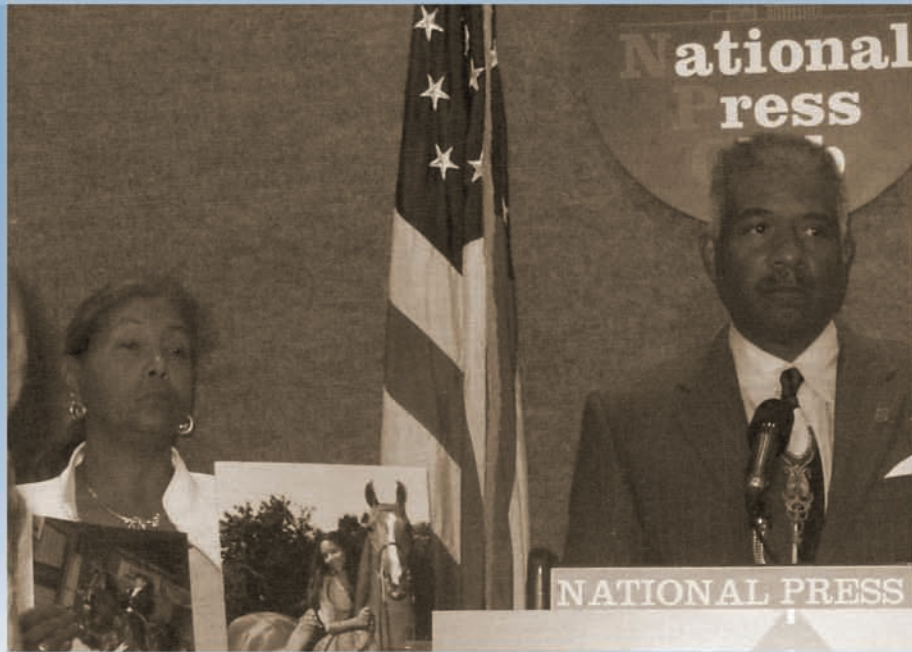


LEGAL ASPECTS



“As a survivor, you need to be aware of the legal ramifications of your loved one’s crash. There might be a criminal prosecution; if so, get informed and stay on top of it. You probably also have a civil suit to consider. Find a lawyer with a lot of truck crash experience. Educate yourself: talk to the Truck Safety Coalition and your attorney. Make sure that you understand what is going on so that you can make sure your interests and your loved one’s interests are protected. Also, check in with your Physician and ask about seeing a grief counselor. Losing a loved one is an extremely emotional event. You want to be mentally prepared for the long road ahead.”

- Rick & Anne Curl, whose daughter was killed in a truck crash



Legal Aspects of a Crash

It is easy to become distressed and confused when trying to figure out just how a truck crash lawsuit works. Often times the legalese, alphabet soup, and procedural mess of pleadings and motions make a lawsuit seem as if it was designed to be unintelligible. It is important, however, for you to understand some of the basics so that you feel more at ease with what is going on, and so you can do your best job advocating your position with your attorney.

Criminal vs. Civil

Legal proceedings after a truck crash generally take two forms. If a truck driver's behavior violates the law, the state or county prosecutors may pursue a *criminal* case against the truck driver and the trucking company. This may result in a fine, the suspension of the driver's and/or employer's license, or imprisonment.

Many people assume that the prosecutor will do everything that is necessary to ensure that the truck driver and company are prosecuted; unfortunately, this is not always the case. Stay in contact with the prosecutor and the victim's advocate office to stay informed and to make your voice heard by the decision makers. Find out which attorney has been assigned to the case. If you do not understand the charges or any part of the process, ask the prosecutor to explain. When you talk to the attorney, let him/her know that you want to be kept informed; also send a letter formally requesting information updates.

In most states, there are laws that allow victims and/or survivors to write a victim impact statement. The statements are presented after conviction and usually before sentencing. The statement should tell the court how the crime has affected your life.

Whether or not the prosecutor chooses to prosecute, an injured person or relative of the deceased victim may pursue a *civil* case against the trucking company, the driver, and/or any other parties that might be responsible. Civil cases often result in a monetary settlement or award. If a case is settled, the settlement can also address steps to be taken by the trucking company to reduce the risk of something similar happening again.

Who can sue, and who can be sued?

Very simply: anyone who is injured in a crash might have a case. Additionally, when someone dies in a truck crash, sometimes their loved ones (spouse, parents, children, siblings) can sue, sometimes his or her estate may; and in some situations, the estate and survivors might both have claims, depending on the state.

