

COLE AND HODGES

A quarterly newsletter for friends and clients of Cole and Hodges, P.C., Trial Lawyers

WINTER 2008

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Fatigued truckers kill 750 people per year

In the United States each year, approximately 5,000 people are killed and nearly 150,000 are injured in trucking collisions. One in four passenger vehicle deaths in multiple-vehicle crashes involve a large truck, and large trucks are involved in multiple-vehicle fatal crashes twice as often as passenger vehicles. When truckers are tired from excessive daily and weekly work hours, they increase the risk of crashes that result in injury or death.

The Federal Motor Carrier Safety Administration (FMCSA) has reported that 750 people die each year due to fatigued truck drivers and another 20,000 people are injured due to truck driver fatigue.

Our firm has handled an 18 wheeler case which caused a national trucking company to institute new safety policies to protect against drivers falling asleep at

the wheel. This lawsuit involved the Federal Motor Carrier Safety Regulations (FMCSR), and emphasized what are known as the Hours of Service rules.

We were able to force the trucking company to admit that the Hours of Service rules originally were passed to force railroads to allow train crews to get some sleep. We also convinced the trucking company to admit that the Hours of Service rules later were applied to trucking companies which have taken over so much of the interstate delivery of goods which formerly was handled by railroads. In an industry which potentially affects the safety of everyone who uses the roads and highways of America, we believed it was imperative that trucking companies cease the practice of establishing "runs" for their drivers which can

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Why you must increase your underinsured/uninsured motorist coverage today

As lawyers for hurt people, we often encounter situations where there is not enough insurance coverage to compensate an injured person for their injuries and damages under the law. The majority of our law practice involves representing people or the families of people that

ance at all.

Although Alabama law requires minimum liability coverage, many individuals choose to disobey the law. A recent study done by an independent property-casualty insurance research group concluded that in 2007, 26 percent of Alabama's drivers did not have any car insurance. In 2007, Alabama had the third most uninsured drivers behind only New Mexico and Mississippi. The study did not address what percent of Alabama drivers were driving with the legally required minimum coverage of \$25,000 per person and \$50,000 per occurrence. Perhaps more concerning was the study's conclusion that the number of uninsured drivers will increase in 2010 because of the economy.

were required to be hospitalized for a few days. We will further imagine that your job required you to be on your feet often and you were unable to return to work for three or four weeks. This could easily result in medical bills of \$25,000 and lost wages of thousands more. If the driver had no insurance, and you had no uninsured or underinsured motorist coverage, you could be faced with paying the medical bills and receiving no compensation for your lost wages.

Many Americans, especially in these trying economic times, are living paycheck to paycheck. Going a month or two without receiving your paycheck and having to be responsible for tens of thousands of dollars in medical debt could be financially harmful to your family if you or a loved one were injured.

have been injured in an 18 wheeler wreck or a car wreck. Many times, the person that caused our client's injuries will not have enough insurance to compensate our client or will simply not have insur-

Practically speaking, what does this mean to you? Let us imagine that you were involved in a car wreck and broke your leg. The break was severe enough that it required surgery to correct. You

One way to protect yourself and your family is to add or increase your uninsured or underinsured motorist coverage.

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"Too many times, people get hurt by uninsured or underinsured drivers. Over 1 in 4 Alabama drivers do not have car insurance. "UM/UIM" coverage is critical to protect you and your family."

Jeremiah M. Hodges

President Obama puts freeze on preemption regulations

President Obama issued a memorandum to all federal agencies to halt any pending regulations until the new administration can review them. This Memorandum directs federal agencies to immediately freeze all on-going regulatory proceedings, including regulations that may have been finalized prior to the end of the Bush Administration, but are not yet ef-

“We must stop this assault on the citadel of the right to a jury trial, a Constitutional right established over 200 years ago by our Founding Fathers.”

Kenneth B. Cole, Jr.

fective.

Essentially, The Bush Administration found a loophole by using agencies to enact “regulations” in lieu of law in a manner inconsistent with the principles laid out by our founding fathers in the United States Constitution.

Under this Memorandum, the Obama Administration will have the option not to finalize any proposed rule (or final rule which has not yet become effective) or to ensure that any final version of a pending rule does NOT contain complete immunity preemption language, which would preempt state tort law.

