



Passion. Preparation. Persistence.

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THE BASSETT BULLETIN™

MY TRUCK DRIVER HAS BEEN ARRESTED! WHAT YOU SHOULD KNOW BEFORE THIS HAPPENS

If you work in the trucking industry, it is important that you prepare yourself and your driver for what happens when a driver is arrested after a trucking accident. We are seeing more often than not that drivers are being arrested for accidents where someone has died – *even* if it was the other person's fault.

By preparing your company and driver for this situation, you are making an investment in the future of your drivers and company. Everyone should know what to expect and what to do so that the criminal process and the civil process can go as smoothly as possible for everyone.

WHAT ARE THE CHANCES THAT MY DRIVER WOULD BE ARRESTED?

If someone has died in the accident, then there is a pretty good probability that the police officer will arrest your driver. In our experience, we are finding that it doesn't always matter the size of the town or the facts of the accident. If someone has died and a truck driver is involved in the accident, then the police officer is going to bring the truck driver in.

Quite often the police officer doesn't want to have to make the decision as to whether or not the driver is guilty of some criminal act that may have caused this accident. Therefore, the police officer sends the case to the district attorney's office. The district attorney has to answer to his or her constituents; therefore, these accidents typically get sent to the grand jury so that the people can make the call as to whether criminal charges should be pursued. If a grand jury comes back and finds that no criminal charges should be pursued, then the district attorney can tell the deceased's family that the people have made the decision that no criminal charges should be pursued. This is as opposed to the district attorney having to make a personal decision not to bring a criminal case forward.

In our opinion, this is why so many trucking fatality accidents are presented to a grand jury.

TWO SIDES OF A COIN

There are two "sides" of the law: the criminal side and the civil side.

The criminal side of law is what you typically see on television. Instead of a plaintiff, there is a prosecutor working on behalf of the State. The person being tried for the crime, for purposes of our discussion, is the truck driver. The lawsuit will read: State of Texas v. Joe the Truck Driver. The punishment in a criminal case is probation or possibly jail time. Your driver has a personal interest in this lawsuit because it is about his life – he may be on probation for years or could end up serving jail time.

The civil side of the law is where the injured party and/or their family will file a lawsuit for negligence or a wrongful death case. These lawsuits are tried by plaintiff's attorneys who represent the injured parties. This lawsuit will read: John Doe v. Joe the Truck Driver and Trucking Company X. In these cases, the plaintiffs are looking for money from the trucking company as opposed to jail time or probation for the truck driver.

The two sides of the law will intermingle with each other if there is a criminal charge pending against a truck driver and the family has filed a wrongful death case against the driver and the company in a civil lawsuit.

For example, if the driver goes on trial or pleads guilty to the crime, then that information or criminal testimony could be presented to the civil jury. Therefore, it is important that the driver is being taken care of in both cases so that each lawsuit gets resolved quickly and satisfactorily.

WHAT DOES THE COMPANY NEED TO KNOW?

1. In most cases, it is a good idea to hire a criminal attorney to help the driver. They need guidance and help. This is stressful and scary for them. This is also their life. You also don't just want a driver to plead out just to be done with the case. If he pleads guilty, then that evidence comes before a civil jury, which can affect the civil case. A civil jury will hear that your driver plead guilty to vehicular homicide and killed someone.
2. Do not take recorded statements of your driver. If the Texas Department of Transportation doesn't require you take certain actions, then don't do it. You are just helping the other side because you will have to turn those statements over in the civil case.
3. Have a procedure in place BEFORE this accident happens. Have a procedure that is clear and easy to follow that shows: (1) who gets called and (2) what documents get put together. When the accident is unfolding and your driver is on his way to jail, that is not when you want to figure

WHAT DOES MY DRIVER NEED TO KNOW?

- out what you need because crucial steps will be missed.
1. When a fatality accident happens, they need to ask for a lawyer right away. This shuts down all questions until they can consult with a lawyer. They do not need to talk to the police officer – they need a lawyer.
 2. They are being watched and recorded the entire time they are on the side of the road, in the squad car, and at the station. Tell them that they should not get on their cell phone unless it is to call 911 or dispatch right after the accident. They need to watch what they say, how they are acting, and what they are doing even when they think no one is looking.

3. Let them know that they should stay calm and not panic. They should not run away or take off from the scene. They need to try and stay calm. They should get the names and contact information for any witnesses that show up. They need to contact 911 for help and dispatch so that the company can get them help right away.

WHAT IF I HAVE MORE QUESTIONS? OR, I WANT TRAINING ON HOW TO HELP OUR DRIVERS?

We offer a training presentation geared towards trucking companies to provide them with information on this topic so that they can pass it on to their drivers.

In this training, we cover:

1. The difference between criminal and civil law;
2. What your drivers need to know;
3. Tips from criminal attorneys and civil attorneys;
4. An outline of a procedure for investigating an accident;
5. The documents you need to gather after an accident; and
6. Questions you may have about how the criminal case and civil case affect each other.

If you are interested in this presentation or have questions, please contact us.



The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com**

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ASHMORE**
- **ROBERT L. MCGEE, JR.**
- **WILLIAM A. NEWMAN**
- **MICHAEL J. NOORDSY**
- **JOHN J. ROBERTS**
- **J. ANDREW ROBERTSON**
- **MATHEW SAMUEL**

Information regarding *The Bassett Bulletin*TM is available from Sabrina Kereta (skereta@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

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