

MORE THAN DRIVER ERROR

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I. Introduction

Driver error is a likely cause of any automobile accident. As lawyers, our first focus should always be on the role of the drivers involved. However, in many instances, we need to look beyond the drivers to understand all the factors that combine to cause the accident and to cause or aggravate injury. Additionally, we may need to look to other parties to secure compensation that is appropriate to the damages suffered by our clients.

We have to be aware of these other potential claims at the onset of representation. Securing the appropriate evidence early in our investigation can make or break some of these claims that do not focus on the driver. Thorough investigation of the potential for these additional claims and the facts that may support the additional claims is of paramount importance.

II. Dram Shop/Social Host

Whenever alcohol is involved, we must pay attention to the level of intoxication of any drivers involved. If driver alcohol levels exceed legal limits or are sufficient to deleteriously affect driver performance, the alcohol becomes a causative factor. Third parties to the accident may bear responsibility to the injured under certain circumstances.

Some states have social host liability. Noncommercial providers of alcohol to a driver whose alcohol consumption contributes to a car wreck may bear legal responsibility if they have not exercised ordinary care in serving social guests. Serving underage drinkers or obviously intoxicated drinkers may trigger liability. We must investigate the circumstances surrounding the provision of alcohol whenever there is driver impairment due to alcohol consumption.

Many states have laws that create “dram shop” liability for retail alcohol providers. Typically, these bars and restaurants will also bear legal responsibility for over serving, serving the obviously drunk, and serving those who cannot legally drink. Service policies, witness accounts, and bar tabs are all areas that must be investigated. Inquiry

regarding happy hour specials and other drink promotions may also be important to this type of claim.

In cases involving underage drinkers, liquor stores or convenience stores may be liable for selling to minors. In the past, I have had underage “plants” attempt to purchase at the store in question—often with successful, videotaped results.

All of these claims focus on the role of the alcohol provided and that alcohol’s impact on a driver and subsequent collision. You must typically be able to prove that the alcohol provided by a potential server or seller was actually causative of the accident. A toxicologist will usually be retained to interpret driver alcohol levels, discuss timing issues, and extrapolate when the driver’s prior intoxication should have been obvious to the server or provider. Additionally, a toxicologist can describe the effect that a given alcohol level will likely have on the drinker’s ability to safely operate a motor vehicle.

III. Employer Negligence

In cases involving employee drivers, the role of the employer cannot be ignored. Employers may bear responsibility under several different theories.

Employees, especially professional drivers, must be adequately screened and vetted in the hiring process to reasonably minimize tragic driving outcomes. Employees with prior DWI or vehicular manslaughter convictions should not be put in positions with significant driving responsibilities. Similarly, employees with drug or alcohol abuse issues should not be entrusted with company driving tasks. Employees with mental or physical disabilities that make them risky drivers should similarly be excluded from jobs that involve significant driving.

Employers must also ensure that drivers who need additional training receive the training needed to operate heavy-duty or special purpose vehicles so as to minimize accidents. This is especially true of over-the-road trucks and other large or special-use vehicles. Employer business practices must also be considered. Employers who overwork drivers or cause them to ignore road safety issues may also bear responsibility for automobile wrecks. In cases involving commercial truckers, logbooks, written policies, and business practices must be analyzed to determine if the employer has failed to comply with state and federal laws regarding commercial vehicle safety. In particular, federal time limits on driving and required sleep must be considered. On-board trip and engine computers, GPS tracking records, and credit card and other receipts must be examined to uncover the real facts regarding driver fatigue and overwork.

IV. Vehicle Maintenance Issues

Both employer and third-party repair shops and maintenance facilities may play a role if inadequate maintenance of a vehicle is in question. We have to identify the party responsible for maintenance if faulty repairs arise as an issue. If faulty maintenance is suspected, the vehicle must be located and preserved to evidence the faulty or inadequate repairs. Testing that could destroy relevant vehicle evidence should be avoided until such testing can be agreed upon between relevant parties or conducted with court approval and

oversight. Failing that, all such testing should be videotaped. Being able to demonstrate the faulty condition as it existed immediately after impact is crucial to the success of a maintenance claim.

V. Roadway Hazards

Remember that the road itself or conditions on or near the roadway may also play a role in collisions. All kinds of road conditions may play a role. A lack of median barriers, excess gravel, serious potholes, or road excavations may all affect the safe operation of motor vehicles. We must know what state law allows regarding claims against governments for these types of hazards. In some states, such as Texas, many of these highway design issues are not actionable, as they are viewed as discretionary acts of the government. TEX. CIV. PRAC. & CODE §§ 101.001 *et seq.*

Structures adjacent to roadways may also be a problem. Guardrails, signs, curbs, shoulders, or the lack thereof may all contribute to collisions. Improper, obscured, nonexistent or poorly maintained road signs, traffic lights, or other traffic control devices may also deserve consideration. Sight obstructions due to vegetation or other causes may violate state or local laws and contribute to collisions.

All of these roadway and related conditions are often exacerbated by ongoing road construction or road maintenance efforts. Adjustments to lanes of travel, warning signs, speed limits, and road surfaces during construction can all create significant safety issues for drivers. When private contractors are involved, some of the liability limitations afforded governments may not apply. Some states do protect contractors from liability so long as the contractors' activities are in compliance with the design plans. We must always examine design plans and any related traffic control plans carefully to analyze potential liability on the part of the government and any outside contractors involved.

VI. Automotive Products Liability

In any case involving significant injury or death, we must consider the possibility of automotive products liability claims. These are expensive cases to work up and are not justified in cases of minor or moderate injury. If there is any hint of a products claim and pursuit is justified because of large damages, obtaining and preserving the automobile must be done promptly after the accident occurs. At a minimum, the defective vehicle must be preserved and stored in a manner so as not to allow the elements to destroy or unduly affect the defect in question. Because of the need to analyze vehicle and human dynamics during the accident, trained accident investigators or reconstruction experts must promptly survey the accident scene, investigate for evidence of vehicle behavior, and document the scene and any evidence. All of this should ideally happen within days or weeks of the incident.

Typical issues involve restraint system failure, seat-back failure, rollover protection, ejection issues, fire susceptibility, and traction and stability issues. Tire performance and

car seat performance are also common areas that must be considered. These issues cannot be ignored in the appropriate cases.

VII. Conclusion

There may well be more than driver error involved in any automobile case. We have to be sure to carefully inquire and investigate when there are other potential causes. Careful attention to these other causes is key to proper representation of the client.