

No. 02-_____

IN THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

In re Citizens for Reliable and Safe Highways;
Parents Against Tired Truckers; Teamsters for a
Democratic Union; and Public Citizen,

Petitioners.

CC-1363

Norman Y. Mineta, Secretary of the United States Department
of Transportation; the United States Department of Transportation;
and the Federal Motor Carrier Safety Administration,

Respondents.

**PETITION FOR A WRIT OF MANDAMUS AND FOR
RELIEF FROM UNLAWFULLY WITHHELD AGENCY ACTION**

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November 26, 2002

Exhibits to Petition

- Exhibit 1 Declaration of Kenneth T. Paff (for Teamsters for a Democratic Union)
- Exhibit 2 Declaration of Michael P. Schaffer (member, Teamsters for a Democratic Union)
- Exhibit 3 Declaration of Jennifer Mooney Tierney (for Citizens for Reliable and Safe Highways)
- Exhibit 4 Declaration of Tami Friedrich (member, Citizens for Reliable and Safe Highways)
- Exhibit 5 Declaration of Randi A. Baun (for Parents Against Tired Truckers)
- Exhibit 6 Declaration of Daphne G. Izer (member, Parents Against Tired Truckers)
- Exhibit 7 Declaration of Joan Claybrook (for Public Citizen)
- Exhibit 8 Declaration of Nancy H. Chasen (member, Public Citizen)

EXHIBIT 1

DECLARATION OF KENNETH T. PAFF

I, Kenneth T. Paff, declare:

1. I am the National Organizer of Teamsters for a Democratic Union (TDU).

TDU is a movement of members of the Teamsters Union working together to improve their union and their working conditions. TDU is affiliated with the Teamster Rank and File Education and Legal Defense Foundation (TRF) (of which I am the Executive Director), which provides educational services and materials and works with TDU to promote the legal rights of Teamster members.

2. TDU was founded in 1976 and TRF was founded in 1977. Both organizations maintain offices in Detroit and New York and operate across the U.S. and Canada. TDU has approximately 10,000 members, all of whom are members of the Teamsters and many of whom drive commercial trucks for a living.

3. Almost from its inception, TDU has concerned itself with truck safety issues. In 1979, a safety watchdog group called "PROD" (Professional Drivers Organization for Safety and Health) merged into TDU.

4. TDU has promoted the truck safety provisions of the Surface Transportation Assistance Act (STAA) of 1982. TDU members testified at Congressional hearings in support of the legislation. Lawyers working for PROD and TDU were involved in drafting the legislation establishing this trucking "whistleblower" act, under which commercial motor vehicle drivers may not be subject to adverse employment actions for reporting safety violations to the federal Department of Transportation or state or local police. In addition,

under STAA, truckers may refuse to drive trucks that do not comply with applicable safety laws and regulations without retaliatory job action.

5. One of TDU's key roles is to explain safety rights to truck drivers. In November 2000, we published *The STAA Handbook*, a comprehensive handbook which explains how truck drivers can enforce truck safety regulations while protecting their jobs. In that book, we explain who is covered by STAA, how workers can file "whistleblower" complaints under STAA, how complaints are investigated, and how to organize around important recurring truck safety issues (such as those concerning hours-of-service, lack of truck safety inspections, employers forcing drivers to work when ill, failure to equip trucks with proper lighting, reflectors and other safety equipment, overweight, over-length, and over-height vehicles, and the like). The *Handbook* contains descriptions of successful STAA cases and provides advice on how truckers can educate their co-workers on truck safety and organize them around STAA issues.

6. TDU also publishes a monthly newsletter called the *Convoy Dispatch*, which, among other things, educates Teamsters on truck safety issues. Over the years, the *Convoy Dispatch* has published many articles promoting safe trucking, including a three-part series concerning truckers' rights under STAA and how truckers can use STAA to advance truck safety. In addition, *Convoy Dispatch* has published articles discussing workers' victories in lawsuits challenging adverse employment action taken in retaliation against workers who have reported truck safety violations. In that way, TDU aims to educate truckers about the existence of truck safety laws and to embolden them to take action to protect their safety

and that of their co-workers.

7. In addition to our publications, TDU runs truck safety workshops at its annual convention and other meetings. Staff at TDU's offices respond on a regular basis to requests from Teamsters for information on truck safety and for advice on pursuing union and collective bargaining grievances involving truck safety issues. TDU also refers drivers to lawyers when it believes that they need representation to assert their rights under STAA, other laws, or their collective bargaining agreements.

8. TDU on its behalf and that of its members is petitioning the United States Court of Appeals for the District of Columbia Circuit to require the Department of Transportation to issue particular safety regulations concerning (a) hours-of-service, (b) training for drivers of longer combination vehicles, (c) training for new commercial truck drivers, (d) staffing standards at international borders, (f) standards for the transportation of hazardous materials, and (g) background checks on commercial drivers. In a series of laws enacted during the 1990's, Congress required the Department to issue those regulations by certain dates, but the Department did not issue the regulations by the required dates and has still not issued those regulations. The main reason that TDU seeks the promulgation of these regulations is that a large number of TDU's members are truck drivers who are exposed to the dangers of the road for long hours on an almost daily basis. Their safety is compromised in the absence of these regulations. On the other hand, the promulgation of these regulations will enhance their safety by making it less likely that they will be injured or killed on the road.

9. TDU has considerable experience in dealing with the issue of hours-of-service for truck drivers. In its publications and in its organizing efforts, TDU has argued for strict enforcement of DOT regulations and improvement in regulations to prevent tired drivers from being forced onto the nation's highways, and to upgrade the working conditions of truck drivers more generally.

10. In addition, TDU supports enhanced minimum safety training for all new drivers and specialized training for drivers of longer combination vehicles, which pose particular risks for drivers and the motoring public because of their tendency to "jackknife" and the difficulties in handling such large vehicles.

11. TDU also supports increased and higher quality safety inspections at our international borders. In particular, at our southern border, trucks arriving from Mexico often do not meet U.S. safety standards, posing hazards to drivers on U.S. roads, including TDU truck drivers. In addition, the use of safe trucks and well-trained truck drivers impose costs on trucking companies, as compared to using trucks that are relatively unsafe and drivers that are relatively untrained. Therefore, when commercial trucks are not properly inspected at our borders, resulting in unsafe vehicles and unlicensed or untrained drivers entering the U.S., domestic trucking concerns become relatively uncompetitive, driving down wages and/or resulting in a loss of jobs for truckers, thus harming truck drivers, including Teamster and TDU members.

12. As noted above, TDU and TDU members have a longstanding interest in promoting the health and safety of truck drivers through enhanced safety regulations

imposed on truckers and trucking companies. In addition, TDU and TDU members have an economic interest in promoting reasonable standards for the truck driving profession. Many non-union employers operate with low standards, and thus may endanger their employees as well as the public. Such low standards drive down working conditions, wages, and safety standards in the trucking industry as a whole, which ultimately have the same downward effect on union employers as they try to compete.

