

Albany Office
P. O. Drawer 71788
Albany, Georgia 31708
Telephone: (229) 883-2441
Facsimile: (229) 888-8148
www.gwsh-law.com

Atlanta Office
1201 Peachtree St., N.E.
400 Colony Square
Atlanta, Georgia 30361
Telephone: (404) 874-9588



GARDNER WILLIS
SWEAT & HANDELMAN, LLP
ATTORNEYS AT LAW

TRUCKING - RAPID RESPONSE

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Gardner, Willis, Sweat & Handelman, LLP hopes you find the information in this newsletter helpful. This information is intended to be general in nature and is not a substitute for competent legal advice. Because every issue is unique, we do not recommend that you apply the information in this newsletter without first seeking appropriate legal advice.

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All motor vehicle accidents can give rise to claims for property damage and injuries. Motor vehicle accidents involving commercial vehicles are even more likely to give rise to claims due to both physics and economics. From a physics standpoint, force is directly related to both speed and mass. Commercial vehicles are larger, have greater mass and produce greater forces which result in greater damage than other smaller vehicles operating at the same speed. From an economics standpoint, commercial vehicles are the most heavily insured vehicles on the road. As a result, they are a more likely target for claims. Because of the greater impacts and the greater available coverage, those claims are also more likely to end up in litigation.

However, by the time suit is filed, the accident has been cleared away, the witnesses have dispersed and the truck driver has likely been interrogated, tested and possibly charged by law enforcement with responsibility for the accident. At that point, defending a claim is like trying to prepare for a test the night before the exam. Its often too little, too late.

To avoid that situation, a rapid response to the scene of the accident is critical. Our firm has experience in conducting scene investigations, relationships with local law enforcement officials and contact with several accident reconstruction experts. When we are called upon at the time of the accident and can visit the scene before it is disturbed, our chances for a successful defense of any claims that arise later is much greater. It is almost impossible that a claimant will have counsel and a reconstruction team present at an accident site. The opportunity of the commercial carrier to do so is an invaluable one that should be utilized. Having a rapid response team available in advance is a key to successfully defending claims and to protecting the interests of both the commercial carrier and its drivers.

When we are called upon to provide rapid response, there are five basic things we do:

1. PHOTOGRAPH

- Scene from all angles
- Resting position of vehicles involved—with and without reference points in background
- Damages to vehicles involved from all angles
- Pre-accident traveling paths of each vehicle - with and without reference points
- Fluid trails of each vehicle - with and without reference points
- Areas where any parts fell from the vehicles

2. GATHER

- Name of officer in charge of the scene
- Names of DOT representatives
- Name of first officer on the scene
- Name of SCRT Team Leader
- Names of drivers and occupants
- Names of witnesses
- Name and Employer of Wrecker Service Driver
- Name and County of EMT's and Hospital destination
- Number and identity of injured parties - how severe were their injuries
- Number and identity of fatalities - did they survive for any period of time
- Number and identity of individuals attended to by EMT's
- Number and identity of individuals taken to Hospital
- Abandoned parts from vehicles
- Abandoned papers
- Driver's log books, scale tickets, bills of lading, shipping papers, citations, inspections, fuel records and any other documentation
- Driver's personal effects
- Photograph it before you pick it up - with and without reference points

3. INTERVIEW

- Drivers
- Occupants
- Witnesses
- Law Enforcement
- GSP
- SCRT
- EMT's
- DOT

4. MEASURE

- Skid Marks
- Distances between vehicles at point of rest
- Distances from reference points
- Road conditions - wet, dry, gravel, etc.

5. PROTECT THE DRIVER

- Determine his medical condition
- Arrange for him to be blood tested - preferably within 3 hours
- Assess need for counseling

- Determine if he has been interviewed by anyone and what he told them
- Advise him not to talk to anyone about the accident
- Get a very brief account - in private - and advise him we, and only we, will take a more detailed statement from him on a later date

By performing a rapid response, we are able to preserve evidence that may later become unavailable. We are able to insure that evidence which the commercial carrier will be required to preserve does not inadvertently become lost or destroyed resulting in a later claim of spoliation of evidence. We are often able to prevent the driver from unwittingly making statements or comments while he is in a state of shock or confusion that could later be used against him or the company. Finally, we are also better able to offer advise on the extent of exposure to potential claims.

A rapid response is the first, and most important, step in controlling exposure to damages claims resulting from an accident. If we may be of such service to you, please call. But, in any event, do not miss the opportunity to gather the information critical to your defense while it is available. Accidents are unfortunate events, but a failure to react quickly can allow a bad situation to become far worse.

Mark represents clients in the construction and trucking industries where he embraces a hands-on approach that includes offering immediate, on site investigation of catastrophic accidents. Mark has a thorough understanding of trucking and construction trade practices, as well as the legal and regulatory issues governing these industries. His ability to relate and explain these complex matters in simple understandable terms has contributed to his success in resolving disputes and winning jury trials.



He is a member of the Trucking Insurance Defense Association. Mark serves on the Board of Directors for the Boys and Girls Club of Albany and is the Chairman of the Board of Directors for the Chehaw Park Authority. He and his wife, Liza, have four children.

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