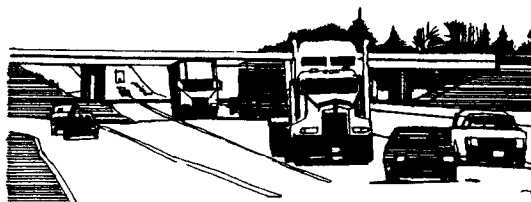

The Sleepy Killer:



THE TIRED TRUCK DRIVER

By Claudia J. Edwards and Jason R. Schultz

ALL of us are overworked and know what it is like to have worked too many hours and to push on to get the job done. What happens when those behind the steering wheels of monster trucks are exhausted?

According to a recent study by the American Automobile Association Foundation, driver fatigue was the primary cause of forty-one percent (41%) of all truck crashes. Surveys have shown that 9 out of 10 drivers break the laws regulating and limiting their hours driving in order to meet demanding and unreasonable time schedules. Nineteen percent (19%) admitted to falling asleep at the wheel during the previous month. There is little doubt that sleep deprivation severely impairs a driver's ability to navigate his rig. Adding substance abuse and/or speeding to the equation makes driving on the highway similar to Russian Roulette.

Specific Rules Govern How Long Truckers May Drive

Rules govern the number of hours a truck driver can legally drive. For interstate truckers, the rules are found in the Federal Motor Carrier Safety Regulations ("FMCSR") at 49 C.F.R. § 395. Every driver is to have in his/her possession a copy of the FMCSR, and is to have read and understood it. Intrastate truckers are governed by the Georgia Public Service Commission, which has adopted essentially verbatim the federal regulations.

Essentially, 49 C.F.R. § 395.8 limits the number of hours a driver is allowed to drive in any given time period. Truckers cannot drive for more than 10 hours at a time, a period to be followed by an eight 8-hour rest period. Truckers cannot be on duty more than 15 hours following 8 consecutive hours off. No motor carrier shall permit the driver to drive after the driver has been on duty 60 hours in any consecutive 7 days, or 70 hours in any period of 8 consecutive days.

Most drivers will admit to driving more hours than allowed by law, for a variety of reasons. First, drivers often are paid by the mile, not by the hour. Second, they are under pressure from their companies to meet unreasonable time schedules. Third, the drivers are given more desirable loads and trips if they do not complain about breaking the rules. For example, companies sometimes use a system called forced dispatched. The driver who does not perform, or do exactly what the company wants, gets less desirable loads and trips.

The Sleepy Killer: The Tired Truck Driver

Approximately two years ago, a movement arose within the trucking industry to increase the number of hours a truck driver could drive to 100 hours in an 8-day period, with one 24-hour rest period wedged in between. This proposal went all the way to the stage of being a proposed rule change, but thankfully it failed.

How Drivers Violate the Law

Drivers are required by regulation to keep time records in a log book, including a daily log consisting of a detailed chart and graph showing their driving time, on-duty non-driving time, sleeping berth time, and off-duty time. So how do drivers violate the law and get away with it?

Many drivers keep multiple sets of log books in their rigs. Log book #1 will show one schedule, log book #2 another. If pulled over, the driver can point to the illegitimate log book to elude detection. Frequently drivers also will mail their books, fuel receipts and other operational documentation in to the company in order to avoid being caught with the incriminating documentation. Drivers sometimes will even buy two new log books (available at any truck stop) and start over, shoving the previous week off the log.

Drivers often need to drive in violation of the law in order to make ends meet. Drivers generally are "officially" on duty, but not driving, for the following activities: waiting to be dispatched, loading or unloading the truck, waiting to be unloaded, checking the rig, waiting through out-of-service hours for maintenance, etc. Companies do not customarily compensate the driver for these activities. Most drivers are only paid for the miles that they drive. This policy obviously puts the driver in an unenviable position: as more on-duty non-driving time builds, their pocketbooks will suffer unless they violate the law.

How to Detect a Violation

If the plaintiff's lawyer can document a violation of the hours of service, that fact will be a powerful weapon in the plaintiff's arsenal. Generally, the sooner the documents are requested, the better.