13. For all of the reasons discussed above, TDU and its members are harmed by the Department of Transportation's failure to issue the regulations at issue here. Their prompt issuance will enhance safety, as envisioned by Congress, to the benefit of TDU and its members.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 22, 2002, in Detroit, Michigan, pursuant to 28 U.S.C. § 1746.



Kenneth T. Paff

EXHIBIT 2

DECLARATION OF MICHAEL P. SCHAFFER

I, Michael P. Schaffer, declare:

1. I live in Youngstown, Ohio. I have been a commercial truck driver since May 1988. I am employed by Roadway Express and am a member of Local 377 of the International Brotherhood of Teamsters. For three years, from 1996-1999, I was an officer of my Teamsters local in Youngstown and I did not drive.
2. My basic job for Roadway is to deliver freight from one Roadway Express facility to another. I drive a long multi-trailer rig. The vast majority of my driving is on turnpikes and interstate highways.
3. Until recently, I drove a truck for Roadway six days a week and was on-duty approximately 12 hours per day. Due to seniority, this year generally I drive only five days a week, and I continue to be on duty about 12 hours per day. I still work no less than 60 hours per week and continue to drive, on average, more than 100,000 miles per year.
4. I have been a member of, and active in, the Teamsters for a Democratic Union (TDU) since later 1988 or early 1989. I have served on TDU's international steering committee, which is the elected body of TDU that sets the agenda for the organization and formulates its policies. One of the main reasons that I joined TDU is its commitment to promoting safe working conditions and, in particular, supporting enhanced truck safety laws and regulations. Improving truck safety is enormously important to me and my

fellow truckers because we spend a lot of time on the road and safety improvements reduce the likelihood that we will be injured or killed in an accident.

5. I am submitting this declaration in support of TDU's court petition seeking to order the U.S. Department of Transportation to issue truck safety regulations in six separate areas. Specifically, TDU is petitioning the United States Court of Appeals for the District of Columbia Circuit to require the Department of Transportation to issue safety regulations concerning (1) hours-of-service, (2) training for drivers of longer combination vehicles, (3) training for new commercial truck drivers, (4) staffing standards at international borders, (5) standards for the transportation of hazardous materials, and (6) background checks on commercial drivers. I support the effort to force the Department of Transportation to issue these regulations and believe that the issuance of each of them will reduce the potential that I will be injured or killed on the road.

6. As I stated above, I drive a multi-trailer rig, also known as a longer combination vehicle (LCV). I am personally familiar with the extreme difficulty in driving these types of vehicles. On an almost daily basis I witness a crash (or the aftermath of a crash). Some of these accidents involve multi-trailer vehicles, which are especially prone to wreck in inclement weather. In some states, there is almost no additional training required before a licensed trucker is permitted to drive a "double" (a two-trailer rig) and sometimes even a "triple." Truckers need to receive training on these vehicles for many reasons. For instance, inexperienced drivers are unaware of the

difficulty of driving multis in bad weather and high winds, and they tend to be unaware of their potential for jackknifing, which can cause serious spills and crashes. Also, it is important for multi-trailer drivers to be trained not to get into situations where they will be required to back up because backing up in a multi-trailer vehicle is next to impossible.

7. Inexperienced, untrained truckers also frequently do not appreciate that multi-trailer rigs are very difficult to handle going downhill. Therefore, those truckers often drive too fast or are not as attentive as they should be when driving downhill. Tragically, a friend and co-worker of mine at Roadway was killed by a non-union LCV driver on November 2, 1995. The other driver was going too fast on a downgrade on the Pennsylvania Turnpike, when he lost control, jumped the median, and ran head-on into my friend's rig.

8. Hours of service is one of the issues about which TDU and I have been very concerned. Hours-of-service rules have a direct effect on me. Under the current rules, I can be required (and often am required) to work more total hours and more continuous hours than I believe are consistent with safety. Currently, truck drivers are limited to no more than 10 on-the-road hours in any 18-hour period. Nevertheless, many drivers are forced to drive when they are tired because of several problems with the current rules. One of the key problems is that off-road hours — when drivers are engaged in loading and unloading, waiting for roadside repairs, or simply waiting for their rig to be ready — are not counted the same as on-the-road hours. Under the law, drivers can be required to

work for 15 consecutive hours without violating the rules, so long as they are not required to drive more than 10 of those hours. This problem is particularly bad when drivers are required to drive late at night or early in the morning. Many times, I have not started driving until very early in the morning, say 4 a.m. or some similar time, which makes it impossible to be as alert as I should be. For instance, it is perfectly legal for an employer to put a driver on the road ~~from~~ ^{AT} 1 a.m. ^{drive} to 6 a.m., require the driver to wait at the destination to pick up additional freight until 11 a.m., and then require the driver to drive another five hours, until 4 p.m. ^{THAT} ~~the next~~ day. MPS.

8. Another loophole in the law makes matters even worse. To use another example: Assume that a driver comes off his legally required rest period at 1 a.m. on day one, and is technically "off duty." However, that driver is then required by his employer to wait at home near the phone to be called for work. That driver waits until 8 p.m., when he is called in by the employer and put "on duty." He can then legally be required to work the next 15 hours, until 11 a.m. on day two, as long as no more than 10 of those 15 hours are on-the-road driving hours. In this example, the driver can be on the road after ~~up to~~ ^{MPS} 34 hours without sleep. I would hope that any new federal rules would deal with this problem, which allows very tired truck drivers to be on the road.

9. Another problem is that, under current law, after driving for 10 hours, a driver can be provided as few as eight hours off, and then be required to drive again. In other words, the driver can be forced to work on an "18-hour day" instead of a 24-hour day. I

know from personal experience that these "short" days can lead to great fatigue on the road, and that it would be far better for the safety of truckers and the driving public if truckers worked on a normal 24-hour day as do most other workers.

10. Another continuing problem is one of enforcement of hours-of-service rules. Regardless of the exact content of the rules, it is important that trucking companies follow the rules. From personal experience, I know that trucking companies sometimes do not follow the rules, particularly because they are under pressure from customers who are anxious to get the goods that we are transporting. One method of enforcement is to have automated, tamper-proof devices in trucks that record mileage and hours of service for a particular driver. By law, these devices may be used as one method of reporting compliance with the law, but they are not mandatory. (One company, Frito-Lay, uses a particularly effective version of this kind of device; that device simply does not permit the vehicle to operate after it has run continuously for a certain number of hours or miles). I know that if automated devices were mandatory, hours-of-service rules would be obeyed more frequently than they are today.

11. Based on my experience, I also think it is important for there to be rules requiring trucking companies to provide background safety information on former employees (such as accident records, information about training, alcohol and drug use, and the like) to prospective employers. I am personally aware of situations in which truckers with poor safety records have been hired, apparently without the employer

knowing anything about the history of the people that they hired. This problem is particularly serious with non-union employers, where wages are low and turnover is about 100% per year. I also think that it is essential that when the Department of Transportation issues a rule requiring the provision of background information to prospective employers that the Department itself be required to compile that information in some circumstances. In recent years, many trucking companies have gone out of business. For instance, just this past Labor Day, a major trucking company with about 40,000 employees, Consolidated Freightways, closed its doors. It is important that the information previously held by now-defunct companies be retained by the government, so that it can be forwarded to prospective employers.

