

Comedian Sues Walmart over Fatigue-Related Traffic Accident



We've written before about the role that fatigue can play in safety incidents, including vehicular accidents. For example, we've discussed a study that not only confirmed that fatigue is a factor in traffic accidents but also demonstrated that it's a bigger factor than previously thought, even in daytime crashes.

If workers are injured on the job due to fatigue, their employers could face liability for OHS violations. But they could also face other liability risks if non-employees are injured in the incident.

A recent lawsuit in the US by comedian Tracy Morgan is a good example of such liability risks.

On June 7, 2014, a Walmart truck slammed into the back of a luxury van carrying a group that included Morgan, seriously injuring him and several others and killing James McNair, a comedian known as Jimmy Mack.

Morgan has sued Walmart Stores, claiming the company was partly responsible for the crash. The lawsuit says that Walmart was negligent in the ownership and operation of its truck, which was a 'substantial contributing factor' in the crash. The suit claims that Kevin Roper, the truck driver, fell asleep at the wheel before the accident.

Roper has been charged with vehicular homicide on the theory that at the time of the crash he hadn't slept in more than 24 hours. Roper has pleaded not guilty.

The civil lawsuit contends that Walmart should've known how little sleep its driver was operating on, and that it allowed him to commute an unreasonable distance before starting his shift in New Jersey. (On the morning of June 6, Roper reported to a Walmart distribution center in Smyrna, DE, after driving there from his home in Georgia, a trip of more than 700 miles that would've taken him more than 11 hours.)

The Morgan lawsuit isn't the first of its kind in the US. (See, 'Are Employers Liable for Traffic Accidents Caused by Fatigued Workers after Their Shifts'' for

other examples.)

We're unaware of any similar Canadian cases but such a lawsuit is certainly possible under Canadian law. (Please contact us if you're aware of any similar Canadian lawsuits.)

One way to prevent vehicular accidents by fatigued workers is through a fatigue risk management system, including a Model Fatigue Management Policy. You can also give workers this Model Notice on recognizing the signs of fatigue.