The truck driver may be sued for being negligent; he might have been speeding; he may have run a red light; he may not have been paying adequate attention to the vehicles around the truck; or he may have fallen asleep at the wheel. The trucking company may also have been negligent: it could have hired someone unfit to drive the truck; it could have failed to train the driver appropriately; it could have failed to keep up on the truck's maintenance; or it could have improperly supervised or retained an unsafe driver. Additionally, any party whose negligence may have contributed to cause the crash may be liable.



Different States, Different Rules

Many laws and rules applicable to a truck crash case depend upon the state where the crash happened, where the trucking company does business, and/or where the lawsuit is filed.

States have different time period requirements for when a suit can be brought; they have rules regarding who is allowed to sue in certain situations; they require different standards of care from truck drivers; they have different rules concerning how the victim's fault (if any) factors into the damages equation; and they have different rules about compensatory and punitive damages.

On the other hand, many federal regulations created by the Federal Motor Carrier Safety Administration are applicable in truck crash lawsuits regardless of where the crash occurred or where the suit was filed. Familiarizing yourself with some of the basics may help you better understand the crash, your case, and some of the broader safety issues in the trucking industry. Obviously your attorney should be familiar with these regulations. You can ask the *Truck Safety Coalition* for help in understanding the regulations and how they affect safety on our nation's highways.

Settlement vs. Trial

Cases are often settled out of court because trucking companies and insurers wish to avoid negative publicity and the wrath of an angry jury. An experienced attorney may be able to require a change in practice or equipment as part of the settlement to prevent the same tragedy from happening to others in the future. We strongly recommend that you hire a lawyer who is capable of treating (and willing to treat) the investigation and preparation of your case as though it will be tried. The defendants are preparing for a trial. Thorough preparation by the plaintiff's (claimant's) attorney is the surest way to achieve an appropriate settlement or verdict.

Trial Process

All cases are different. There is no single description to cover all aspects of all cases. The following is a generic description of the progress of a truck crash case.

A. Investigation.

The preparation of a case should begin immediately. After a serious crash, it is a certain bet that the trucking company's insurance carrier hired a "Rapid Response Team" (or "Go Team") to investigate the crash and gather evidence for their defense before the vehicles were even moved from the crash scene. The failure to have a similar team acting on your behalf as soon as possible can prejudice your position down the road. While the police or highway patrol may be investigating the crash, they are looking for criminal and traffic violations; they are not attempting to establish the elements of a civil case for the people who have been injured or killed. Many times the police investigation will overlap your lawyer's investigation, but that is not necessarily the case. If certain information is not preserved almost immediately, it can be lost forever. The trucking company knows this and they almost always hire their own investigation team. You should be at least as well prepared as the trucking company and their insurance carriers.

The Rapid Response Teams hired by the trucking companies are led by defense lawyers who routinely handle truck crash cases. The defense insurance companies have "approved" lists of very experienced



truck crash lawyers who focus their practice on defending truck crash claims. People who have been injured or who have lost a loved one do not have the benefit of years of experience in hiring expert truck crash lawyers. One of the best things you can do for yourself and your family at this difficult time is to spend some time locating the most experienced truck crash lawyer you can find. The lawyer does not have to be from your state or the state where the crash occurred. Have a family member help you search. Check references. Call the Truck Safety Coalition if you need help. While the timing of an investigation after a crash is crucial, the time spent locating the right lawyer is time well spent. Be wary of the Internet. Many, many lawyers' websites claim the lawyers are experienced truck crash lawyers. While such a lawyer may have handled a truck crash case or even several truck crash cases, that does not mean he or she has the necessary experience to do battle with the truck company's lawyers.

The lawyer you hire should immediately send a "spoliation letter" to the trucking company or its lawyer. This letter puts the defendant on notice that a claim is being made and requests that particular evidence relevant to the crash be preserved. If evidence is destroyed after such a letter, many states allow certain assumptions to be made that the evidence would have been harmful to the trucking company's interests.

B. Filing the Lawsuit and Discovery.

After the lawsuit is filed, formal "discovery" can commence. This will include written requests for information, interrogatories, requests for production of documents and requests for admissions, as well as depositions. Both sides may hire experts who may be witnesses or who may consult on the case. Frequently hired experts, depending on what issues are presented in a case, may include crash reconstructionists, safety experts, medical experts (or treaters), forensic economists, human factors experts, fatigue experts and engineers.

Depositions may be taken of anyone who may have relevant information. These are interrogations under oath taken of the witness (or the parties) by the lawyers in the case, with the proceedings taken down by a court reporter. Sometimes the depositions are also videotaped.

