

Law Offices of
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Injury Law Alert

Spring 2007

Collisions with Big-Rig Trucks

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. According to federal statistics, commercial trucks are involved in thousands of collisions each year. Some of the reasons are obvious:

A collision between a big rig and a car is likely to come out badly for the car.

- Trucks are bigger, heavier, and longer than cars;
- Trucks need more room to maneuver;
- Trucks take a lot more road to come to a stop.

Given their size and weight, common sense tells you that a collision between a big rig and a car, or even an SUV and a car, is likely to come out badly for the car. In fact, commercial truck crashes

killed over 5,300 people in 2001 and injured over 125,000 more, many of them seriously.

Reasons for Crashes

As with other kinds of automobile collisions, there are various causes of big-rig accidents. Many of these collisions are the result of the same things that cause run-of-

the-mill car accidents: poorly maintained trucks, speeding, overly aggressive driving, failing to yield the right of way, or bad driving conditions caused by rain or snow. However, some of the collisions are related to other factors unique to commercial trucks.

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Controversial Trucking Rules

Trucker fatigue is one of the leading causes of accidents involving big rigs. However, the federal government recently reenacted controversial rules permitting truckers to drive even more hours.

These rules—which in 2003 a court found had been enacted improperly—have recently been reinstated, virtually unchanged. They raise the number of daily hours that a trucker may drive from 10 to 11, and change the rules regarding how much a trucker may drive each week to *permit up to 77 hours of driving in a single 7-day period, almost twice as much as the standard 40-hour workweek.*

As you might imagine, the trucking industry is delighted with the change, which permits the movement of the same volume of goods with fewer drivers. What effect these changes will have on the number of trucking accidents remains to be seen.

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Home Improvement Scams

Your home is your castle . . . and it is also probably your most valuable investment. Unfortunately, many homeowners unwittingly hire crooked contractors to improve or repair their castles, and they wind up being cheated out of money or paying for inferior work. The home improvement business is crawling with cheats. Before signing on the dotted line, remember the following:

- Be wary of a salesman who comes to your home uninvited, especially if he claims he was doing some work for your neighbor or was just “in the neighborhood.”

Unfortunately, many homeowners wind up being cheated out of money or paying for inferior work.

- Ask for references, with names and telephone numbers—nothing drives away a swindler quicker than a request for references.
- Beware of the low-ball bids or offers that seem too good to be true, because they usually are.
- Beware of people who ask for a large “deposit” or ask to be paid in full before the work is done.
- Read everything carefully before you sign it, and make sure you understand all of the terms.
- Do not sign a contract with blanks in it.
- Beware of a salesman who claims that his offer is for a

“limited time” or is “today only,” especially where he is pressuring you to sign before you have read the contract.

If you have a complaint about your home improvement project, begin by trying to resolve it with the contractor. Honest mistakes can occur and can be easily corrected. Make sure to follow up with a letter that you send by certified mail and to keep a copy for your records. If this approach is unsuccessful, contact your local or state consumer protection office.

We Prefer You to Refer!

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.

Understaffed Nursing Home Leads to Patient's Death

A jury recently returned a verdict for almost \$3 million in a case where a nursing home resident died because the nursing home where she was staying failed to provide her with the proper care.

The patient suffered from cancer, and she had entered the nursing home for a few weeks to rehabilitate after a series of radiation treatments. The treatments had gone well, and her doctors told her that she was cancer-free and should live for a number of years. However, the patient died less than a week later.

The evidence in the case showed that, despite repeated warnings from its own employees, the nursing home was chronically understaffed, and that what staff it did have had not been properly trained. As a result, the staff members did not regularly clear the tracheotomy tube through which the patient breathed,

despite the complaints of both the patient and her daughter that the patient was having trouble breathing. Eventually, the tube became blocked and, despite being taken to the hospital, the patient died.

Immediately before the trial began, the nursing home admitted that it was understaffed and that it did not have the proper emergency equipment on hand, a move that prevented the patient's family from presenting evidence showing the jury just how flagrant the problem was. However, the jury did hear the nursing home's argument that the patient's life was worth little since she had cancer and that the quality of her remaining life would be poor.

