

SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS AT BANFF

B10/10 2010

FAI17

DETERMINATION

by

SHERIFF WILLIAM H. SUMMERS ESQ.

in the Inquiry under the Fatal Accidents & Sudden Deaths Inquiry (Scotland) Act 1976

into the Death of

WALLACE EWEN

BANFF, 19th April 2010.

The Sheriff having resumed consideration of the evidence, affidavits, productions and submissions, Determines:-

1. In terms of Section 6(1)(a) of the Fatal Accidents & Sudden Deaths Inquiry (Scotland) Act 1976 ("the Act") that Wallace Ewen, who was born on 25th August 1963 and resided at 13 Wellfield Terrace, Aberchirder, Huntly, Aberdeenshire, AB54 7PQ died at about 14-30 hours on 30th August 2009. He died immediately to the West of the access road to Hillend Farm, Fordyce, Aberdeenshire as a result of injuries sustained by him in an accident which occurred there whilst he was working in the course of his employment at Hillend Farm, Fordyce, Aberdeenshire.

2. In terms of Section 6(1)(b) of the Act, that the death of Wallace Ewen was due to traumatic asphyxia. This was a rapidly fatal consequence of the tractor and trailer combination he was driving becoming unstable, Mr Ewen being unable to control it, the tractor colliding with the kerb of the access road, Mr Ewen being ejected from the cab and thereafter becoming trapped and crushed under the tractor.

3. In terms of Section 6(1)(c) of the Act, that there were no reasonable precautions that might have been taken and that might have avoided the accident. If Mr Ewen had taken the reasonable precaution of wearing the seatbelt that was available within the tractor, that might have avoided his death following the accident.

4. In terms of Section 6(1)(d) of the Act, that there was no evidence of any defect in any system of working that contributed to the accident or the death.

5. In terms of Section 6(1)(e) of the Act, that the following facts are relevant to the circumstances of the death.

5.1 It was established that the deceased's blood alcohol level was 263 microgrammes of alcohol in 100 millilitres of blood.

5.2 The level of alcohol in the deceased's blood is likely to have adversely affected his reaction time and made it more difficult for him to control the tractor and trailer combination when it became unstable.

Sheriff

NOTE:-

Introduction

1. This is a mandatory Fatal Accident Inquiry held in terms of Section 1(1)(a)(i) of the Fatal Accidents & Sudden Deaths Inquiry (Scotland) Act 1976. The Inquiry is in relation to the death of Wallace Ewen following an accident at work on 30th August 2009. The application was warranted on 28th January 2010. The date allocated for the Inquiry was 18th March 2010. I heard evidence and submissions that day.

2. The Inquiry was presented on behalf of the Crown by Mr Fay, Procurator Fiscal Depute. No other party was represented at the Inquiry. I heard evidence from six witnesses at the Inquiry. Those were:-

2.1 Gregor Sieviewright

Mr Sieviewright is 35 years of age. He is a farmer. He is one of the partners in the business that employed Mr Ewen. Mr Sieviewright was one of the first people on the scene after the accident.

2.2 Keith Broadfoot

Mr Broadfoot is 45 years of age. He is a paramedic based at Buckie. He has been a paramedic for six years. He attended the scene after the accident.

2.3 Ian Donaldson

Mr Donaldson is 50 years of age. He is the station manager at the Grampian Fire Rescue Service based in Aberdeen. He has been with the fire service for 28 years and a manager for one year. Mr Donaldson was the senior member of the Fire and Rescue Service at the scene of the accident.

2.4 Graeme Duncan

Mr Duncan is a police constable with Grampian Police. He is 33 years of age. He is based at Banff and has five years police service. He was the first Police Officer to arrive at the accident.

2.5 Robin Smith

Mr Smith is a police constable with Grampian Police. He is 40 years of age. He is attached to the Collision and Investigation Unit and has eight years police service. PC Smith was involved in investigating the accident and dealing with an accident reconstruction.