Federal preemption has become a process by which judges are asked to rule that federal regulatory rules trump state laws concerning the accountability that wrongdoers should face when they hurt someone. The problem with preemption is that it allows federal political appointees with specific political agendas to adversely affect the rights of injured Alabamians by making it impossible for them to pursue lawsuits to hold wrongdoers accountable. These political appointees are motivated to protect the big businesses that contribute to the political party of their boss. Not only do these regulations rob Alabamians of their rights, therefore, but the transitory political winds of Washington are being allowed to eradicate hundreds of years of well reasoned legal principles which heretofore have held dangerous corporations accountable. Injured Alabamians deserve their day in court, and profit-motivated compa-

nies should not be allowed to avoid accountability simply by heavily contributing to their federal political bosses. We must stop this assault on the citadel of the right to a jury trial, a Constitutional right estab-



lished over 200 years ago by our Founding Fathers.

The Obama administration taking steps to allow states to protect their citizens and taking steps to stop preemption is good for Alabamians.

Fatigued truckers are a risk to all of us

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only be successfully met if the drivers violate the Hours of Service rules by driving too long and sleeping too little.

During discovery, we were able to determine that the safety director of the trucking outfit had recognized the danger of sleep-deprived drivers and had complained to upper management that “runs” were too long for the allotted time to complete them, such that drivers were being forced to violate the Hours of Service rules. However, the evidence established that upper management ignored the pleas of the safety director to make the company safer. We also attacked the practice of allowing drivers to have cruise control on 18 wheelers, which obviously meant that trucks would continue to travel at high rates of speed even after drivers fell asleep at the wheel.

The lawsuit settled just prior to the trial date. During settlement negotiations, the trucking company produced its new and improved safety regulations which would help make sure its drivers were able to get the required amount of sleep by complying with the Hours of Service rules

while also being able to complete their “runs” during the time allotted.

We are proud of our work helping victims and their families who have been injured or killed because of the negligence and bad conduct of greedy trucking companies. Unfortunately, the executives in charge at these trucking companies sometimes put profits over safety. If that



has happened to you or someone you know, please contact us to see if we can help you.

We welcome the opportunity to represent and help clients and their families who have had to undergo the tragedy of losing a loved one or the pain involved in personal injury. We will work hard to see that you are fairly compensated for your inju-

ries, compensated for lost time at work, and reimbursed for losses stemming from property damage.

These collisions often happen because drivers have been forced to drive for too long in violation of federal law, are intoxicated, or just are not qualified to be driving such massive and potentially deadly machines. When such collisions happen the consequences are usually devastating and catastrophic to the victims. We have handled such cases around the country and look forward to discussing your case with you.

Eighteen (18) wheeler collisions can also be caused by a defective product or defective design, including defective tires, brakes, and gas tanks. Personal injuries due to truck collisions are often tragic, severe, and life altering.

We will review the details of your case and discuss with you your options going forward. In addition, we stay in close contact with insurance companies, hospitals, and lawyers representing others who are related to the case to ensure that issues of concern to you are handled with your interests at heart.

What do I do once I have decided I need a lawyer?

The decision to meet with a lawyer can be a difficult one, especially in the face of filing a lawsuit. Regardless of what the media and politicians would have us believe, no one really wants to be involved in lawsuits or litigation. Often, clients express reservations about lawsuits because of negative stereotypes they have seen on television or read about in the newspapers. Over the years, we have represented a multitude of injured persons in a variety of situations. These people needed our help. If you need our help, please do not hesitate to contact us directly. Once you decide to meet with a lawyer, here are some suggestions to make the meeting easier and more pro-

ductive.

You should make copies of everything you're going to need to take with you to the lawyer's office. Keep the originals together somewhere safe and place the copies in a large envelope or folder. For example, if you were involved in a car wreck, you would want to bring the police report, your insurance declarations page, any photographs of injuries you suffered, any photographs of damaged vehicles, any correspondence from the other driver or other's driver's insurance company, doctor's excuses, pay stubs from your paycheck, medical bills, collections letters and any other documents that may relate

to the wreck.

You want to be realistic about how long the meeting will take and make sure you schedule plenty of time for the meeting. The details and complexity of your case can vary and you will want to have enough time to thoroughly discuss your problem and your options. We often tell clients to expect the first meeting to take two or more hours because we know it is important to be able to ask many questions about the circumstances.

Sometimes potential clients bring a list of written questions to our first meetings. This helps make sure you get to ask all of
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Legislative Update

With the new legislative session beginning on February 3, 2009, it is expected and hoped that the Legislature will address two issues that directly affect almost every Alabamian. These two issues are judicial reform and worker's compensation.

