

**Case Reference No: B115/14**

**DETERMINATION**

**of**

**SHERIFF ALASTAIR CARMICHAEL**

**following a Fatal Accident Inquiry into the death of**

**DAVID REILLY**

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Act: Arias, Procurator Fiscal Depute;

Alt: Bone, (for A. Grant and W.H. Malcolm) and McDonell (for A.Sutherland and Calder Leisure).

**Dumfries: 2 October 2014**

The Sheriff, having considered all of the evidence adduced, determines in terms of section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that:

- a. David Reilly, who was born on 24 July 1946, died on the northbound carriageway of the A74(M) motorway approximately 300 yards south of Pennershaughs overbridge, Ecclefechan, at about 01.07 am on 6 April 2013;
- b. The cause of his death was neck and chest injuries sustained due to a road traffic collision.

## **NOTE**

### **Mr Reilly**

1. By all accounts David Reilly was a strong personality who loved, and would do anything for, his family. He was described as a man who was always happy to help others and as a man who believed in sticking to the rules where safety was concerned.
2. Paul Hood is the step-son of Mr Reilly. He described him as being a very careful and responsible driver and as being content to drive along at 50 or 60 mph on major roads. In other words, Mr Reilly did not tend to drive at excessive speed. In his time Mr Reilly had driven many different sorts of vehicles professionally, including cars, motorcycles, taxis, buses, “bendy” buses and articulated lorries. He had held an HGV license for 20 years and was used to doing long-distance lorry driving. Mr Hood described Mr Reilly’s safety regime as “second to none”, that Mr Reilly always wore a seat belt and that he had even left previous employers when they had expected him to break the rules about drivers’ hours. Mr Reilly had retired at 65 (2011 or thereby) and had undertaken part-time driving since then for Calder Leisure of East Calder, West Lothian. Mr Reilly was engaged in his duties as a driver for Calder Leisure at the time of his death. He held a UK driving license that entitled him to drive the vehicles for Calder Leisure on 5 and 6 April.
3. Mr Hood told the court that Mr Reilly was in fairly good health. He had had a heart attack on the 12th of July 2002 but he had seemed to recover from that. Mr Reilly walked and cycled a good deal and this had helped him to recover and maintain his fitness level. Mr Hood said that he last spoke to Mr Reilly four or five days before his death, and at that time Mr Reilly had told them about the job on 5 April when he would be going down to Wales to pick up a caravan.

### **The site of the collision**

4. This is the northbound carriageway of the A74(M) motorway approximately 300 yards south of Pennershaughs overbridge, Ecclefechan. This is 0.7 miles north of junction 20. The road here is a three lane motorway ('lane one' is the slow/inside lane and 'lane 3' is the fast/outside lane) that also has a hard shoulder. There is a Rumble Strip on the outside of lane three and there is an area of 0.29 metres between that and the central reservation. The central reservation consists of an area of gravel divided by a central reserved rope barrier which ends 27.84 metres south of Pennershaughs Overbridge. A metal protective Armco barrier commences 46.67 metres south of Pennershaughs Overbridge which provides extra protection on the approach to the support pillar of that overbridge.
5. At the time of the collision it was dark, the road surface was dry and there were no adverse weather conditions. There was no street lighting present in this area and there was no appreciable natural light. The condition of the road was good with no reinstatement potholes or other imperfections. No grit or other contaminants were present on the road surface. The speed limit here is 70 mph for most vehicles but 60 mph for articulated lorries and for vehicles towing caravans.

### **The Vehicles**

6. At the time of the collision Mr Reilly was driving a Toyota Hilux motor pickup towing a double-axle caravan. Both of these vehicles were examined after the collision and no mechanical defects were found that could have contributed to the collision.
7. At the time of the collision Mr Alister Grant was driving a Volvo articulated lorry. This vehicle was examined after the collision and no mechanical defects were found that could have contributed to the collision. Tachograph records show that this vehicle was not being driven at above 60 mph at the time of the collision.

### **The Events of 5 and 6 April 2013**

8. Calder Leisure had bought a Toyota Hilux motor car and a Fabex Caravan two-axled semi-trailer caravan. These vehicles were located in Abergavenny, Wales, and Calder Leisure sent Mr Reilly, their part time employee, to go down and bring these vehicles back to their yard in West Lothian. So, Mr Reilly flew from Edinburgh to Birmingham on the morning of the fifth of April 2013. From there he was driven to Abergavenny, Wales where he arrived at 15:30 that day. Shortly after that he started his journey back to Scotland, driving the Toyota Hilux with the caravan attached. At about 17:50 he took a break from driving and met his brother-in-law, Archibald Menzies, and they had dinner at the Robin Hood pub, near to junction 5 of the M5. Mr Reilly had his meal with a beer shandy and then left there at about 19:35 to continue his journey up the M5. Traces of alcohol were found in Mr Reilly's blood, but this was at such a low level that it could not have had any significant contribution to the cause of the collision. Mr Reilly stopped off at Southwaite Services on the M6 at approximately 23:40.
9. I heard evidence from Sergeant Paul Dodds of the Dumfries and Galloway Roads Unit. He has worked in this unit since 2004 and is both well qualified and very experienced in road traffic collision and accident investigation and reconstruction. He presented his report in a measured and thoughtful manner. I accepted his evidence about what had happened on 6 April 2013 as follows; as Mr Reilly approached the Pennershaughs Overbridge, his pick-up and caravan left the third lane of the road and entered the central reservation area. The caravan contacted the central reservation barrier. The pick-up and caravan came back on to the roadway and corrective steering resulted in the pick-up and caravan both overturning, sliding along the motorway and coming to rest in the first and middle lanes. At an unknown time after this, Mr Grant was driving his Volvo lorry at 55.92 mph, did not see the