This verdict should make nursing homes even more aware of the need to have enough trained staff at their facilities to provide sufficient routine care to their patients.

Do You Know the Details of Your Life Insurance Policy?

A life insurance policy is a contract or an agreement between two parties. If you have life insurance, your written policy is the contract between you and the insurer. You are referred to in the policy as “the insured.” While you may not readily recall having done so, you have designated an owner of the policy and you have also designated beneficiaries.

In most instances, the insured owns the policy. However, under certain circumstances, a person or corporation can own a policy of life insurance on another individual. No matter who owns a policy, the policy itself clearly identifies who is entitled to the death benefits. This person or entity is called the beneficiary.

Changing Beneficiaries

Typically, a policy owner can change the beneficiaries only by following the insurer’s strict requirements for beneficiary changes. Usually, those requirements involve the use of the insurer’s form.

Do not try to change your beneficiaries by leaving life insurance to someone in your will. The insurance contract and the most recently named beneficiaries under it will control. Your will has no effect on directing the payment of your life insurance benefits unless you have properly set up a life insurance trust that is clearly identified both in your estate planning documents and in your insurance policy.

Do you know who your primary and secondary beneficiaries are? You should name as primary beneficiaries those individuals to whom you wish to direct a share of your

life insurance. Your designation should identify the percentage that each primary beneficiary will receive. Secondary beneficiaries are persons who receive your life insurance only in the event that the primary beneficiaries predecease you or cannot be found or identified. If you designate more than one secondary beneficiary, you should identify the percentage that each of them will receive.

It is wise to regularly check on the status and details of your life insurance policy. To make effective changes, be sure to comply with all of the procedures required by your insurer and the law.

What Is a Trademark?

A trademark is a distinctive mark, word, design, picture, or arrangement that a seller uses in conjunction with a product and that tends to cause consumers to identify the product with its producer.

Product trademarks, which are most familiar to consumers, are affixed to a good, its packaging, or its labeling. Service marks are used in connection with a service. Collective marks identify producers as belonging to a larger group, such as trade unions. Certification marks, like the famous “Good Housekeeping Seal of Approval,” are licensed by groups that set specific criteria for their use.

Defective Pain Patch

In a recent suit involving a pain patch, the jury ruled that the patch was defective and awarded the deceased woman’s family over \$700,000.

The case involved a woman who had been in a car accident. She was prescribed a patch with fentanyl, a powerful pain medication. The patch was supposed to release the pain medication slowly, but the evidence showed that it released the medicine much too quickly. Fentanyl can shut down the brain’s respiratory center, and, after the patient died, it was discovered that she had 10 times the proper amount of medication in her system.

Johnson & Johnson, the maker of the patch, unsuccessfully argued that the woman had actually died of a heart attack caused by her obesity. The jury rejected this argument, finding that the evidence about the presence of fentanyl in her system—and the evidence showing that other patches made at almost the same time as that used on the victim had been recalled—was sufficient to show that the patch caused her death.

Although modern medical science can work wonders, this case reminds us that advancements in medical technology, like any human endeavor, can sometimes lead to mistakes.

Big-Rig Trucks

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For example, some collisions occur because a truck is overloaded and therefore cannot stop in time. Other collisions are caused by the driver's inexperience in operating a particular kind or size of truck. Still other collisions are the result of tired truckers who have been on the road for too long and who are fatigued. Tired truck drivers are now more likely to be on the road, with the deregulation of the trucking industry, changes in the way 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.

People injured by the negligence of commercial truck drivers are entitled to compensation for their injuries. But be aware that

suits involving truckers are often more difficult 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 they pay out in compensation to accident victims is a dollar that does not go into their pockets.

Further complicating matters is the fact that most commercial big-rig accidents involve far more parties than the typical fender-bender. Parties can include the truck driver, the trucking company, the ship-

per(s), the insurance adjuster, and the insurer, and the legal relationships among all of these parties can be difficult to unravel.

Persons who have been involved in a collision with a trucker are entitled to recover compensation for items such 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.

If you or someone you know has been involved in a big-rig collision, call us. We will be happy to discuss the matter with you and work to get you the compensation that you deserve.

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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