Judicial Reform: The Legislature is expected to address how we elect our Judges, specifically our appellate judges. Right now we have partisan elections, meaning that Judges run as Republicans, Democrats, or as members of a third party. Alabama had one of the most, if not the most expensive Supreme Court races in the country last November. More than \$5 million was spent for a position that pays \$169,310 per year.

Being a judge is different from being a

politician. Politicians are known for taking hard line stands on issues, or not doing so, and voters can decide who they think is right or wrong. Judges swear an oath to uphold the law. A judge should hear the facts and apply the law. When we have judges that pronounce how they will rule on cases before they even take office, it gives the appearance of bias. Alabama citizens deserve judges that can and will be fair. Alabama citizens deserve judges elected in a non partisan fashion.

Worker's Compensation: Hopefully, the Legislature will take steps this year to increase the cap related to worker's compensation. Alabama Code §25-5-68 caps recovery of permanent partial disability benefits ("PPD") to injured workers to a maximum of \$220 per week. This cap

has not been adjusted in 23 years. The Legislature needs to raise this cap and change the laws so that the cap automatically adjusts upward periodically. Alabama workers deserve fair treatment when they get hurt while doing their jobs. We have had the pleasure of represent-
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Chapman Middle School celebrates its football season

The Chapman Middle School Football team has completed its season. As you may recall, Kenny and Jeremiah served as volunteer assistant coaches during the season. Coach Cole and Coach Jeremiah were extremely proud of the way the team progressed over the season and worked really hard. Chapman had a football banquet to celebrate the

season on January 22, 2008. The Fellowship of Christian Athletes of North Alabama was able to arrange for Melvin Adams, a former Harlem Globetrotter, to speak at Chapman's banquet. Mr. Adams's presentation was entertaining and inspiring for all in attendance. Please join us in congratulating these hard working young people.



Kenny presents the FCA Foxhole Award



Kenny and Jeremiah with Coach Shelby

W E WANT TO HELP YOUR FRIENDS AND FAMILY MEMBERS

We want you to think of us as **your** law firm. If you have a legal concern that needs attention, please let us know. If we cannot handle the matter, we will refer you to a competent firm that can.

We continue to rely on "word of mouth advertising" for opportunities to help new clients and take on new cases. We are proud that close to 100% of our new clients come by referral from former clients, businesspeople, other lawyers, and sometimes even former adversaries.

Please feel free to refer us to your family, friends, co-workers, and neighbors for their legal needs. We would welcome the opportunity to help people that you know.

Please visit our website at www.notanaccident.com for legal information that may be useful or interesting to you.

COLE AND HODGES

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*“Over twenty-eight years
experience representing injured
persons.”*

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Or Current Resident

Legislative Update

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ing many injured workers and we have seen the unfairness of this system first hand. We believe that this is a critical issue facing our state.

What Can I Do? You can contact your Representative and tell them that you want non-partisan judicial elections. You can tell them that you want to see Alabama workers protected and that it is time §25-5-68 is changed. You can find out who your Senator or Representative is by accessing the Helpful Resources page of our website.

About Cole and Hodges, P.C.

Our firm is based in Huntsville, Alabama, but handles cases all over the State of Alabama and across the United States. Cole and Hodges have over twenty-eight years of combined experience representing injured persons in all types of litigation. If Cole and Hodges, P.C. can help, please contact us.

UM/UIM Coverage

This coverage is actually triggered when either the defendant has no insurance (like 26 percent of Alabama drivers in 2007) or does not have enough insurance to compensate the plaintiff for his or her damages. We understand that many people believe that since the law requires insurance, that everyone must have it. Unfortunately, this is simply not the case and often insured drivers do not have enough coverage. For this reason, we always recommend that you evaluate your uninsured or underinsured motorist coverage and consider increasing it to protect your interests if you ever get hurt in a car wreck.

Kenneth B. Cole, Jr.



A graduate of Vanderbilt University School of Law, Kenny has been representing injured persons in Texas and Alabama since 1984. Kenny is a strong believer in the civil justice system.

I need a lawyer...

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your questions. Even those with great memories can forget something and many people are nervous about meeting with a lawyer. We understand that most of our clients have experienced a traumatic event and that is why they are meeting with us, so being nervous or anxious is to be expected. We understand that it is important that you get the information you need to make an informed decision about who you want as your lawyer.

Jeremiah M. Hodges



Jeremiah graduated from the University of Alabama School of Law in 2004. He has concentrated his practice in representing people who are injured and he believes need his help the most.

Alabama Bar Association rules require the following disclaimer: no representation is made that the quality of legal services to be provided is greater than quality of legal services to be performed by other attorneys.