2.6 Michael Howden

Mr Howden is 56 years of age. He is a vehicle examiner employed by the Vehicle & Operator Services Agency ("VOSA"). He has been employed by the Agency as an examiner tester for fourteen years. He inspected the vehicles involved in the accident.

3. In addition to the parole evidence, evidence was presented through affidavits. Affidavits were referred to in respect of:-

3.1 Kenneth Thomson - speaking to two volumes of photographs, A and B.

3.2 Dr James H K Grieve - speaking to a summary of the post-mortem report dated 3rd September 2009.

3.3 Dr Duncan W S Stephen - speaking to a report dated 4th September 2009 in relation to an analysis of blood.

4. The witnesses referred to a number of documents including photographs taken at the scene. PC Smith spoke to a comprehensive collision investigation report. Mr Howden spoke to a detailed VOSA report.

5. The evidence presented to me was largely uncontroversial and was in any event uncontroverted. I found all of the witnesses to be entirely straightforward, credible and reliable. I have little hesitation in accepting the evidence presented at the Inquiry.

Wallace Ewen

6. The deceased, Wallace Ewen, was born on 25th August 1963. On 30th August 2009 he was 45 years of age. Mr Ewen was married with three children. He was conscientious, reliable and a man who enjoyed his work. At the time of his death he lived at 13 Wellfield Terrace, Aberchirder, Huntly, Aberdeenshire, AB54 7TQ. He was respected and well liked in the community.

7. Mr Ewen was as a tractor man and a general farming hand. Since the spring of 2005 he had been employed by a farming partnership comprising the witness, Gregor Sievewright, Mr Sievewright's father and Mr Sievewright's uncle. Mr Ewen's job involved him in doing ploughing work, baling, helping with stock and other general farming work. Although he would use other machines he generally used a Case tractor, registration number SV07 DYH.

The Locus

8. The locus of the accident was the access road leading to Hillend Farm, Forydce, Banff. The access road is made up and well maintained. It leads from the unclassified road between Brodiesford and Fordyce. The access road runs broadly south to north from the unclassified road on a slight incline upwards to Hillend Farm. The access road is a little over three metres wide. It has kerbs on the east and west sides. To the east of the access road there is a grass verge beyond which there is a

post and wire fence. On the west of the access road there is a grass verge. Beyond the verge is a drainage ditch approximately 1.5 metres deep.

The tractor

9. The tractor involved in this accident is a Case 190MXM agricultural tractor. It is registration number SV07 DYH ("the tractor"). The tractor is unremarkable. It was designed for use on a farm and particularly for off-road use. As one might expect of such a vehicle, the tractor is "four wheel drive".

10. The tractor has, what are described as split brake pedals. In essence this involves there being two separate brake pedals. There is a brake pedal to operate the brakes on the near side wheels and a brake pedal to operate the brakes on the off side wheels of the tractor. These brake pedals are located immediately adjacent to each other. The two pedals can be linked together by means of a locking pin. This effectively locks the pedals together so that they operate as one pedal. This is a design feature of certain tractors.

11. If the brake pedals are not linked together then either the left or right pedal can be depressed independently. If the left pedal is depressed on its own, that operates the brakes on the near side rear wheel of the tractor only. If the right pedal is depressed on its own, that operates the brakes on the off side rear wheel of the tractor only. This facility renders the tractor more manoeuvrable when it is being used off-road. The tractor can be more easily pivoted or turned, around whichever rear wheel is braked. The two brake pedals are located sufficiently close to each other that even when not linked together, the driver is able to cover both pedals with one foot and to operate both pedals. If both pedals are depressed together that has the effect of braking all four wheels of the tractor and not simply the rear wheels. If the brake pedals are linked together then necessarily, if depressed, the brake pedals will be depressed together.

