

## Greyhound To Pay \$6M To Settle 2013 Rollover Crash Suit

By **Bryan Koenig**

Law360, Washington (March 9, 2016, 3:42 PM ET) -- Greyhound Lines will pay \$6 million to settle a Texas county court lawsuit by five bus passengers injured in a 2013 rollover crash when the driver, whom the company didn't test for sleep apnea, allegedly fell asleep at the wheel, according to an announcement Tuesday.

Zehl & Associates PC, which represents the passengers, said that a U.S. Department of Transportation medical examiner had recommended the driver be tested for sleep apnea — a breathing condition that disrupts sleep and can lead to daytime tiredness — just over a month before the Sept. 14, 2013, crash in Ohio, but Greyhound Lines Inc. never ordered the procedure.

"This settlement will not only help the crash survivors attempt to regain their lives, but will bring needed awareness to the catastrophic consequences of untreated Obstructive Sleep Apnea in commercial drivers," firm attorney Ryan Zehl said in the announcement.

The bus was headed from Detroit to Cincinnati when it crashed on Interstate 75 early in the morning, the firm said. Many of the 51 passengers aboard were injured when the bus rolled over into a cornfield that was about 100 feet off the highway, Zehl & Associates said. While there were no fatalities, injuries to the five passengers in the case included compound fractures and neck and back injuries, according to the firm.

In an interview, Zehl told Law360 that driver Dwayne Garrett — who was named in the suit but will not have to pay any money under the settlement — exhibited three of the U.S. DOT Federal Motor Carrier Safety Administration warning signs for sleep apnea: a body-mass index in excess of 35, hypertension and a very wide neck.

The DOT medical examiner had limited the driver's certification to three months and had recommended he undergo an overnight sleep study called polysomnography, according to the firm.

"Despite these warnings, Greyhound never had the driver tested for sleep apnea and claimed, instead, that the driver lost consciousness after choking on a sip of coffee while driving the bus," the firm said.

Greyhound attorney Scott W. Self of Fee Smith Sharp & Vitullo LLP argued Wednesday, however, that the Ohio State Police concluded that Garrett passed out from choking, a conclusion that his own doctors backed up after the accident. Self said that after the DOT medical examiner's warning, Garrett had gone to his doctors who told him, before the accident, that he was not a candidate for the sleep apnea study.

Garrett was eventually required to undergo what Zehl said was the first known court-ordered overnight sleep apnea study of a commercial motor vehicle driver, a study the firm contended

proved he suffered from moderate to severe sleep apnea.

"Our hope is that these rulings will help prevent future fatigue related collisions by encouraging bus and trucking companies to be more proactive when screening for sleep apnea and other sleep disorders that, when untreated, place passengers and the motoring public at serious harm," Zehl said in a statement.

Self on Wednesday described that study as suspect, noting that it took place nearly two years after the crash and was conducted by an expert unilaterally chosen by the passengers' attorneys. The study employed questionable methods, Self said, noting that Garrett was studied in a lab instead of at home and had to sleep on his back even though he doesn't normally sleep in that position. Sleeping on the back is more likely to produce sleep apnea findings, Self said.

Greyhound is represented by Michael P. Sharp and Scott W. Self of Fee Smith Sharp & Vitullo LLP.

The passengers are represented by Ryan Zehl and Kevin C. Haynes of Zehl & Associates PC and Carmen S. Mitchell of The Law Office of Carmen S. Mitchell

The case is Ruthie Allen, et al., v. Greyhound Lines, Inc., et al., Cause No. CC-13-05789-C in County Court at Law No. 3 in Dallas County, Texas.

--Editing by Jill Coffey.

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