overturned pick-up and caravan and collided with them. The pick-up and caravan were separated at impact and the Volvo lorry overturned as a result of the collision. No blame can be attached to Mr Grant – he was not speeding and could not see the pick-up and caravan because of the lack of light, and even if he had seen the overturned pick-up and caravan there would have been insufficient time for him to have applied his brakes to avoid a collision.

10. I cannot come to any conclusion about whether Mr Reilly died as a result of injuries sustained when his vehicle overturned or whether as a result of injuries sustained due to the impact from the lorry. There is no evidence to point one way or the other.
11. Mr Reilly's seatbelt was found to be unharnessed when the police attended and there were no friction marks on the belt to suggest that it had been harnessed and had then come under the sort of stress one might expect in a collision. However, I heard evidence that Mr Reilly was assiduous in using his seat belt and there was also a question mark about whether friction marks would have been expected to have been left in the motion of his vehicle overturning. I cannot therefore come to a firm conclusion about whether he had, or had not, harnessed his seat belt although I feel – because of his extensive professional driving experience - that it is more likely that he had.
12. It has been established that Mr Reilly's vehicle contacted the central reservation, swerved across carriageways, went out of Mr Reilly's control, overturned and was then struck by the lorry. The question remains as to why Mr Reilly's vehicle contacted the central reservation in the first place. There are some possible explanations that were mentioned, but I cannot find any one of them to have been the cause because there is no evidence to establish any one over the others.
13. For example, Sergeant Dodds said that this stretch of the road could be described as, "monotonous", and is therefore a stretch of road that can test a driver's concentration. So, perhaps Mr Reilly had suffered a lapse in concentration? This is

possible, but given that Mr Reilly had already had two breaks on this trip, given his experience of long-distance driving and given the presence of the Rumble Strip it seems unlikely that he would have lost concentration. Another possibility is that something happened that made Mr Reilly take some evasive action – perhaps an animal on the road? There was also agreed evidence from the forensic pathologist that there was nothing either way to suggest that Mr Reilly could have suffered a cardiac event of some sort whilst driving. Without more evidence, it would be pure speculation to try to select one of these as the cause behind Mr Reilly's vehicle leaving the third lane.

14. Regrettably, I am therefore unable to come to any firm conclusion as to why Mr Reilly's vehicle left the third lane of the motorway. There were no witnesses who saw his vehicle leaving the third lane, and while the incident reconstruction evidence of the police is of great assistance, it cannot answer this question.

#### **Precautions or System Defects**

15. I was not asked by any of the parties to make a finding either about whether there are any reasonable precautions that could have helped to prevent Mr Reilly's death, or about whether there were any defects in any system of working that contributed to Mr Reilly's death. I have, however, considered both of these elements anyway.
16. The caravan is an American design adapted for the UK market. I was told that it has a very good safety history and is of a sound design. Mr Alexander Sutherland who set up, and is a director of, Calder Leisure was unaware of any of these caravans having overturned before. Mr Sutherland had employed Mr Reilly for about one and a half years and described him as an excellent employee about whose driving he had no concerns. He was impressed with Mr Reilly because he was mature, reliable, experienced, was "old school" as far as safety was concerned,

would always check over a vehicle before driving it on a job and would stop for breaks or stay overnight when necessary on long journeys. Part of the reason for first employing Mr Reilly was that he held an HGV licence which was in excess of what he needed to drive these pick up vehicles and caravans – so he was experienced at handling much bigger articulated vehicles. Mr Reilly was issued with a Calder Leisure version of the drivers' hours rules at the start of his employment, and although these did not apply to pick-ups and caravans (they are for HGVs) he stuck to them anyway. Mr Reilly had done similar vehicle and caravan driving jobs for Calder Leisure on a weekly to fortnightly basis. By 5 April 2013 he was therefore experienced in driving this vehicle combination.

17. I have concluded that there are no reasonable precautions that could have helped to prevent Mr Reilly's death and nor were there defects in any system of working that contributed to Mr Reilly's death.

#### **Concluding remarks**

18. Finally, I extend my condolences to Mr Reilly's family.

**Alastair Carmichael,**

**Sheriff of**

**South Strathclyde, Dumfries and Galloway**