12. There is another feature of the tractor's brakes that it is necessary to comment on. A tractor is a vehicle often used for towing other vehicles, including trailers. Some trailers have hydraulic braking systems, others do not. If a trailer with a hydraulic braking system is towed by the tractor, and if that hydraulic system is coupled to the tractor's braking system then, in certain circumstances the brakes of the trailer can be applied. If only one of the tractor's brake pedals is depressed then regardless of whether a trailer is being towed, the only wheel that will be braked is either the near side or the off side rear wheel of the tractor, depending on which pedal is depressed. If both brake pedals on the tractor are depressed then all four of the tractor's wheels will brake and at the same time, if connected, the hydraulic brakes on any trailer will also operate. That, of course, must necessarily apply if the brake pedals are linked together.

The trailer

13. The trailer involved in Mr Ewen's accident was a two axle, Marston agricultural trailer. Its unladen weight was approximately 4,300 kilograms. The trailer is fitted with hydraulic brakes on all four wheels. Those brakes can be coupled to a tractor by means of hydraulic hoses and connectors.

Saturday 29th August 2009

14. Mr Ewen was working on 29th August 2009. The witness Gregor Sieviewright had hoped to be able to start harvesting the farm crop that day. In the event it was too wet. Mr Ewen was engaged in doing a number of different jobs. Mr Sieviewright expected the weather to improve by the Sunday afternoon. Mr Sieviewright was working with Mr Ewen and mentioned to Mr Ewen that he might need him to help with harvesting on the Sunday.

Sunday, 30th August 2009

15. It was too wet to start harvesting on the morning of Sunday 30th August. By lunchtime the crop had dried and Mr Sieviewright planned to get some harvesting done. Harvesting was to be by means of a combine harvester. The harvester has an internal storage tank. Harvesting can be done by filling that tank and then downloading the crop from the tank into a trailer. Alternatively a tractor can be used to pull a trailer alongside the harvester and the crop dropped directly into the trailer. Mr Sieviewright anticipated Mr Ewen driving the tractor to pull a trailer in that way. He tried to speak to Mr Ewen at around 11.55 am on 30th August. He did not reach him at that point but called him back at 12.05. He spoke with Mr Ewen then. Mr Sieviewright explained that he wanted to start harvesting in the afternoon. He asked Mr Ewen to help and he asked Mr Ewen to get down to Hillend Farm for about 1.30 pm. Mr Sieviewright's expectation was that by 1.30 pm he would have had time to take the harvester once round the field to fill its storage tank and by that time would be ready for Mr Ewen to help. Mr Ewen seemed perfectly content with the proposed arrangement.

16. Hillend Farm is the centre of the Sieviewright's farming operation. The harvesting was to be undertaken at a neighbouring farm. That farm is about a mile and a half from Hillend. Mr Sieviewright anticipated that Mr Ewen would drive from his home to Hillend, leave his car at Hillend and take a tractor and trailer combination to the field being harvested.

17. Mr Sieviewright made his way to the field and started combining. He filled the combine harvester's tank once. He emptied the contents of the tank into the trailer. He recalled at some point seeing some grey smoke from Hillend Farm but thought nothing of that. Mr Sieviewright went round the field and filled the harvester's tank again. By that time it was after 1-30pm and Mr Ewen had still not appeared. Mr Sieviewright thought that was odd. Mr Ewen was very reliable and, if anything, Mr Sieviewright would have expected him to be early. By this point the tank in the combine harvester was full and the only trailer in the field was full.

18. Mr Sieviewright took a tractor and the full trailer back towards Hillend Farm. Mr Sieviewright did not go specifically to look for Mr Ewen but wondered where he was. As he approached the access road to Hillend, Mr Sieviewright saw the tractor and trailer combination and realised that they were "not right". He turned into the access road. He immediately saw the tractor he expected Mr Ewen to be driving. It was lying upturned in a ditch at the westmost side of the access road to Hillend Farm. The trailer was immediately behind it. When Mr Sieviewright arrived a Mr Michal Jazdzewski was already on the scene. Mr Jazdzewski had been passing by Hillend

Farm and saw the vehicles. He had already telephoned emergency services. The police were alerted. Fire and rescue appliances were alerted and despatched from Portsoy, Cullen and Aberchirder.

