintiffs claimed that Alf was negligent in starting the pileup and that the truck driver should not have parked on the shoulder for a non-emergency. But their main argument was that AWG should not have let Creed drive.

"If you have a combination of a driver who is 76 years old, who had been in the hospital until fairly recently, who was still taking medicine, and you hand that truck driver the keys to an 18-wheel truck that has been described as a moving brick wall, only one thing is ultimately going to happen, and it's human destruction," said the plaintiffs' cocounsel Emmanuel Edem of Oklahoma City.

Federal motor carrier regulations require that trucking companies not let drivers who are fatigued or likely to be fatigued make deliveries, and AWG's policies prohibited using drivers who

“IF YOU HAND a sick, elderly truck driver the keys to an 18-wheel truck that has been described as a moving brick wall, only one thing is going to happen, and it's human destruction.”

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were in poor health or fatigued. Counsel built the case on the violation of these rules—rather than on Creed's negligence—after focus groups showed that Creed, who was distraught during his deposition, would likely garner juror sympathy.

The attorneys were also worried that jurors in Oklahoma would not treat the victims—a Hispanic family that immigrated to the country decades ago, an African-American family, and a non-Hispanic white family—equally.

"We came up with the theme that public safety is a matter of concern to all of us," said Edem. "Today it may be me, and tomorrow it may be another person. This accident didn't discriminate."

AWG conceded Creed's liability in July, but it wasn't until after the NTSB released its final report, which the court ruled admissible, that the defendants agreed to settle for \$62.7 million. The settlement's allocation among all parties is confidential. AWG has since announced that it will review its policies, and the NTSB is using the case to call for collision warning systems in all vehicles and fatigue training.

"This case shows that Americans of all ages, from all walks of life, are needlessly endangered when companies ignore their own safety rules," said cocounsel John Norman, also of Oklahoma City. "Those same people can come together in a bond of courage to stand up to big companies and make it more costly for them to endanger people rather than ensure their safety." □



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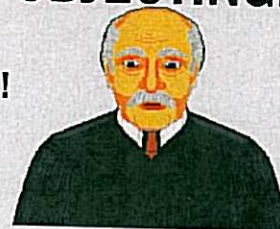
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