12. I am also strongly in favor of training standards for new commercial drivers. At present, in many states, drivers need only pass minimal written tests, but need not demonstrate on-the-road experience or ability. Additional training will reduce the number of unsafe truck drivers on the road, which will enhance my safety, the safety of my fellow drivers, and the safety of the driving public generally. The need for training for new drivers is more important now than ever before. In recent years, there have been an increasing number of commercial drivers who are recent immigrants (particularly from Russia and Mexico). These drivers often have limited understanding of English (and so have trouble understanding basic road signs) and, in my experience, often do not have basic knowledge about how to drive large commercial vehicles.

TOTAL P. 08

13. As I stated earlier, I work for Roadway Express, which is a union employer. Because of my union activities over the past 15 years, I am aware that, in the trucking industry, union employers generally provide safer vehicles, hire more skilled drivers, and provide a safer working environment than non-union employers. In addition to the safety benefit that will come from forcing the Department of Transportation to issue the various regulations at issue here, there will be economic benefit as well. If there are enhanced safety regulations applicable to all employers — for instance in the area of hours of service or in the training of LCV drivers — non-union employers will be less able to lower their costs by skimping on safety and it will be harder for them to put pressure on the wages of union truckers such as myself and my fellow TDU members. In other words, increased safety regulation will not only save lives, but it will tend to even the economic playing field between union and non-union workers.

14. For all the reasons explained above, TDU members, including myself, benefit from the various truck safety regulations that TDU is trying to require the government to issue because those regulations decrease the likelihood that we will be injured or killed in truck crashes. And, as I've explained, these regulations benefit us economically as well.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 23, 2002, in Youngstown, Ohio.


Michael P. Schaffer

EXHIBIT 3

DECLARATION OF JENNIFER MOONEY TIERNEY

I. Jennifer Mooney Tierney, declare:

1. I am a member of the Board of Directors of Citizens for Reliable and Safe Highways (CRASH), a non-profit national advocacy organization with over 14,000 members headquartered in Washington, D.C. I am making this declaration on behalf of CRASH. CRASH was founded in 1990 to help mitigate the devastating problems associated with truck crashes by improving truck safety in the United States and thereby eliminating needless deaths and injuries caused by those crashes.

2. CRASH's membership includes national leaders who volunteer their services to CRASH to advance the organizations objectives, members of emergency care units, brain injury foundations, state highway patrols, and crash reconstruction experts, all of whom have seen first hand the devastation caused by unsafe trucks and truck drivers, and truck crash survivors and the families of crash victims, who truly understand the inadequacy of current truck safety regulations and the urgent need to enact new laws and regulations to mitigate the carnage taking place on the Nation's roads and highways. And many CRASH members are just ordinary people — motorists who share the roads with commercial trucks, and who, for their own safety and for the safety of their loved ones and fellow citizens, want those trucks to operate as safely as possible.

3. CRASH's goals are simply stated: CRASH seeks to (i) reduce the number of injuries and deaths from truck-related crashes; (ii) provide compassionate support to truck crash survivors and the families of truck crash victims; (iii) freeze truck size and weight limitations; (iv) educate the public on truck safety issues; (v) educate legislators and lobby the Congress, state legislatures, and federal and state regulators on truck safety issues; (vi) reduce the number

Exhibit 3

state legislatures, and federal and state regulators on truck safety issues; (vi) reduce the number of deaths and injuries caused by truck driver fatigue, (vii) improve training and hiring standards for commercial truck drivers; (viii) improve truck maintenance standards, and (ix) assure the safety of commercial trucks and drivers crossing our international borders.

4. CRASH's activities and accomplishments include

- pushing for federal legislative changes concerning truck safety regulation;
- supporting enhanced federal and state regulation of the number of hours that truck drivers can work in any work day, and opposing efforts to loosen current hours-of-service laws and regulations;
- urging adoption of laws requiring more effective underride guards on commercial trucks;
- lobbying Congress on the need for better regulation of the interstate truck shipment of hazardous materials;
- urging legislative and administrative requirements that trucks be equipped with reflective materials to increase visibility;
- lobbying to assure that trade treaties and other efforts at international "harmonization" do not allow unsafe trucks to enter the United States; and
- working to assure that size and weight restrictions for longer combination vehicles and other commercial trucks be maintained and enhanced.

A summary of some of CRASH's work in these areas is attached to this declaration as Exhibit A and is incorporated by reference as if fully set out here.

5. CRASH is petitioning the Court to require the Secretary of the U.S. Department of

Transportation (DoT) to issue regulations that Congress determined are vital to improving truck safety. Congress required the DoT to issue regulations concerning (a) truck drivers' hours-of-service, (b) training of drivers of longer combination vehicles, (c) training of new commercial drivers, (d) staffing standards at international borders, (e) background checks for potential truck driving employees, and (f) standards for the transportation of hazardous materials. In each instance, because of the important safety goals of the needed regulations, Congress set specific deadlines by which the regulations were required to be promulgated in final form. But in each instance the DoT did not issue the final regulations by the required date and still has not done so.

6. We have been actively involved in attempting to persuade Congress and DoT to ensure these safety rules – in any or all of these areas – are issued as soon as possible. The high death rate connected with truck crashes – more than 5,000 per year – has persisted for a decade. In 1999, Congress created the Federal Motor Carrier Safety Administration (FMCSA) within the DoT to focus a single DoT agency on improving highway safety, giving FMCSA primary responsibility for this area and increasing its funding. Despite this, FMCSA has made very little progress on any of the topics with which these rules are concerned.

7. CRASH is vitally interested in the topics that Congress wanted FMCSA to address in each of the yet-to-be-issued regulations described in paragraph five. CRASH believes that the promulgation of final regulations on these topics will enhance the safety of the driving public, including CRASH's members.

8. Trucks crossing the U.S. border from Mexico present a serious safety hazard to the U.S. public. Statistics show that in fiscal year 2000, of the trucks crossing into the U.S. from Mexico that were inspected, 36% were removed from service because of safety violations. In

general, trucks originating in Mexico fail safety inspections at twice the rate that U.S.-based trucks fail. Mexico has lower truck safety standards than the U.S, with no hours-of-service regulations whatsoever and no on-board logging of driving hours, and Mexico permits younger drivers to obtain commercial licenses.

9. Despite this glaring evidence of a significant safety problem with Mexico-originating trucks, safety inspections at the border are woefully inadequate because they are grossly understaffed. There are only 89 state and 58 federal truck safety inspectors, total, employed at U.S. borders. Texas, into which two-thirds of all trucks coming from Mexico cross, has no permanent inspection facilities at any of its 15 border crossing points. The U.S. DoT Inspector General concluded in 1998 that at the current levels inspectors simply could not assure that trucks crossing into the U.S. from Mexico are safe. The rule that DoT is required to issue is to set staffing standards for safety inspectors at international borders. Therefore the rule – assuming it implements Congress' direction to address the staffing crisis – would increase border staffing levels and lead to more safety inspections, which would either ensure more unsafe trucks attempting to cross the border are removed from the U.S. roadways or encourage greater safety compliance by those trucks if they want to remain on the road. Both effects would decrease the risks unsafe trucks pose for other highway drivers and passengers, including our members.