19. Mr Sievwright looked but could not immediately see Mr Ewen. The tractor engine was still running. Mr Sievwright reached into the cab to turn the engine off. He then went up to the farm steading to see if he could see Mr Ewen. There was no sign of him. Mr Sievwright took a JCB loader down to the scene of the accident. He went into the cab of the tractor, and at that point he saw Mr Ewen trapped under the cab. Mr Sievwright concluded that he should try to lift the tractor off Mr Ewen. He went back to the farm in the JCB to change the forks. By the time he arrived back on the scene a neighbour had arrived. The neighbour suggested to Mr Sievwright that it was too late to do anything for Mr Ewen. They called emergency services.

20. The first member of the emergency services on the scene was PC Graeme Duncan. PC Duncan was on duty with a colleague in the Portsoy area when he was called to attend the accident. When he arrived on the scene, he met Mr Sievwright and Michal Jazdzewski. PC Duncan saw the overturned tractor in the ditch at the westmost side of the access road with the trailer behind it. The scene is as shown in photograph 1 in album A. Constable Duncan spoke with Mr Sievwright and Mr Jazdzewski. They explained that they thought the driver was trapped underneath the tractor. Constable Duncan looked and it appeared to him as if someone was trapped. Constable Duncan searched the area and the farm. There was no sign of the driver. Mr Sievwright explained that he had been expecting Mr Ewen to be driving the tractor. There was little that Constable Duncan could do at the scene. He blocked the road to facilitate further investigations and he called in the Collision and Investigation Unit.

21. Keith Broadfoot, is the paramedic who attended the locus. He is based at Buckie. He was called at 14.03 on 30th August. He attended the scene as the main response vehicle. He arrived at 14.31 shortly after PC Duncan.

22. When he arrived on the scene Mr Broadfoot met Constable Duncan and his colleague and two civilians. Mr Broadfoot was directed to the tractor. He observed it was upside down in a ditch on the westmost side of the access road to Hillend Farm. He confirmed that by reference to photograph 3 in album A.

23. Constable Duncan explained to Mr Broadfoot that the driver of the vehicle was trapped under the tractor. There was a risk of the tractor slipping and Mr Ewen could not be reached. Mr Broadfoot saw Mr Ewen's body under the roof of the tractor. He could see the upper torso, his back and Mr Ewen's right arm. He could tell that the torso was almost completely submerged in water. It had been so for at least 30 minutes. Mr Ewen's arm was mottled and Mr Broadfoot concluded that the blood had started to pull away from the arm. This is shown in photograph 23 in album A. Mr Broadfoot concluded that the injuries sustained by Mr Ewen were incompatible with life. He co-ordinated with Constable Duncan. He pronounced life extinct approximately 15 minutes after he arrived at the locus.

24. Mr Ian Donaldson was on duty in Aberdeen on 30th August. He was automatically paged when it became apparent that the incident involved a risk to life. He was

paged at 14.28 and started to make his way to the locus. On his way to the locus Mr Donaldson was advised that the incident involved a tractor and trailer. In response to that he mobilised a further appliance. That was an appliance with heavy duty cutting gear. Subsequently but while he was still on his way to the locus, Mr Donaldson was advised that Mr Ewen had died. In response to that he stood down the appliance. Mr Donaldson arrived at the locus at 15.34 on 30th August.

25. Photograph 1 in bundle A described the scene when Mr Donaldson arrived at the locus. When he arrived, Mr Donaldson was met by one of the crew managers of one of the fire appliances. He was told by that crew manager that Mr Broadfoot had explained that the incident involved a fatality. The crew manager had stood down two of the fire appliances. A third one was kept on the scene until Mr Donaldson arrived. On his arrival, Mr Donaldson instructed the taking of steps to stabilise the trailer. It was stabilised by putting blocks under the wheels. Fire and rescue services did not have any heavy lifting gear.

