

# TENNESSEE TOW TRUCK ASSOCIATION

3306 Grandeur Way

12/12/2017

VOLUME:12

Suite 1

Morristown, TN 37814

## **WELCOME NEW AND RENEWED MEMBERS**

*B&D Towing & Recovery – West Memphis, AR*

*Foothills Wrecker Service – Maryville TN*

*GW Towing & Recovery, LLC -Maryville, TN*

## **From the Administrator Desk:**

**Hello all TTTA Member/Professional Towing,**

I would like to wish all TTTA Members a Merry Christmas and a Happy New Year!

It is such a pleasure working with each of the Towing Companies this last year, thank you for all who have made me feel so welcomed!

Be sure to watch newsletters for upcoming Monthly Specials offered to TTTA Members.

Each Company will be receiving a letter and a New 2018 Membership application along with an invoice to make ALL MEMBERS current through the end of 2018. The revised Bylaws is for all memberships to be due by January 1 each year, the amount on your company invoice has been prorated to bring all member current and paid until January 2019. I also need your New 2018 Membership application filled out and returned to the office please.

*Have a Blessed and Safe Month,*

*Rebecca – Administrator*

**TENNESSEE TOW TRUCK ASSOCIATION**  
**TREASURER REPORT FOR DECEMBER 2017**

Treasure Report December 2, 2017

***Tennessee Tow Truck Assoc. Inc General account First Tennessee***

Checks paid for November	M. McGovern	\$ 2000.00
	R. Bowlin	\$ 1000.00
	TTTA Training account	\$10,000.00
	Meeting room Museum	\$ 100.00
	TTTA phone	\$ 96.33
	<u>Postage</u>	<u>\$ 13.30</u>
<b><i>Ending balance as of 12/01/2017</i></b>		<b><i>\$ 81,453.65</i></b>

<b><i>Tennessee Tow Truck Assoc. INC Training Account First TN</i></b>	<b><i>\$10,000.00</i></b>
Checks	\$ 36.15
<b><i>Balance as of 12/01/2017</i></b>	<b><i>\$ 9,963.85</i></b>

<b><i>Tennessee Tow Truck Association</i></b>	<b><i>lobbyist account CCU</i></b>	<b><i>\$ 77.20</i></b>
No Activity since Jan. 2017		
<b><i>Balance as of 12/01/2017</i></b>		<b><i>\$ 77.20</i></b>

*From the office of the TTTA General Counsel:*

## **Loss of Use: Tow Truck Downtime**

Michael McGovern  
*The McGovern Law Firm, Knoxville*

Sometimes the vehicle used to tow wrecked vehicles is itself involved in a wreck. The wrecker gets wrecked.

If your tow truck is damaged in a collision, the person causing the crash, or your own collision insurance company, is legally obligated to repair or replace the damaged tow truck. So far, so good. But your tow truck is a money-making machine. What about the loss of use of that truck during the time it is being repaired or until it is replaced? Are you entitled to compensation for that “downtime” and, if so, how much?

The first consideration in a loss of use claim is whether the damaged tow truck is (1) repairable or (2) a total loss. The traditional rule is that loss of use is not recoverable in a total-loss case. The reasoning is that, although the at-fault party will ultimately have to reimburse the owner of the truck for the fair value of the destroyed truck, it is not their fault if the owner does not or cannot replace the truck while the settlement or lawsuit is pending.

There is a movement, however, towards allowing loss of use damages even in total-loss cases. Courts in Tennessee have adopted that “modern view,” recognizing that immediate replacement of a totaled commercial vehicle is not always practical. In *DKB Trucking Co., LLC v. JNJ Exp., Inc.*, the Tennessee Court of Appeals noted reasons why replacement commercial trucks often cannot be put on the road quickly: DOT inspections must be performed, permits and licenses obtained, and special equipment (like wrecker bodies) installed, etc. In its 2012 ruling, the court said that “loss of use or lost profits may be recovered for the reasonable amount of time it takes to put the replacement [truck] into service.”

The measure of damages for loss of use is the rental value of a comparable tow truck for the amount of time reasonably necessary to make the repairs, even if the tow truck owner does not actually rent a truck. Theoretically, if a substitute tow truck can be obtained and utilized,

there will be no lost profits, just rental costs. However, a tow truck similar to the type damaged may not be available for rent in the owner's geographic area. In that event, the towing company can recover actual lost profits, provided there is sufficient evidence to adequately and clearly measure such loss. Lost profits, however, cannot be recovered in the absence of proof that a substitute tow truck could not be rented or that the rental value could not be determined.

Finally, insurance claim representatives will sometimes deny demands for loss of use compensation to towing companies with large fleets of tow trucks on the basis that other units were available to "cover" the loss of the damaged truck, therefore no profits were lost. Do not be fooled by that tactic; most courts have rejected it.

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