10. Driver fatigue is perhaps the most pervasive truck safety problem. Truck driver fatigue is a contributing factor in up to 30 to 40 percent of all truck crashes. National Highway Traffic Safety Administration (NHTSA), 2001. Government studies show that working long shifts not only greatly increases the risk of performance errors due to lost alertness and drowsiness, but also impairs truck drivers' ability to gain proper restorative sleep even when they

have sufficient off-duty time for sleep. (Federal Highway Administration, 1997). Perhaps most alarmingly given the current rules, the risk of a crash effectively doubles between a driver's eighth and tenth hour of driving, and doubles again from the tenth to the eleventh hour of driving. (FMCSA, 2000). The current rules permit 10 consecutive hours of driving before a non-driving period of eight hours is required. The rules also permit a driver to spend sixteen hours of a twenty-four hour period driving.

11. The current rules on hours of service and fatigue could be dramatically improved by certain aspects of rules that have been proposed by the agency at various times. First, there is a proposal to shorten the permitted driving period to eight hours, which would eliminate the highly dangerous eighth hour-to-tenth hour period in which alertness decreases dramatically. In addition, the current rules are based on an 18-hour schedule, while proposed rules would be based on a 24-hour circadian schedule to better match the body's natural clock. Drivers would also be required to take alertness-enhancing breaks during their 8-hour driving periods. Currently, no such breaks are required even under the more demanding 10-hour schedule. Proposed rules would also improve enforcement by requiring some type of on-board tamper-proof device to record actual driving time to ensure compliance with hours-of-service regulations. Trucks currently are not required to have automated or tamper-proof recorders, so there is no assurance that drivers stop even after 10 hours of continuous driving. CRASH has pressed for all of these proposed measures and also encouraged DoT to act expeditiously to implement these proposals.

12. The rules that DoT is required to issue also include a rule to establish standards for permits to transport hazardous materials. The current rules, such as they are, do little in the way

of safety and security. The need for security measures for hazardous materials is much more evident since the terrorist attacks of September 11, 2001. Currently, commercial trucks that begin carrying hazardous materials need only register and pay a fee to the Research and Special Programs Administration (RSPA), but need not go through any licensing or permitting process, to be authorized to transport hazardous materials. Further, FMCSA may have no idea that the carriers over whom it has primary safety responsibility are carrying hazardous materials, because carriers need not inform FMCSA, and RSPA has no obligation or practice of sharing the registration information with FMCSA. In addition, drivers with a run-of-the-mill commercial drivers license can obtain an "endorsement" on their commercial license, authorizing them to drive a truck loaded with hazardous materials, by merely passing a written test. CRASH believes that this lax system presents the potential for any irresponsible carrier – whether ill-intentioned or merely inexperienced or careless – to put the American public at risk of broad-scale disasters such as fire, environmental contamination, or mass poisonings.

13. The hazardous materials rules would address at least some of these shortcomings because the rule is supposed to establish a general security plan for the transportation of hazardous materials as well as requirements for hazardous materials drivers licenses. We have also encouraged the agency to include in its rule a requirement that trucks employ Global Positioning System technology to enable the agency to track the location of hazards-carrying trucks.

14. In sum, public safety, including the safety and health of our members, is at risk as long as DoT fails to issue these six safety rules because of the safety gaps described above. The prompt promulgation of the six regulations listed above would benefit CRASH and its members

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by enhancing safety on our Nation's highways and reducing the risk of death and injury from crashes involving commercial trucks. Therefore, CRASH and its members would benefit if this lawsuit succeeds because it would compel DoT to issue rules that would bring about safer highways.

I declare under penalty of perjury that the foregoing is true and correct pursuant to 28 U.S.C. § 1746. Executed in Kernersville, North Carolina, on November 26, 2002.

Jennifer Mooney Tierney
Jennifer Mooney Tierney

EXHIBIT A

CRASH Activities and Accomplishments

Federal Regulation of Truck Safety

- 1998 - 1999: Provide testimony to the Inspector General of the U.S. Dept. Of Transportation, The General Accounting Office and at numerous Congressional and National Transportation Safety Board (NTSB) hearings, documenting the abdication of the U.S. Office of Motor Carrier of its regulatory and enforcement functions for trucks on the road. CRASH has played an instrumental role, working with Members of Congress and the media, toward forging key legislative changes.

Fatigue and Hours of Service

- 1998: Successfully petitioned Congress during the passage of TEA-21 to remove trucking industry backed language that would have made GPS data off limits to those enforcing truck driver hours-of-service regulations.
- 1998: Spearheaded a campaign at the Departments of Labor and Transportation to republish OSHA poster #3113 detailing whistle blower protections for truck drivers, and make the posting mandatory for carriers.
- 1997: Reached 50 million people through a public awareness campaign revealing the deaths annually among professional truck drivers and targeting trucking company practices, which provide incentives to drivers to speed and drive tired, through pay by the mile and unreasonable delivery schedules.
- 1997: Submitted first comprehensive docket comments developed through a partnership of a non- profit, grassroots highway safety group and professional truck drivers, on the problem of fatigue and hours of service, to the Federal Highway Administration.
- 1996: Organized the first forum for truck drivers and victims of truck crashes to meet and develop a mutual lobbying agenda -- the Annual National Conference of Truck Crash Survivors in Wash. D.C.
- 1995: Killed Maryland copycat bill modeled after the 1995 California hours of service bill (see below.)
- 1995: Killed a California bill that would have endangered agricultural company truck drivers by increasing their shifts to 100 hours long and decreasing the rest period between shifts to 24 hours.
- 1994: Overturned a Federal Highway Administration (FHWA) proposed rule that would have increased the number of hours a truck driver could drive in an eight-day period from 70 to 100 hours.
- 1991-1995: Killed bills in numerous states that would have increased the time intrastate truck drivers could drive continuously without rest from 10 to 20 hours.

Underride

- 1998: Drew national media attention to the continuing issue of ineffective underride guards at a press conference in Washington, D.C. as part of CRASH's Ten Most Wanted

and Needed Truck Safety Actions.

- 1993: Achieved a ruling by the Department of Transportation lowering guards on the rear of trucks so that fewer cars would slide underneath in rear-end crashes. Unfortunately, DOT only lowered the guard to 22 inches -- an energy absorbing guard at 16 inches would prevent thousands more deaths and injuries annually.

Environment

- 1998: Participated in the successful petitioning of Congress during the passage of TEA-21 to not allow broad exemptions on intrastate shipments of hazardous agricultural materials.

Conspicuity

- 1999: After tens of thousands of volunteer hours spent on this issue, CRASH's work was recognized by being asked to witness the signing of new rulemaking at FHWA requiring uniform reflective tape or reflex reflectors on all big rig trailers manufactured before 1993.
- 1998: Submitted comprehensive docket comments to the FHWA on mandating the retrofitting of all tractors and trailers manufactured before 1993 with highly reflective materials.
- 1996: After 15 years of work by members of the CRASH Survivor Network, NHTSA issued a rule that will require all big trucks - tractors and trailers - manufactured after January 1, 1993 be marked with highly reflective materials that increases visibility.