26. Constable Duncan was able to establish with reasonable certainty that the person trapped under the vehicle was Mr Ewen. He established where Mr Ewen's widow worked but was unable to contact her. Mrs Ewen arrived on the scene shortly thereafter. Constable Duncan told her then what had happened.

27. The location of the trailer and in particular the tractor posed challenges for the rescue services. They needed heavy lifting gear to move the tractor. None of the appliances that had been despatched to the locus had any such equipment. It quickly became apparent to Mr Donaldson that having stabilised the trailer there was little that the fire and rescue services could do. He stood down the third appliance. The fire and rescue service appliances left the scene shortly after Mr Broadfoot pronounced life extinct. Mr Donaldson offered such assistance as he was able to provide to the police and he then left the scene of the accident.

28. Arrangements were made to make heavy lifting equipment available. Later on the same day the tractor was lifted. Mr Ewen's body was recovered and was taken to Aberdeen where he was identified.

Investigation

29. There were no eye witnesses to the accident. The locus was inspected following the accident. The tractor and trailer were inspected. On the basis of the investigations that were carried out, the circumstances of the accident were reconstructed.

30. PC Robin Smith was the police officer principally involved in investigating the locus and dealing with the reconstruction. He started work at 14.00 hours on 30th August. He was alerted to this incident at 14.30 and he arrived on the scene at 15.00.

31. When PC Smith arrived on the scene he found the tractor on its roof in the ditch at the west side of the access road. Photographs 1, 2 and 3 in volume A describe the position of the tractor and trailer when he arrived. PC Smith checked to see whether there was anything he could do to assist in preserving life. When it was clear there

was nothing to be done he took steps to start collecting evidence. The towing eye on the trailer drawbar had sheared allowing it to become detached from the tractor. There was no immediately obvious explanation for how the accident had happened. Conditions were good. There was nothing untoward about the road. PC Smith surveyed the locus. He checked the road and the kerbs for markings. He checked the verges for damage. He tried to ascertain if there was anything that would indicate where the tractor and trailer combination had been and the direction in which it had travelled.

32. Moving in a generally southerly direction from Hillend downhill towards the unclassified road, PC Smith identified a fresh tyre mark on the westmost kerb and on the verge. At or about the same point, some debris in the centre of the road had been moved aside (photograph 5 in volume A).

33. Moving southwards and further down the access road PC Smith observed other, more significant damage to the verge. He concluded that damage had been caused by the front off side wheel of the tractor. The damage was caused by steering lock being applied and the wheel "snow ploughing" down the verge. A little further down the access track (shown in photographs 7 and 8 in volume A) there were very obvious and fresh tyre marks on the road. PC Smith concluded these had been made by the tractor. The marks showed that the tractor was moving in an east/west direction. These marks were made by the tyres sliding sideways as they rotated on the road surface. PC Smith explained that when these marks were made the brakes were not being applied. The tread on the tyres tried to break contact with the road surface. The friction melted the road surface. That caused the road surface to melt. Rubber from the tyre tread stuck to the road. The tyres themselves had lateral marks that were consistent with the marks on the road. (photographs 18 and 19 in volume A).

34. On the basis of these observations, PC Smith was able to reconstruct the accident. A detailed report was produced and spoken to by PC Smith. He concluded that the accident happened while Mr Ewen was driving the tractor and trailer combination south on the access road from the farmyard towards the unclassified road. For reasons unknown, the front off side tyre of the tractor struck the west kerb. The tractor and trailer then returned to the access road. They travelled a little further south before they again mounted the west verge. Mr Ewen applied steering lock to steer the tractor back onto the road. The front off side tyre of the tractor caused significant damage to the verge. The tractor then returned to the access road but for all practical purposes was out of control at that point. The tractor crossed the access road and collided with the east kerb. The tractor then re-crossed the road at almost 45 degrees to the road. The front wheels of the tractor then collided with the westmost kerb. The wheels mounted the west verge and went into the ditch to the west of the access road. At that point the front of the tractor started to descend into the ditch. The trailer was at almost a right angle to the tractor. The weight of the trailer carried it on downhill in a generally southerly direction. The trailer lifted the rear of the tractor off the ground. The rear off side wheel of the tractor and the drawbar of the trailer came into contact. That caused the towing eye of the trailer to snap. The tractor broke free from the trailer and fell back to the ground. At that point the near side wheel struck the kerb. By that time the tractor had started to overturn into the ditch. The force of that impact combined with the motion of the tractor