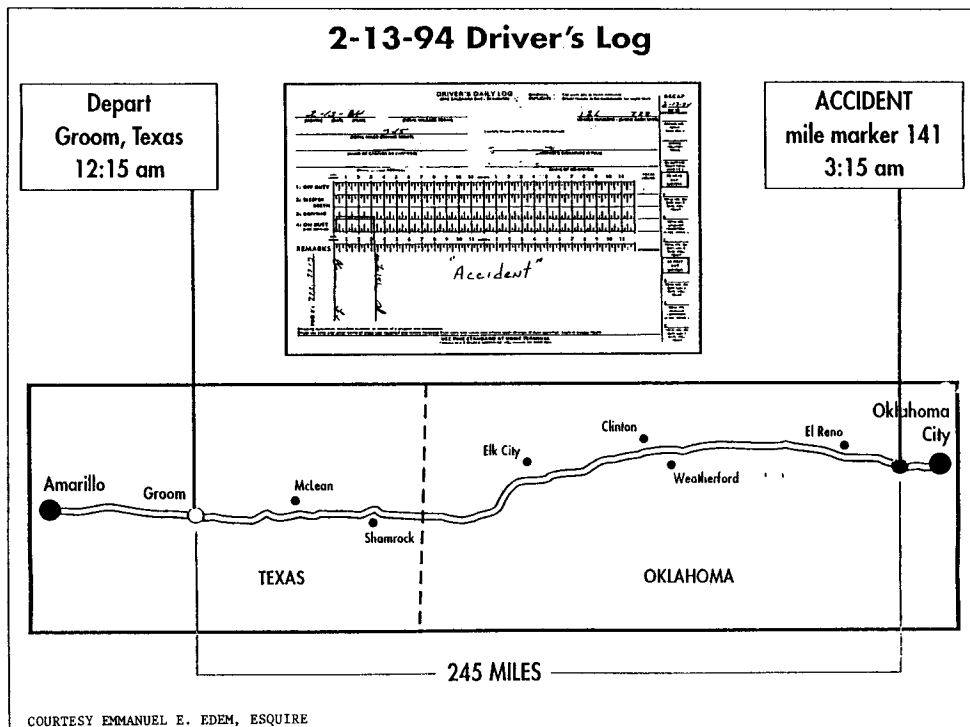
Companies are only required to keep log books for 6 months. If you get the case within 6 months of the wreck, immediately send a letter by certified mail to the safety division of the trucking company requesting that they retain the log books and that the books not be altered, modified or changed in any way.

In your correspondence, cite to 49 C.F.R. § 395.8(k), dealing with the retention of the driver's record of duty status. If you do this and the carrier fails to produce the driver's logs, you should be able to get a charge on spoilation. See O.C.G.A. § 24-4-22. You should request the log books for at least 3 weeks prior to the time of the collision.

Oftentimes, the logs you receive will look perfect. For that reason, it is imperative that you request all of the operational documents associated with each trip that driver made for 3 weeks prior to and through the time of the wreck.

Request and review everything, including the driver's trip envelopes and/or trip reports, receipts for food, lodging, fuel, cargo pickup and delivery orders, bills of lading and all other written instruments. Ask for records from the carrier including, but not limited to, all reports about cargo transported, all trip receipts, cargo pickup and delivery orders, routes of travel, accounting and dispatch records. Request records concerning cargo transported from the shipper and receiver. Also ask to see the driver's paychecks. If the driver is paid by the mile, these pay records can be very helpful. You can get out a map and recreate the driver's route, take his deposition, and see if he could have been where the collision occurred had he been driving within the regulated hours and/or at the speed limit.

Thorough investigation concerning possible driver fatigue is vital to your case. If it is the primary or a contributing factor in the wreck, it is a strong weapon for the plaintiff's case. ♦



The driver's log can help you identify when a driver drove too fast or too long. This driver either falsified his log or he drove 82 miles an hour for the three hours preceding the wreck.