NAFTA

- 1996 -1998: Contributed to President Clinton's continued delay on opening the border under NAFTA, because a reliable system for safety checks of entering trucks was still not in place.
- 1996: Led a campaign that generated nearly 300 Congressional signatures to a letter urging Transportation Secretary Federico Pena to maintain U.S. truck size and weight standards in the context of NAFTA harmonization talks.
- 1995: With the Teamsters influenced President Clinton's decision on December 18, 1995 to delay opening the border-states to Mexican truck traffic for safety reasons.
- 1995: Helped pass a U.S. Senate resolution instructing NAFTA negotiators to preserve U.S. truck safety rules and make truck safety a top priority.

Size and Weight

- 2000: Helped kill SB 1848 in the California Senate that would have increased the weight of gasoline tanker trucks from 80,000 lbs, to 86,000 lbs.
- 1999: Sponsored California AB 576 to prevent over length big rigs from traveling on narrow sections of state highways where they must off track into oncoming traffic.
- 1998: Successfully petitioned Congress during the passage of TEA-21 to not allow Idaho to increase truck weights on their federally maintained highways.
- 1998: Sponsored California AB 2253 to prevent over length big rigs from traveling on narrow sections of state highways where they must off track into oncoming traffic.

Measure stalls in appropriations.

- 1998: With the passage of TEA-21, maintained the Congressional "freeze" on the use of unstable multi - trailer Longer Combination Vehicles (LCVs), preventing their spread through the 48 contiguous states.
- 1997: Killed Georgia bill that would have increased the allowable length of a single-trailer truck to 75 ft.
- 1997: Passed California Assembly Joint Resolution 8 which states the California Legislature's opposition to lifting the federal freeze on LCVs and informs President Clinton, Congress, and Governor Wilson that the Legislature finds safety the highest priority in commercial trucking.
- 1997: Killed North Carolina bill that would have allowed for an increase in the length of trucks to 70 feet from 60 feet and width from 98 to 102 inches.
- 1997: Reached 10 million people through a public awareness campaign on the top ten most dangerous states for truck-related fatalities, targeting the need for size and weight limits on trucks at the state and federal levels.
- 1996: Killed Idaho bill that would have dangerously increased state weight limits.
- 1991-1995: Killed bills in numerous state legislatures that would have increased the maximum legal weight of trucks.
- 1991: Passed legislation through Congress to "freeze" the use of unstable multi-trailer Longer Combination Vehicles (LCVs), preventing their spread through the 48 contiguous states.

EXHIBIT 4

5. I am familiar with the petition CRASH is filing to compel the Department of Transportation to issue rules to improve the safety of commercial trucking. These rules would address highly important safety areas including hours of service, required rest periods, and other vitally important fatigue issues for commercial drivers, what background information employers would be required to obtain on potential truck driver employees, minimum training requirements for entry-level truck drivers, training requirements for drivers of longer-combination/multiple trailer rigs, increased safety inspections at international borders, and minimum requirements for permits for commercial trucks to carry hazardous materials. These rules all concern problems that currently pose safety risks to me. If the lawsuit is successful, I would benefit from the lawsuit because the rules the DOT would be required to issue would improve each of these safety areas and reduce the risks to me of death and injury on the highway that I experience every day.

I declare under penalty of perjury that the foregoing is true and correct pursuant to 28 U.S.C. § 1746. Executed November 26, 2002 in Pasadena, California.


Tami Friedrich

EXHIBIT 5

DECLARATION OF RANDI A. BAUN

I, Randi A. Baun, declare:

1. I am the Executive Director of Parents Against Tired Truckers (P.A.T.T.). P.A.T.T. was founded in Maine in 1994, after a truck driver fell asleep at the wheel of his 80,000-pound rig, killing four teenagers. P.A.T.T. is now a national organization, headquartered in Washington, D.C., with members in every state and more than 5,000 members total. Since its inception, P.A.T.T. has worked to save lives by improving highway safety. Although it has worked on a number of highway safety issues, its focus is on reducing commercial vehicle crashes by assuring that tired truckers are not on the road and by otherwise mitigating the dangers posed by tired truckers.

2. P.A.T.T. lobbies Congress and state and local legislative bodies seeking the enactment of legislation that will reduce the dangers of driver fatigue. It participates in proceedings before administrative agencies — such as the U.S. Department of Transportation (DoT), and meets with key regulators — such as the Secretary of Transportation and the Administrator of the Federal Motor Carrier Safety Administration (FMCSA), seeking the promulgation of regulations and policies that will reduce the dangers of driver fatigue. P.A.T.T. also pursues its mission through various forms of public education, such as appearances at public meetings and safety conventions around the country, and by distributing materials and talking to drivers at shopping malls and other public places.

3. To name just a few of our accomplishments and activities, P.A.T.T. has:
- Testified before committees of Congress on pending truck safety legislation and on the need for such legislation;
 - Provided educational materials regarding driver fatigue to 700 trucking companies nationwide;
 - Testified before state legislative committees on driver fatigue issues;

- Sponsored a range of state legislation, particularly in Maine, where the organization was founded. Examples of legislation that P.A.T.T. sponsored in Maine include:
 - The Tired Trucker Bill, initiated in 1996, which provides for liability for trucking company managers if a driver under their supervision is involved in a crash due to being pushed beyond the legal limits of hours of service;
 - Twice in 1999 and once in 2000, P.A.T.T. sponsored legislation to increase the amount a plaintiff can recover in a wrongful death suit. These laws eventually raised the recovery cap from \$75,000 to \$400,000;
 - Under 1998 legislation that P.A.T.T. sponsored, qualified investigators from the Maine State Police Commercial Vehicle Enforcement Unit must investigate every commercial crash involving a fatality. Previously any officer, regardless of knowledge of laws governing commercial vehicle, could serve as the crash investigator.

4. There is no doubt that driver fatigue is a primary cause of serious transportation accidents throughout the United States. As the former Chairman of the National Transportation Safety Board (NTSB), Marion Blakely, has put it:

Many times and throughout all modes of transportation, investigations have found that lost sleep equals lost lives. . . . We can do more to stem the fatalities, injuries and property damage that result from operators who should be in bed rather than behind the wheel.

Press release, National Transportation Safety Board, April 3, 2002. Available at <http://www.nts.gov/pressrel/2002/020403.htm> (visited November 23, 2002).

