



Eckert & Associates, P.A.

# TRANSPORTATION TIMES

Term: 2019 First Quarter

## WHO WE ARE



The law firm of Eckert & Associates, P.A. aggressively pursues and collects downtime claims for owner-operators and fleets, as well as subrogation matters for insurance companies and fleets nationwide.

Our staff includes attorneys, insurance adjusters and paralegals with extensive knowledge of insurance claims and the transportation industry.

The recovery of lost income after a traffic accident can be a complicated process. We work to make this process easier for our clients.

The staff at Eckert & Associates, P.A. strives to be legal advocates for the transportation industry and for owner operators nationwide. We work on a contingency fee basis. No upfront cost is required to begin a case through our office.

Visit [DowntimeClaims.com](http://DowntimeClaims.com) for more information.

## MITIGATION SAVES LITIGATION



The word litigation often conjures up images of long court delays, expensive lawyers, and lots of paperwork. No one wants to add to their problems. Instead, consider steps you can take to avoid litigation. Mitigation of damages may keep you out of court, get you back on the road quicker and put money in your pocket.

Your business loses time and money when a bad driver damages your equipment. Even when that driver's insurance company agrees to pay for your repairs, it might not agree to pay for your lost income while down. Insurance companies often insist you should have gotten your equipment back on the road quicker. You know repairs take time, which translates into downtime without pay.

How can you get reimbursed for downtime income losses without a lengthy court battle? It's not enough to try clever negotiations. It's not even enough to have a high-powered transportation attorney. You must have the facts to back up the demand.

First step: mitigate your losses. What is mitigation? Mitigation is the act of lessening your losses after an accident. Insurance companies like to counter a demand by saying you failed to mitigate your losses. Read on to learn how to respond to their claims.

Second step: present your carefully calculated demand. Provide the other side with clear and concise information they can easily understand and believe. Every dollar demanded should be backed up with written documentation. Even though you're the victim of the accident, it's your job to prove the loss.

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## STAFF SPOTLIGHT



**Judy Pippin**

A licensed All-Lines Adjuster since 1995, Judy has worked for both insurance companies and law firms while handling personal injury, uninsured/under-insured motorist, and bodily injury large loss claims and litigation.

Judy enjoys investigation and digging into hard facts in order to help support claims that have previously been denied.

Judy can be reached at:  
[jpippin@collectionattorneys.cc](mailto:jpippin@collectionattorneys.cc)



**Tom Normandeau**

**Attorney at Law**

Tom joined the firm last year. He was recently made a shareholder in the firm. Please join us in congratulating him. To learn more about Tom, visit <http://bit.ly/TomNBio>.

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Third step: move forward with litigation. File suit if the adverse party or insurance company is being unreasonable. As long as you have the facts on your side, the odds are in your favor and you will most likely prevail. Depending on your type of business, you may be able to represent yourself or you may need a transportation lawyer.

### Mitigation Matters

There are many possible ways for trucking companies to mitigate, or lessen, losses after an accident. Depending on the size and type of business, it may be possible to rent or borrow equipment while damaged equipment is being repaired. A large transportation company may have extra trucks and trailers on the lot for use as replacements. A small company might rent equipment from Ryder, Penske, or their motor carrier.

Sometimes temporary repairs can be made while waiting on parts to be delivered. Paying for the damage out of pocket or filing a claim with your own insurance may be an option. A note of caution: business owners must think twice before filing a claim with their own insurance, especially when a claim is not their fault. Too many claims can cause insurance rates to increase or a policy to be canceled. If the repairs are significant enough, even buying new equipment might make sense.

Be sure to document each attempt at renting equipment. It will be important in negotiation and in court. Keep a log of all calls to rental companies, including date, time, company name, contact person, and the conversation. For example, if you and your team driver need a sleeper in order to haul expedited loads cross country, and no rental company has one within hundreds of miles, get written confirmation from each rental company that they have no sleepers available for rent.

For many transportation companies, especially owner operators, it's impossible to mitigate losses by renting. Specialized equipment, motor carrier agreements, lack of credit, and vendor requirements all present barriers to mitigation. For example, a truck owner who contracts with a motor carrier that does not allow temporary rentals is contractually unable to rent temporary equipment; he is unable to haul loads until the original equipment is repaired. Another example would be a driver who has a specially equipped cab to accommodate a disability.

Mitigation doesn't necessarily mean you'll earn the same amount of income – just that you'll limit the loss within reasonable limits. For example, an owner operator may temporarily become a company driver or work some other type of job while the equipment is down. A driver of a heavy haul trailer that's out of commission may temporarily be able to rent a regular trailer and haul less desirable loads. If the earned income is less, pursue the adverse party for the income difference.

Documenting mitigation of damages after an accident can help convince the adverse insurance company that you've acted reasonably. With persistence, you'll have a good chance of recovering the downtime loss. If you don't reach a reasonable settlement, you will be able to bring a strong case with convincing evidence to court.

Written by: Kelsea Eckert, Attorney at Law

*This article is presented for informational purposes only, and it is not intended to be construed or used as general legal advice. We suggest you consult an attorney directly regarding your unique situation.*

## UPCOMING EVENTS & KEY DATES

### **Women in Trucking Radio Show: March 2, 2019**

Attorney, Kelsea Eckert, will appear on the Women in Trucking show on Sirius XM's Road Dog Radio at 11 am CST on March 2, 2019. Call 888-8-ROAD DOG or 888-876-2336 with your questions about downtime.

### **Mid-America Trucking Show: March 28-30, 2019**

We'll be attending MATS in Louisville, KY again this year. Look for us at booth 66216 and enter to win a dash cam. We look forward to meeting you!

**Office Closed: April 19, 2019**