Top 10 Discovery Tips in Human Fatigue or Inattention Cases

All too often, when cases potentially involve human inattention or fatigue, attorneys unfamiliar with the physiology of human impairment miss important opportunities for gathering relevant information. Information gathering should really begin on day one, immediately following an accident and continue through to the formal discovery process. Accurately reconstructing a driver’s schedule to examine his/her fatigue level needs to be considered upfront and there are a myriad of opportunities to obtain the necessary information. The following tips should be helpful to anyone trying to investigate a potential claim of driver fatigue:

Tip 1: Begin the accident reconstruction task before the accident site:

In cases where it is suspected that a lapse of attention and/or a microsleep may have occurred, the accident reconstruction should begin at least one mile before the site of the accident. Information about the driving conditions and roadways such as an up or down grade in the roadway or a slight curve to either the left or right is important data to consider when looking at possible lapses of attention as a cause of an accident.

Tip 2: Use objective data to build an accurate reconstructed schedule:

The use of GPS logs, ECM downloads, cell phone records, credit card and toll receipts, fuel receipts, weigh station receipts, rest stop records, loading/unloading records and punch cards allows a person’s place, time and activities to be used as data points for their sleep-wake history. These data points can help to prove that a particular driver was or was not sleeping at any particular time.

Tip 3: Obtain information about the geography of the trip:

Obtaining information about the starting and end points of a planned trip is one more set of objective data points that can be used to help reconstruct a sleep-wake timeline. Through the use of maps and mileage tools it is possible to reconstruct the planned trip and determine the accuracy of the drivers’ logs based on both mileage and average speed.
Tip 4: Reconstruct a detailed timeline to determine both chronic and acute fatigue levels:

The interpretation of the risk of impairment is strongly influenced by the driver’s state in the days leading up to the accident. Someone who has had ample sleep and slept well for the days leading up to any period of sleep deprivation will be much more alert, and resistant to impairment, than someone who is sleep deprived before a period of extended wakefulness begins. In an ideal situation, the driver’s activities over the month prior to an accident should be reconstructed, which will establish work-rest norms as well as determine whether the pattern will likely induce chronic fatigue. However, if the prior months’ data is not available, the sleep & wake pattern and timing, meal schedule and work-rest and travel/driving/commuting schedules of the driver, for the prior week should be constructed.

Tip 5: Consider the level of fatigue of all of the drivers:

It is important to investigate the risk of fatigue of the “other” drivers in truck-automobile collisions, by reconstructing their work-rest schedules over the past week, identifying the times they were awake from cell-phone records, and understanding the specifics of any travel or recreational activities.

Tip 6: Determine if the driver has sleep apnea or any other sleep related disorder:

It is essential to get comprehensive medical records to see if any complaints relating to sleep disorders have been made, and whether any diagnostic tests have been performed, or treatments prescribed. Surveys and other diagnostic tools, such as the Epworth sleep scale, may be innocuously integrated into deposition questions in order to indicate the probability of a sleep related disorder – an overnight sleep study must be conducted, however, in order to accurately identify any disorder.

Tip 7: Gather data that can help to establish physiological typing:

Every individual differs significantly in their sleep and wake patterns – with some being extreme larks (early morning types) and others, extreme owls (late night types). The amount of hours of sleep needed to feel fully rested is also different from person to person. Some individuals need 6 hours, while others need 10 hours of sleep to feel fully rested. These genetically established traits can contribute to the risk or absence of risk in accidents.

Tip 8: The presence of alcohol/drug use doesn’t mean that fatigue was not also a factor:

Multiple sources of impairment are common, and sleep deprivation and alcohol or drug use strongly interact with each other to exacerbate the degree of impairment. While the initial effects of many drugs and stimulants may be euphoria, there is commonly a rebound phase over the subsequent hours when fatigue symptoms are magnified. The actual cause of the accident may have more to do with the secondary fatigue levels than the initial drug or alcohol use.
Tip 9: The presence of a driver distraction doesn’t mean that fatigue was not also a factor:

Distracted driving is estimated to be the cause of one out of every four motor vehicle crashes. Distractions may be caused by playing with the radio, talking on a cell phone, eating and/or drinking, other passengers, or by adjusting climate controls. Drivers who are fatigued are already less focused and stand a greater risk of being easily distracted by these menial tasks. Therefore, the underlying cause of the accident may not be distracted driving but rather fatigue impairment.

Tip 10: Retain expert witnesses before depositions are taken:

Retaining your expert witnesses prior to the any deposition will allow you to avail yourself of vital information. Depositions relating to a scientifically and technically complex subject, such as fatigue and inattention cases, require the development of questions constructed in layman’s terms while maintaining their scientific and research base. Hiring an expert before the deposition is taken ensures that pertinent questions grounded in science are asked, and asked in the right manner. Obtaining the answers to these questions will allow for optimal detail necessary for reconstruction and help to establish patterns relating to sleep, meals, and commuting time.

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Driver impairment and human fatigue claims now, more than ever, require special expertise and should take advantage of the extensive scientific research and modeling tools which can build a strong case. For 30 years, Circadian Expert Services have been the leading specialists in human impairment (fatigue, pharmacological, medical, behavioral) in accident litigation, work hours regulations, and industrial disputes. With internationally recognized scientific expertise, extensive experience with all transportation modes, and validated tools for assessing human impairment and fatigue we have become a decisive factor in accident and working hours litigation.

We would welcome a call to discuss any ongoing or pending litigation, and would be pleased to provide advice based on our extensive experience on human impairment and fatigue research, consulting and expert services.