5. Many studies link fatigue with accidents and resulting injuries and fatalities. A 1995 study by NTSB estimated that 31 to 40 percent of all truck crash fatalities are fatigue related. Similarly, in 1996 the Federal Highway Administration released a report

stating that fatigue was a major problem in truck safety. At a major transportation summit sponsored by the NTSB in 1995, groups of industry, government, and public attendees each concluded independently that fatigue was the most serious problem in the commercial trucking industry. In its proposed rulemaking on these issues, the DoT only added to the urgency for fatigue-combating rules, estimating that “755 fatalities and 19,075 injuries occur each year on the Nation’s roads because of drowsy, tired or fatigued drivers of CMVs [commercial motor vehicles].” 65 Fed. Reg. 25540. More recently, FMCSA published a report on a six-year study of the effects of sleep deprivation on commercial driving, in which it identified fatigue as a major contributor to poor commercial driver performance. *Effects of Sleep Schedules on Commercial Motor Vehicle Performance*, FMCSA Report No. DOT-MC-00-133, May 2000. These are just some examples of the vast scientific and anecdotal evidence showing that fatigue plays a significant, negative role in a substantial portion of the truck crashes that occur every year. Given that the National Highway Traffic Safety Administration reported that in 2001 alone, more than 5,000 deaths and 131,000 injuries occurred in connection with commercial truck crashes, we consider fatigue to be a pressing health problem for all members of the American public who spend any time on the Nation’s highways.

6. The current state of federal and state regulation on hours of service and other fatigue-related issues is woefully inadequate to protect safety. One of the central problems with current federal regulations is that they are not structured to correspond to the body’s internal clock, or circadian rhythms, which operate on a 24-hour schedule. Under the current non-circadian structure, a driver may spend 16 hours – or two-thirds – of a given 24-hour period driving. In addition, although current rules require 8 hours of

non-driving time after a driver has spent 10 hours driving, some of that non-driving time may be spent loading, unloading, waiting, showering – in short, in many ways other than getting needed rest and sleep. Enforcement is also a problem. Many trucks still use manual logs for recording driving time. Some trucks have on-board devices that record driving time, but many drivers report the devices are easily manipulated or tampered with to allow the driver to drive for even longer periods than the current rules permit. Similarly, state law enforcement officers may enforce current hours-of-service and other fatigue-related rules, but generally do not, probably because they are unfamiliar with these aspects of federal law. The required fatigue-related rules as currently proposed would address many, although not all, of these shortcomings by, for example, structuring hours-of-service rules around the body's circadian rhythms, and requiring the installation of tamper-proof, on-board electronic devices to record driving time.

7. A 1999 NTSB study of government efforts to address driver fatigue found that, despite a number of initiatives, little progress had been made in revising regulations to incorporate the latest research on sleep issues. The NTSB recommended that DoT establish scientifically-based hours-of-service regulations that reasonably limit duty hours and provide adequate time for rest. We believe the DoT has displayed true intransigence by failing to make progress in spite of overwhelming evidence indicating how urgently improved regulations, especially hours-of-service rules, are needed.

8. The inadequacy of current laws and regulations is why P.A.T.T. believes that DoT should immediately issue regulations on hours of service and driver fatigue, as required by section 408 of the Interstate Commerce Commission Termination Act of 1995. That law requires DoT, in formulating its regulation, to consider the need for “8

hours of continuous sleep after 10 hours of driving, loading, and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness.” 49 U.S.C. § 31136 note (“Federal Highway Administration Rulemaking”).

9. P.A.T.T. has strongly urged the DoT to issue the new fatigue-related rules, including by testifying before the Senate to explain why they are needed to improve the safety of the commercial trucking industry.

10. Issuance of a final regulation on any one or all of the topics that Congress required to be considered would, if based appropriately on current scientific research on driver fatigue, enhance the safety of truck drivers and the driving public, including P.A.T.T.’s members, and would therefore also advance the organizational interests of P.A.T.T. in its role as truck safety advocate. For example, if there were a federal requirement that commercial drivers must have eight hours of sleep after 10 hours of driving, loading, or unloading operations, the number of fatalities and injuries attributable to driver fatigue would be greatly reduced. Similarly, a requirement that commercial motor vehicles have automated and tamper-proof devices — used to record how long a driver has been driving — would also enhance safety because it would increase the likelihood of driver compliance, and the enforceability, of whatever hours-of-service rule that was in effect.

11. P.A.T.T. is filing this petition because it believes that these rules are vital to the safety of the Nation’s highways. The rules would reduce truck driver fatigue,

increase the qualifications held by commercial drivers, ensure drivers undergo background checks, keep unsafe foreign-based trucks off U.S. highways, and ensure trucks carrying hazardous materials meet minimum federal permitting requirements. Therefore if the petition succeeds, P.A.T.T.'s organizational interests and the interests of its members will benefit because the rules the DoT would be required to issue would decrease the risks of crashes involving commercial trucks, and would thus decrease the chances of death and injury caused by those crashes.

I declare that the foregoing is true and correct. Signed under penalty of perjury pursuant to 28 U.S.C. § 1746 on November 26, 2002, in Washington, D.C.

A handwritten signature in black ink, appearing to read 'Randi A. Baun', written over a horizontal line.

Randi A. Baun

EXHIBIT 6

DECLARATION OF DAPHNE G. IZER

I, Daphne G., Izer, declare:

1. I am the founder and a currently a Co-Chair of Parents Against Tired Truckers (P.A.T.T).
2. I am familiar with and have participated in much of PATT's work at the state and national level to reduce trucker fatigue and improve the safety of commercial trucking on the Nation's highways.
3. I founded PATT because I am one of many who have lost family members in unnecessary truck crashes caused by a tired trucker. In addition, I continue to use the Nation's roadways both as a driver and a passenger, and therefore am regularly at risk from tired truckers and otherwise unsafe commercial truck driving. My husband and I live in a rural area, so I spend twelve hours per week on average traveling on highways to conduct normal life activities, either as a driver, or as a passenger when my husband is driving. This is in addition to the approximately 60 miles per week I drive to travel to and from work.
4. I am familiar with the petition that PATT is filing to compel the Department of Transportation (DOT) to issue rules that address important commercial trucking safety problems. The rules would address such important safety issues as hours of service and required rest periods for truck drivers, minimum training requirements for new drivers and drivers of longer-combination vehicles, background checks on drivers, increased border inspections of Mexican trucks for safety, and requirements trucks must meet to carry hazardous materials. The issuance of these safety rules will benefit me, my family, and other members of the public because they will reduce driver fatigue and other long-standing trucking safety problems, and therefore will

decrease the risks of death and injury from unsafe commercial truck driving.

I declare under penalty of perjury that the foregoing is true and correct pursuant to 28 U.S.C. § 1746. Executed on November 25, 2002 in Lisbon, Maine.



Daphne G. Izer

EXHIBIT 7

DECLARATION OF JOAN CLAYBROOK

I, Joan Claybrook, declare as follows:

1. I am the president of Public Citizen. I have held this position since 1982. Prior to joining Public Citizen, I was Administrator of the National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation (DoT) from 1977 to 1981. I am submitting this declaration on behalf of Public Citizen.

2. Public Citizen is a nationwide consumer advocacy organization founded in 1971 with a current membership of approximately 125,000. Many of our members drive and are therefore at risk of being involved in crashes with large trucks when they are on the road. These risks remain unacceptably high because DOT has failed to issue rules that Congress directed it to issue in order to improve the safety of commercial trucks operating on the Nation's highways.

3. Public Citizen advocates before Congress, administrative agencies, and the courts for strong and effective health and safety regulation and has a long history of advocacy on matters related to auto and truck safety. Public Citizen works to improve highway safety by lobbying Congress to pass legislation, monitoring the DOT to be sure it carries out the will of Congress, gathering information on auto and truck safety issues, conducting public awareness campaigns, and participating in lawsuits to force government action.

