



*Passion. Preparation. Persistence.*

## THE BASSETT BULLETIN™

### SO WHAT'S IN YOUR CONTRACT?

Our Firm deals with trucking companies all over the state. Some we represent in highway accident litigation; others we represent in business matters.

One thing that we consistently see is trucking companies who enter into business deals (when everything is going well) and then end up dealing with horribly drafted contracts (when things don't go so well). After much thought and consideration, we have put together the 8 things that every trucking company needs to know and think about before entering into any contracts.

Here we go:

- ◆ **Indemnity Agreements:** A promise to safeguard or hold another party harmless against existing, past, or future loss or liability.

*Do you have to pay for another party's negligence?*

- ◆ **Duty to Defend Clause:** If you are sued for someone else's negligence, do they have to hire and pay for your attorney?

*Who will pay for your attorney?*

- ◆ **Auto-Renewal Provisions:** A provision that automatically renews the contract if some action is not performed by a date certain.

*Do you really want this contract to continue?*

- ◆ **Liquidated Damages Clause:** If either party breaches the contract, this clause describes the amount of damages the breaching party must pay.

*Is the amount of damages a penalty or an accurate reflection of the projected damages?*

- ◆ **Arbitration Agreement:** This agreement establishes which forum in which suit must be brought.

*Would you rather pursue the lawsuit in front of an arbitrator, or would you rather be in a State or Federal Court?*

- ◆ **Non-Waiver Clause:** This proviso allows a party that has excused past non-performance to sue for the past non-performance some time in the future.

*Have you waived your right to sue?*

- ◆ **Choice of Law Provision:** Contracts often contain language detailing which State's laws will control the current lawsuit.

*Does New York law control you?*

- ◆ **Attorneys' Fees:** Texas law provides that the prevailing party in a breach of contract lawsuit is entitled to attorneys' fees and costs.

*Are you paying for your breach AND their attorneys' fees?*

## WHAT CAN YOU DO TO PROTECT YOUR COMPANY?

1. Review your current contracts to make sure that you are meeting all your obligations. Although the contract language may seem Greek, the Court will hold you responsible for understanding the clauses if your signature is on the contract.
2. Have your attorney review your contracts before you sign them. Have your attorney draft your contracts to best protect you.
3. If there is a breach of contract, contact your attorney right away (the sooner, the better). Your delay may prove costly, especially when litigation gears up.

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