caused Mr Ewen to be ejected through the left hand door of the tractor into the bottom of the ditch. The tractor continued to roll over coming to rest upside down in the ditch. It trapped Mr Ewen face down in the ditch.

35. On inspection of the vehicle, PC Smith found that the brake pedals of the tractor were in the split position. They were not linked together. The consequence of that is that either the near side or off side rear wheel could be braked independently. That is how the tractor would normally be used off-road. When being used on the road the brake pedals would normally be linked together. PC Smith explained that if either the left or right pedals had been applied that could have caused any snaking movement in the tractor and trailer combination to become exaggerated. There was no evidence at the locus to suggest that had been a significant factor in the accident.

36. There was no obvious explanation for the accident available at the locus. There was no obvious defect with the vehicle and no defects in the road. PC Smith wondered whether Mr Ewen might have been taken ill while driving the tractor. Subsequently the toxicology report became available. It is lodged as a production and is referred to in Dr Stephen's affidavit. It disclosed that at the time of the accident, Mr Ewen had in his blood almost two and a half times the legal limit of alcohol for driving. When he became aware of that Constable Smith concluded that as a consequence, Mr Ewen's reaction time will have been significantly impaired. Constable Smith explained that in his assessment, after the initial impact with the westmost kerb, Mr Ewen was less well equipped to bring the vehicle under control. His reactions were sufficiently impaired that he was unable to properly drive the vehicle thereafter.

37. The tractor was fitted with a seatbelt. The rollover cage in the tractor cab worked well. Even after the tractor rolled over, it was substantially intact. There was no evidence to suggest that Mr Ewen had been wearing the seatbelt. If he had been wearing it, it is unlikely he would have been ejected from the tractor cab. If he had not been ejected there is a good prospect that he would have survived the accident.

Post mortem examination

38. An affidavit of Dr Grieve was presented in evidence. It is dated 15th March 2010 and refers to a summary of the post mortem examination of Mr Ewen dated 3rd September 2009. The conclusion of the report is that Mr Ewen

"..died as a result of traumatic asphyxia, the consequence of his chest being crushed by a tractor, of which he was the driver, apparently overturning and pinning him to the ground, in an agricultural accident."

The tractor post-accident

39. The tractor and trailer were each examined independently by Mr Michael Howden after the accident. Mr Howden inspected the tractor in Elgin on 8th September. Mr Howden produced a detailed report which he spoke to in his evidence.

40. Mr Howden explained that there was superficial damage to the tractor. The nearside tyres were deflated. The glass on the left hand door was broken. Lights were displaced. There was a dent on the bonnet and wheel rims were damaged. Mr Howden inspected the tractor for signs of any pre-accident defects. In particular he checked the brakes and tyres and general condition of the tractor. There was no evidence of any pre-accident defect. He observed that the brake pedals were not linked. He explained the operation of the brakes as dealt with in paragraphs 10,11 & 12 above.

41. Mr Howden inspected the trailer. Again it was in good condition. The brakes of the trailer were tested and met statutory requirements. The brake hoses of the trailer did not show any signs of damage. There was nothing to suggest that they had been damaged when the tractor and trailer became detached. As far as Mr Howden could tell, the brakes had not been coupled to the tractor.