4. Since its founding, Public Citizen has been instrumental in bringing about dramatic improvements in the laws and regulations that affect auto and highway safety. These improvements include the following:

- In 1975, Public Citizen waged a successful public and legislative campaign to urge Congress to enact legislation establishing energy conservation and fuel economy

standards, including the federal program for Corporate Average Fuel Economy (CAFE) standards;

- In 1991 Public Citizen worked to help bring about legislation to require head injury protection and air bags in all passenger vehicles. We also organized public support for a law requiring passenger-side air bags;
- Also in 1991, Public Citizen helped defeat proposed legislation that would have permitted expanded use of triple-trailer trucks;
- In 1998, we helped to win passage of legislation requiring advanced air bag safety standards reflecting safety testing for women and children. We participated fully in the DoT's subsequent rulemaking by submitting comments at each stage, and are pursuing litigation against NHTSA for weakening these important safety standards at the final rule stage by reducing the crash test speed at which the air bag must perform;
- In 1999, Public Citizen supported reform efforts at DoT that led to the creation of the Federal Motor Carrier Safety Administration (FMCSA). Its support activities included publicizing and testifying before Congress on the shortcomings of the Office of Motor Carriers;
- After Firestone's recall of 6.5 million tires in 2000 and the discovery that Firestone had withheld defect information from the government and the public, we led a group of organizations in a campaign to convince Congress to include key safety enhancing provisions in the legislation passed in response to this scandal, the Transportation, Recall Enhancement, Accountability and Documentation (TREAD) Act. Those provisions include required NHTSA to update its tire safety standards, required

companies to submit to NHTSA early warning information about possible safety defects, required the evaluation of standards for child restraints, and provided for substantially higher civil penalties for regulatory violations.

5. The six statutes at issue in this case involve issues that are vital to improving the safety of the commercial trucking industry to reduce unnecessary crashes, protect commercial drivers, and protect drivers and passengers who use highways. Public Citizen has actively sought improvements in all of these areas, including by pressing the DoT to issue the rules, because we agree with Congress that each of the required rules will improve truck safety and security.

6. The requirement that DoT issue a rule regarding staffing standards for federal and state inspectors of trucks crossing U.S. borders is important for preventing unsafe trucks domiciled outside the U.S. from threatening American lives on our highways. The DoT's Office of the Inspector General has detailed the problems caused at the border due to an inadequate number of inspectors. In a December 1998 report, the Inspector General concluded that far too few trucks are being inspected at the U.S.-Mexico border, and that too few trucks comply with U.S. standards. Office of Inspector General, *Motor Carrier Safety Program for Commercial Trucks at U.S. Borders* iii, (Washington: 28 December 1998). This report also stated that "a direct correlation exists between the condition of Mexican commercial trucks entering the U.S. commercial zones and the level of inspection resources at the border." Thus trucks entering the United States will generally be safer if more inspectors are available to perform inspections, because these inspections will prevent unsafe trucks from entering the United States. If inspection levels are not improved, the burden of noncompliant and unsafe trucks will fall on

local law enforcement as well as drivers, passengers, and property owners who may suffer injury and property damage from crashes caused by the unsafe trucks.

7. To attempt to improve cross-border truck safety, we have done the following:

- Visited border areas and met with affected officials and citizens to gather information on the current state of border safety and inspections;
- Testified at hearings of the Senate Subcommittee on Surface Transportation and Merchant Marine on these safety issues;
- Led lobbying efforts for passage of the provision of the Motor Carrier Safety Act that requires DoT to issue standards for border inspection staffing;
- Submitted comments on numerous occasions to DoT on proposed safety rules related to non-U.S. trucks;
- Extensively publicized these safety issues and urged our members and the public to press for safety improvements from Congress and DoT.

8. Regarding the Do's failure to issue rules to establish standards for drivers' continuous hours of service, required rest, and other fatigue-related issues, there is voluminous evidence that driver fatigue is a serious roadway hazard. DoT itself has estimated that "755 fatalities and 19,705 injuries occur each year on the Nation's roads because of drowsy, tired, or fatigued [commercial motor vehicle] drivers." "Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations," FMCSA, 65 Fed. Reg. 25,540 (May 2, 2000).

9. In a 1995 National Transportation Safety Board (NTSB)-sponsored summit on truck and bus safety, industry, public and government representatives all identified fatigue as the highest priority safety issue. 66 Fed. Reg. 61248 (Dec. 3, 2001). That same year, NTSB

recommended that DoT issue at least an emergency rule that would guarantee drivers more protected off-duty rest time. The DoT has projected that rules addressing driver fatigue would save 115 lives and prevent 2,995 injuries per year, and have a net economic benefit of \$3.359 billion. 66 Fed. Reg. 61248 (Dec. 3, 2001).

10. Public Citizen has been actively involved in seeking to improve highway safety by reducing commercial driver fatigue. These efforts included urging and supporting the statutory measures eventually adopted by Congress in 1995 to require DoT to issue rules to address these fatigue-related issues, gathering scientific evidence, testifying before Congress, and publicizing the issue to raise public awareness.

11. Background checks of prospective commercial truck drivers is an issue that has major safety and security implications. Currently there is no federal requirement that motor-carrier employers obtain prior safety-related information about prospective drivers from their former employers, no federal requirement that prior employers respond to such information requests, or standards specifying what would constitute an appropriate response. As just one example of the consequences of this regulatory gap, the NTSB reported on a bus crash that killed 22 passengers after the driver suddenly “slouch[ed] down” while driving and veered off the road. The NTSB determined that the driver was previously been diagnosed with a life-threatening heart condition, had been fired twice for testing positive for drug use, and had been involved in three property-damaging crashes while driving a bus. It concluded that the “inadequacy of the medical certification process” and the “absence of a mechanism for identifying drivers who have tested positive for drug use” were indirect causes of the crash. “Motorcoach Run-off-the-road Accident New Orleans, Louisiana, May 9, 1999,” National Transportation Safety Board, Highway

Accident Report PB 2001-916201, August 28, 2001. In addition, I testified to the Senate Subcommittee on Surface Transportation and Merchant Marine in October 2001 regarding the lack of federal regulation in this area and the urgent need for improvements.

12. The rules Congress has required in this area would compel background checks on prospective employees, require prior employers' cooperation with such screenings, and specify what information prior employers must provide. These rules would remedy the problem of ignorance in driver hiring by giving employers access to sufficient information to make informed decisions about whether a driver will safely and responsibly drive a large commercial vehicles, and would thus prevent unsafe drivers from being placed in a position to harm passengers and other users of the nation's roads. These background checks are particularly important in light of the our increased awareness of the risk of terrorist attacks, because these regulatory gaps also exist for, and the required rules would also apply to, drivers of vehicles carrying hazardous materials. These regulations would make motor carriers who are entrusted with transporting hazardous materials responsible for obtaining background information about the persons who will control highly dangerous materials as those materials are being transported through the country.

