



TRANSPORTATION LAW UPDATE

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NEW YORK

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MV-104

When an accident happens in the State of New York which involves a fatality, personal injury or property damage over \$1,000, the accident must be reported within ten (10) days to the New York State Department of Motor Vehicles. The accident must be reported using the MV-104 form which is available from the NYS Department of Motor Vehicles. Failing to report the accident is a misdemeanor, punishable by up to 1 year imprisonment. If the driver of the vehicle is physically unable to prepare the report, the owner of the vehicle is required to file the report within ten days after learning the facts of the accident.

A driver's license may be suspended until a MV-104 is filed. This can be a

problem for drivers who regularly drive in the State of New York. The accident will appear on the records of all involved drivers. An accident listed on a driver's record does not indicate who was at fault for the accident. The NYS Department of Motor Vehicles does not determine fault for an accident.

In State of New York v. Norman Ellsworth, we defended Norman Ellsworth, a truck driver, at an administrative hearing in Oneonta, New York to investigate a fatal accident and determine the action that should be taken against his driving privileges in the State of New York. Ellsworth was also charged with failing to file the MV-104. Ellsworth had a Pennsylvania driver's license and he drove regularly in New York to make deliveries. Because this accident involved a fatality, his driving privileges in New York could have been suspended for a substantial period of time.

On the day of the accident, Ellsworth was driving a tractor trailer north on Route 12 in Oxford, New York. He believed that he was crossing the intersection of Route 220 on a green light. Douglas Dungey was stopped on Route 220 at its intersection with Route 12. Dungey claimed that the light turned green and he proceeded to make a left turn onto Route 12

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north. He claimed that Ellsworth drove through a red light and crashed into the passenger side of his car. The passenger side of Dungey's car made contact with the left rear tires of the trailer. Dungey's elderly mother was in the front passenger seat. She died nine days later.

A NYS State Trooper witnessed the accident from where he was stopped at the intersection of Route 220 and Route 12, opposite Dungey's vehicle. He reported that Ellsworth ran the red light. However, he also stated that while looking under Ellsworth's trailer, he observed Dungey's car just before the collision. The Chief of Police who came upon the scene and investigated the accident acknowledged at the hearing that this statement meant that the trailer was already more than halfway through the intersection before the collision occurred. He also admitted that the tractor was completely through the intersection before the collision occurred.

We contended that assuming Ellsworth had a red light, Dungey had the duty to make sure that the road was clear and it was safe to proceed into the roadway. Moreover, we argued that Ellsworth's tractor was completely through the intersection and his trailer was substantially through the intersection, suggesting that Dungey should have seen the tractor trailer in the roadway before beginning his left turn.

Judge Gary Lane ruled that Ellsworth violated Section 1111(d)(1) of the New York State Vehicle and Traffic Law for passing through a

red light without stopping. Ellsworth was "issued a warning and directed to drive with great caution within the State of New York." He did not lose his driving privileges in the State of New York.

Ellsworth was also charged with failing to prepare and submit the MV-104 accident form. Ellsworth arrived at the hearing with a copy of the completed MV-104 which we had submitted to the NYS Department of Motor Vehicles several days before the hearing. We noted that Ellsworth was unaware of the requirement to submit the form and he submitted the form promptly upon receipt of that knowledge. The charge for failure to file the MV-104 was dismissed upon proof of submission.

There are times when the property damage appears minor and motorists do not appear to be injured. Some time after the accident, counsel for the other parties may notify you of a claim for personal injuries. With or without the written notice, a civil lawsuit may be subsequently filed claiming personal injuries. If the MV-104 form has not been previously filed, we recommend that the form be completed and filed as soon as possible

The MV-104 must be signed by the driver. One of the requirements is to give a written description of how the accident happened. Be careful! Under New York law, this statement will constitute an admission by the driver which is discoverable in a civil lawsuit. Many plaintiff's attorneys contact the Department of Motor Vehicles and request accident reports. They also request

such forms in the course of discovery. If the employer fills out the form and has the driver sign it, the driver adopts all of the statements on the form as his own. Therefore, it is important that the driver's written description of the accident is both truthful and consistent with all statements previously made about the accident. Statements made early will form the basis of the driver's defense in a civil lawsuit even if the action is not instituted until three years after the accident. Therefore, it is vital that the driver carefully review the MV-104 and make sure that its contents are accurate. We recommend seeking advice from counsel before completing the form. It ensures that the defense of a civil lawsuit is established early and in the best interest of the driver and the trucking company.

Diane B. Carvell, received her law degree in 1996 from Dickinson School of Law where she was the recipient of the Golub Foundation Graduate Scholarship and the Sandor Yelon Award. She was also a member of the Dickinson Journal of International Law. She graduated, *magna cum laude*, from Elmira College in 1993 where she was *Phi Beta Kappa* and the recipient of the Iris Leadership Award.

Diane is admitted to practice in the state courts of Pennsylvania and New York as well as the U.S. District Courts for the Northern, Southern, Eastern and Western Districts of New York, and the Middle and Eastern Districts of Pennsylvania.