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Tracking The Tractor-Trailers

'Black Box' Data Alone Is Not Enough For Win In Truck Injury Cases

Although "black box" data from on-board computers is a common feature of tractor-trailer wreck suits, two case reports to Lawyers Weekly show that other types of evidence are equally important for a winning hand.

- In one suit involving an I-95 rear-ender between two tractor-trailers, the relative speed of the two trucks was a central issue as to who was at fault. Jurors heard from an eyewitness who said the plaintiff was going faster than 70 mph just before the accident. That contradicted testimony that an electronic control module in the plaintiff's truck kept it from going faster than 65 mph.

The result: jurors apparently rejected the black box evidence in returning a "no negligence" verdict for the defendants in *Padron v. Waters & Grayson Mitchell, Inc. et al* (U.S. Eastern District No. 5:02-CV-474-BO(3)).

- In a second report, in which a truck rear-ended a car stopped in heavy traffic on I-26 in Asheville, black box readings were used to buttress claims that the trucker had been driving for more than 24 hours with only an hour's sleep before the wreck.

The truck's electronic control module showed when the truck's engine was on and when it was off. But to pin down the fatigue issue, the plaintiff had to use company records, cell phone bills, handwritten logs and the trucker's own deposition testimony.

The result: a \$3.37 million settlement for the plaintiff in *Hawkins v. Haas Carriage, Inc. et al* (U.S. Western District No. 1:04-CV-77).

'Not Answer To All Questions'

Raleigh attorney Joseph Wall, who represented the defendants in *Padrone*, said ECM data is important in tractor-trailer litigation, "but it's not the answer to all the questions that we as attorneys have about a case."

In *Padrone*, the plaintiff's ECM evidence on his truck's speed limit was powerful. However, Wall said his accident reconstructionist told him that "there is a considerable amount of variation from the ECM

setting from truck to truck. Just because the ECM on the plaintiff's truck was set to a certain speed, that didn't necessarily prove that it couldn't go faster."

"Also, I thought that it was important that the truck had been manufactured a little over three years before the accident," Wall said. "Even though I could show no proof that the ECM had been modified, that passage of time opened the door to some skepticism over whether it was still restricted to its original speed."

Because the plaintiff's vehicle overturned and burned, Wall said he didn't know if data on the plaintiff's actual speed could have been downloaded from his truck's ECM.

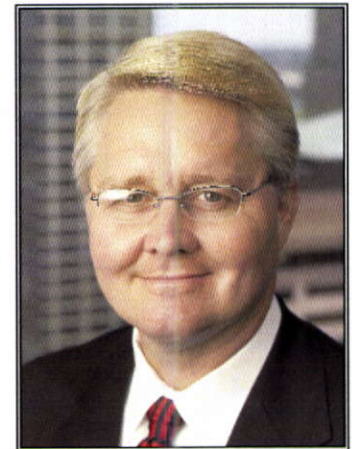
"I kind of doubt it," Wall said. "But in any event, it was not done."

"I think ECM information is very important," said Wall. "I've just never had a case where it told me the definite answer I was looking for. But I'm sure that day will come."

'Incredibly Important'

Kansas City, Mo. attorney Tim Dollar, who represented the plaintiffs in *Hawkins*, said that ECM data "is incredibly important." However, its usefulness depends on the sophistication of the on-board equipment.

"It can provide information not only about a crash in terms of the braking speeds but also show a driver's braking patterns," said Dollar, whose practice focuses on truck injury cases. "You may have a module that demonstrates not only hard braking just before an incident but also that the driver had 15 previous hard braking incidents."



TIM DOLLAR

"Well, that was a disaster waiting to happen."

In *Hawkins*, Dollar sent a letter to the defendant trucking company asking it to preserve the ECM information from its driver's truck.

"Based on the logs that were produced in response to our spoliation letter, we had suspicions that trucker fatigue was a key factor in the accident," Dollar said. "By piecing together the ECM data, which showed when the truck engine was on and off, company documents, and the driver's handwritten logs, cell phone records and deposition testimony, we had strong evidence that he had been without sleep for more than 24 hours before the accident."

That fatigue information also strengthened the plaintiff's case against the driver's employer, according to Dollar.

"Driver fatigue has implications for a direct action against the employer for failing to train drivers on the dangers of fatigue," Dollar said. "This driver said he didn't recall seeing any fatigue information."

"What the industry, lawyers, and victims need to remember is that a fatigued driver is every bit as dangerous as an intoxicated driver," said Dollar. "An equivalent amount of attention should be paid to that issue but it's not being done."



Plaintiff's auto after rear-end collision in *Hawkins v. Haas Carriage, Inc. et al*.