13. Congress has also required DoT to issue rules that establish minimum training requirements for entry level commercial truck drivers. Currently, commercial drivers licenses (CDLs) for interstate trucking are issued by states, and applicants need comply with only minimal federal rules. These do not include any requirements for prior training or certification of prior training. The state-by-state requirements for intrastate CDLs are even less demanding in most cases.

14. Government studies have shown that commercial training programs need improvement. The General Accounting Office (GAO) published a study in 1989 on driver training showed wide variations in curricula content, hours of training, and costs at various private and public driver training programs it studied. The study also noted that the majority of schools were not accredited or certified. *Truck Safety: Information on Driver Training*, U.S. General Accounting Office (GAO/RCED-89-163) Aug. 1989. Pursuant to a Congressional mandate, the DoT studied private training programs and concluded, in its resulting report to Congress, that the current (private and voluntary) level of training provided to new commercial drivers is inadequate, and that detailed federal performance standards are needed to improve safety. 61 Fed. Reg. 18,355 (April 25, 1996).

15. Government statistics show the likelihood of an operator being involved in a fatal crash decreases as the operator spends more time behind the wheel. *Traffic Safety Facts 1999: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System*, National Highway Traffic Safety Administration 99 (Dec. 2000). Because crashes decrease as drivers become more experienced, and current training programs and requirements are inadequate, establishing training requirements for new commercial truck drivers will reduce the number of crashes. We have worked to support these rules because they would increase the safety of roads for our members. In support of establishing minimum training requirements, Public Citizen has supported federal legislation to require these safety rules, presented testimony to the relevant Senate subcommittee on the need for these rules, and informed the public about these issues and encouraged public involvement in getting these rules issued.

16. Another rule required by Congress that the DoT has not issued would establish better training requirements for operators of longer-combination vehicles (LCVs). Crashes involving LCVs frequently involve a “jackknife” situation in which the tractor and trailer(s) spin at sharp angles to each other, posing a severe hazard to other motorists in the area of the crash. *Traffic Safety Facts 1999: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System*, National Highway Traffic Safety Administration 78, Dec. 2000. The DoT concluded in its advance notice of proposed rulemaking that drivers of single-unit commercial trucks are not capable of driving LCVs safely without additional, advanced on-the-road training. 58 Fed. Reg. 4638 (Jan. 15, 1993). Thus, a lack of minimum training requirements increases the likelihood of crashes involving LCVs and the associated risk of harm to motorists from LCV jackknives. Fulfilling this rulemaking obligation would reduce the risk of death and injury to the millions of drivers and passengers who share the road with LCVs. Public Citizen has been involved for years in attempting to improve this situation by supporting the legislation that requires the DoT to issue these rules, testifying before Congress about the need for training requirements for LCV drivers, and increasing public awareness about the regulatory gaps in safety on this issue.

17. Public Citizen has also been active on the issue of the transportation of hazardous materials, which is a vital safety and security issue. Congress directed the DoT to finish formulating a uniform system for issuing permits to motor carrier companies to transport hazardous materials more than eleven years ago, but DoT has failed to do so. There is currently no national permitting system or database for motor carriers of hazardous materials. States permit carriers to transport hazardous materials, but government reports have concluded there are

widespread defects in state permitting systems that directly affect the safety of, and availability of data on, hazardous materials being transported by motor carriers. We have therefore testified before Congress, lobbied Congress multiple times on this issue, and urged DoT to formulate the federal uniform permitting system required by statute. We have also urged Congress to undertake further reforms in this area, including heightened reporting requirements, establishing a national database to facilitate monitoring and enforcement, and requiring carriers to register and certify compliance with DoT before they begin transporting hazardous materials, rather than after some period of delay as under the current system of regulation.

18. Public Citizen is participating in this lawsuit because we believe each of the rules the DoT has failed to issue are extremely important to the safety of commercial trucks on the nation's highways. Compelling the DoT to issue these rules would have a noticeable impact on the lives of our members and the general public by reducing truck crashes and the resulting fatalities and injuries associated with them, and generally making it safer for our members and the general public to use the Nation's roads.

I hereby declare under penalty of perjury that the foregoing is true and correct. Signed pursuant to 28 U.S.C. § 1746 on November 26, 2002, in Washington, D.C.

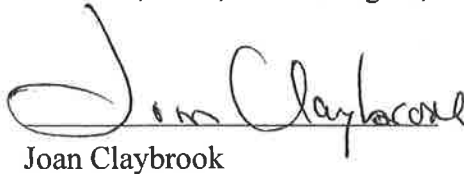

Joan Claybrook

EXHIBIT 8

DECLARATION OF NANCY H. CHASEN

I, Nancy H. Chasen, declares:

1. I am a member of Public Citizen, and have been a member for several years.

2. I am generally familiar with Public Citizen's work to improve auto and highway safety and I support Public Citizen's work on this issue. I have read the declaration of Joan Claybrook on behalf of Public Citizen, and as a member of Public Citizen I support and agree with the statements contained in that declaration.

3. My family and I travel heavily on the nation's roads and highways and frequently share those roadways with commercial trucks. I am therefore regularly subject to the risk of death and injury that the safety, or lack of safety, of commercial trucks and their drivers pose for me and my family. My son attends college in New England, and my extended family lives in Hartford, Connecticut. As a result, my family and I travel from the Washington, D.C. area, where I live, to New England by car several times a year, by way of the "eastern corridor," a set of highways I consider dangerous in part because of heavy commercial truck traffic. My son drives himself to and from college approximately five times per year, and I am concerned about the risks to my son's life and health as he drives this same eastern highway corridor. My daughter is also a user of the highway system. Further, my husband and I live in a suburban area and thus regularly use the area highways and beltways in conducting our normal daily activities. My husband spends approximately an hour per day driving to and from work on the National Capitol Beltway, which I consider to be a hazardous road, made all the more so by unsafe trucks and truck driving.

4. I am familiar with the petition Public Citizen is filing to compel the Department of Transportation to issue commercial truck safety rules that Congress ordered the agency to issue years ago. These rules will improve safety in the areas of truck driver fatigue, training requirements for new drivers and for drivers of longer-combination vehicles, staffing levels for safety inspectors at U.S. borders, requirements for trucks that may carrying hazardous materials, and required background checks on truck drivers. I am particularly concerned about the problem of driver fatigue, and have informed myself about the negative effects of sleep deprivation on drivers and the resulting risks for other drivers such as me. If successful, Public Citizen's lawsuit will benefit me because it will result in rules that will increase the safety of commercial trucks and their drivers, which will decrease the risks to the health and safety of me and my family in traveling by car on the nation's roadways.

Signed under penalty of perjury pursuant to 28 U.S.C. § 1746 on November 25, 2002 in Bethesda,
Maryland.



Nancy H. Chasen

CERTIFICATE OF SERVICE

I, Brian Wolfman, hereby certify that, on November 26, 2002, I caused to be served a copy of the foregoing petition on the following by certified mail, return receipt requested:

United States Department of Transportation
c/o Federal Motor Carrier Safety Administration
400 7th Street, S.W.
Washington, D.C. 20590

Hon. John Ashcroft
United States Attorney General
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001


Brian Wolfman