42 The tractor manufacturer's made recommendations in relation to the type of vehicle that can be towed safely by the tractor. There is a significant difference in the mass of a load that can be towed safely, dependant on whether the load is independently braked. Mr Howden explained there is a plate on the inside of the tractor cab dealing with the safe recommended limits for towing. A photograph of the plate is reproduced in his report. The "unbraked towable mass" is stated at 3,500 kilograms. If the mass being towed is braked, the mass that can be towed safely is 23,000 kilograms. Mr Howden explained that if there was any braking system on a trailer it should be coupled to the tractor while towing on the road. That is good practice. It enables the application of the trailer brakes and prevents the trailer pushing the tractor. As far as Mr Howden was concerned this trailer was too heavy to be towed by the tractor without the brakes being coupled.

43. The user's manual of the tractor was in the tractor cab. A copy of one of the pages from the manual is reproduced in Mr Howden's report. The manual provides *inter alia*

"Where independent wheel braking is not required ensure both pedals are locked together to provide normal braking **IMPORTANT:** the trailer brakes will only operate when both brakes are applied. **WARNING** for your safety always lock the brake pedals together when travelling at transport speeds or if a hydraulically braked trailer is attached to the tractor"

44 There was no evidence to suggest that the seatbelt in the tractor had been worn. If it had been worn, Mr Howden would have expected to see stretching of the belt fibre, transfer between the belt and Mr Ewen's clothing and friction burns on the belt. None of those were present.

45. The glass panel on the left hand door was missing. There was evidence of friction burns on the bar of the door. That was a strong indication that the occupant of the tractor had been forcibly ejected through that door.

46. The tractor and trailer were both in good condition. There was nothing to suggest that the condition of either vehicle had contributed to the accident.

Submission

47. Against the backdrop of the evidence, Mr Fay's submission was admirably succinct. For the purposes of Section 6(1)(a) of the Act, he invited me to find that the deceased had died on the access road to Hillend Farm on 30th August 2009 and the death was around 2.30 pm that day.

48. For the purposes of Section 6(1)(b) of the Act, Mr Fay invited me to find that the cause of death was traumatic asphyxia arising from an incident at work. Relying on the evidence and in particular the evidence of PC Smith and Mr Howden, he invited me to find that the accident happened after the tractor and trailer combination became unstable. Mr Ewen was unable to correct the instability in consequence of which the tractor collided with the westmost kerb of the access road. He fell from the cab of the tractor and thereafter sustained injuries that were not compatible with life.

49. As far as reasonable precautions were concerned and for the purposes of Section 6(1)(c) of the Act, Mr Fay invited me to find that had the deceased worn a seatbelt that might have avoided his death. He did not suggest that there were any reasonable precautions that might have been taken to avoid the accident. Although it is possible that the locking of the split brake pedals or the coupling of the brakes on the trailer might have had a bearing on the accident, there was no evidence on which I could rely to make any findings in relation to either of those things.

50. I was not invited to make any findings in relation to any defects in any system of working that contributed to the death for the purposes of Section 6(1)(d) of the Act.

51. Mr Fay invited me to make one other finding for the purposes of Section 6(1)(e) of the Act. He invited me to find that the fact the deceased's blood alcohol count was some two and a half times over the legal limit affected his reaction time and rendered it more difficult for him to control the tractor and trailer combination when it became unstable. That it is said was relevant to the circumstances of Mr Ewen's death.

Conclusion

52. On the basis of the evidence led before me I am entirely satisfied that for the purposes of Section 6(1)(a) of the 1976 Act that the deceased, Mr Wallace Ewen, whose date of birth was 25th August 1963 and who resided at 13 Wellfield Terrace, Aberchirder, Huntly, Aberdeenshire, AB54 7TQ died at approximately 2.30 pm on 30th August 2009. He died immediately to the west of the access road leading to Hillend Farm, Fordyce, Aberdeenshire.