C. Mediation

It is very common, at some point in the preparation of the case, for the parties to agree (or for the court to require the parties) to mediate the case. Mediation is a non-binding procedure by which the lawyers and parties from each side have a meeting with each other that is conducted by a neutral third person to explore whether the case can be settled. There is no set procedure for a mediation to follow. The parties usually end up in separate rooms and the mediator goes back and forth between the parties, discussing issues in the case and conveying settlement positions. Even if a mediation may not result in a settlement that day, it may well set the stage for a subsequent settlement.

D. Trial.

At some point, if the case is not resolved, the judge will set a trial date. In some jurisdictions it is not uncommon for trial dates to be postponed or "continued." In other jurisdictions, trial dates may be



considered “in concrete.” In any event, when trial comes, it will usually be a jury trial, which means that disputed issues of fact will be decided by jury. Issues of law will be decided by the judge.

In the presentation of evidence, usually the plaintiff puts on his or her evidence first, followed by the defendant. At the close of all evidence, the lawyers make their closing arguments and the judge instructs the jury. The jury then deliberates and decides the issues raised by the jury instructions by reaching a verdict. Ultimately, the decisions made by a jury are whether to award monetary damages and, if so, how much. Generally their decision will be solely about a monetary award. A jury in a civil case cannot usually be asked to decide that a defendant should improve its safety performance, surrender a license, or take steps other than the payment of monetary damages.

Damages

Damages are a way of understanding your injuries and your loved ones’ injuries in a monetary sense. While it sometimes might not make much sense to think about the loss of a loved one as a kind of damage that has a precise dollar figure, it is how the civil judicial system compensates victims. It is the legal way to hold a person or company accountable for causing a loss to another person.

Compensatory damages - also occasionally called “actual damages” - are paid to compensate the claimant for loss, injury, or harm caused by the truck driver and/or trucking company. Compensatory damages may be divided into economic damages and non-economic damages. Economic damages consist of loss of wages, medical bills, damage to property, the cost to replace services, etc. Non-economic damages are damages for pain, suffering, loss of companionship and loss of consortium.

Punitive Damages, on the other hand, are not awarded to compensate the plaintiff, but are imposed by the court in order to punish the trucking company for especially egregious recklessness or intentional misconduct. The hope is that the imposition of these damages will deter the company and similar entities from behaving so recklessly in the future.

Attorney’s Fees

Most individuals cannot afford to pay a lawyer to pursue their case on the basis of a non-contingent hourly charge. Most plaintiffs’ attorneys are paid on a contingent fee basis. That is, the lawyer is paid a percentage of the recovery he or she may obtain from the trucking company (or its insurer), and there is no fee if there is no recovery. The fee may be “net of expenses” or “before expenses.” This is an important difference. It is better for you if the fee is calculated after the lawyer’s expenses are first repaid out of the recovery. The law firm should also be willing to “front” the expenses, and not require you to pay them while the case is ongoing. The expenses for experts, travel, depositions, etc. can add up quickly and most people cannot afford to pay them on their own. Be sure the lawyer is willing to spend the expenses necessary to properly prepare the case. If a lawyer wants to wait to see if the case will settle before he or she is willing to put significant time and expense into the case, consider finding a different lawyer. The best way to achieve a good settlement is for your lawyer to prepare, prepare, prepare. The defense must know you are capable and willing to go to trial if necessary.



Underinsured Insurance

You should check into your own insurance coverage for Underinsured Motorist Coverage (UIM). Frequently, a trucking company does not carry enough liability insurance to cover the amount of damage it has done. The coverage may be based on whether you have more insurance than the defendant has, or whether you have more in damages than the defendant has in liability limits, depending on your policy and the law of the state in which you live or the state where the crash occurred. You should ask your insurance agent for a copy of all of your auto insurance policies and any of your excess (or umbrella) policies, along with the "declarations page" for each policy, and provide copies to your attorney.

Interpleader

If it is clear that a defendant does not have enough insurance to cover the damages caused in a crash, the defendant's insurer may file an "Interpleader" lawsuit against all the claimants and against its own insured. The purpose of such an action is to ask the court to declare that there is only so much insurance and to require all injured persons to "interplead amongst themselves" as to how the insurance proceeds should be distributed among the claimants. Unfortunately, due to the disparity in size and mass between trucks and cars, trucks often collide with multiple vehicles and cause injury and death to many people in one crash. This problem is compounded by the fact that the minimum insurance for trucks is only \$750,000.00 and that amount has not been raised since 1980.



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Michael C. Balke



Connie & Joshua Beddingfield



Mary Beebee



Beatrice S. Brandis

In Memory of our Loved Ones WE HONOR THEIR LIVES



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Virgil L. Hensley



Wayne Knight



Mckenzie Lynne Hlavinke



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Teresa Anne Gholson



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