53. For the purposes of Section 6(1)(b) of the Act, I am entirely satisfied, again on the basis of the evidence presented to me, that Mr Ewen died as a result of traumatic asphyxia after he became trapped underneath the tractor he had been driving. More difficulty arises in determining what caused the accident that resulted in Mr Ewen's death. There were no eye witnesses to the accident. I was, however, presented with compelling evidence from both PC Smith and Mr Howden. I am satisfied on the basis of that evidence that for reasons unknown, Mr Ewen lost control of the tractor and trailer combination he was driving. He was unable to regain control of the vehicles. The front wheels of the tractor collided with the westmost kerb of the access road. Mr

Ewen was forcibly ejected from the cab of the tractor. The tractor overturned and landed on top of him - all as described in evidence by PC Smith. Mr Ewen sustained injuries at that point that were not compatible with life.

54. It was clear on the basis of the evidence before me, and I have no difficulty in accepting that Mr Ewen was not wearing a seatbelt. That is not untypical of tractor drivers. It was clear on the basis of the evidence presented to me, and again I have no difficulty in accepting that following the accident the protective cage in the tractor's cab remained intact. It seems to me to be very likely that if he had been wearing a seatbelt Mr Ewen would not have been ejected from the cab. It seems to me that if he had remained within the cab, Mr Ewen would have survived the accident. It seems to me on that basis that the wearing of a seatbelt is a reasonable precaution that Mr Ewen might have taken which would have avoided his death.

55. I heard evidence in relation to the brake system of the tractor, in particular the split brake pedals, the mechanism by virtue which the pedals can be locked together and the effect of only one brake pedal being applied. I am satisfied that good practice would have required the brake pedals to be locked together while a trailer was being towed and if the vehicle was being used on a public road. Against that, however, while it is clear that the brake pedals were not locked together I heard no evidence on the basis of which I could be satisfied that had any bearing on the accident. That being so, for the particular purposes of this Inquiry I cannot say that locking the brake pedals together is a reasonable precaution that if taken, would have avoided this accident.

56. Similar considerations apply in relation to the brake system of the trailer. Again, it is clearly good practice for the brake system of an independently braked trailer to be coupled to the tractor towing it. Again, it is clear on the basis of the evidence I heard, that the brakes of the trailer being towed by Mr Ewen were not coupled to the tractor. Again, however, I heard no evidence to suggest that had a bearing on the accident. I cannot say for the particular purposes of this Inquiry that the coupling of the brakes is a precaution that if taken, would have necessarily avoided the accident.

57. Mr Ewen was an experienced tractor driver. He was familiar with both the tractor he was driving and the trailer he was towing. Although I have no direct evidence in relation to the matter I am entitled by way of reasonable inference to conclude that Mr Ewen knew it would have been good practice to lock the split brake pedals together and to couple the brake system of the trailer before proceeding as he did. I heard no evidence on the basis of which I could make any findings in relation to any defect in any system of working which contributed to Mr Ewen's death or to the accident that resulted in his death.

58. It is clear from the affidavit of Dr Stephen that at the time of his death, Mr Ewen had a significant blood alcohol reading. The legal limit for driving is 107 microgrammes/100 millilitres. The post-mortem reading for Mr Ewen was 263 mg/100 ml. In his evidence, Constable Smith described that as being two and a half times over the legal limit, and that is broadly correct. Constable Smith gave evidence in relation to the extent of the impairment such a blood alcohol count was likely to have caused Mr Ewen. That might or might not have been a contributing factor in his initially losing control of the vehicle. I make no finding in relation to that. Again,

however, on the basis of the evidence I heard, I am satisfied that the amount of alcohol in his body will have significantly impaired Mr Ewen's ability to drive, and in particular will have slowed down his reaction time. I am satisfied that having lost control of the tractor and trailer, the amount of alcohol in his blood is a factor that contributed to his being unable to regain control. In those circumstances and for the purposes of Section 6(1)(e) of the Act, I find that the amount of alcohol he had consumed is a factor that is relevant to the circumstances of Mr Ewen's death. It does not seem to me that there are any other factors that are relevant.