

## DEFENDING LOW IMPACT ACCIDENTS

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It was a blip on your radar screen. A call from a driver that he bumped a four-wheeler. No one hurt. Minimal damage. Just a little bent metal. The police come, information exchanged and both drive away.

You take the report, note the file, and put it in its final resting place. Closed case.

Wrong. Six-months year later this file arises with a letter from a lawyer. His client, an occupant of the four-wheeler (driver or passenger, take your choice) was grievously injured by your mammoth truck. He has suffered since the accident and has been deprived life's joys. He is kind enough to give you an opportunity to settle this matter reasonably before filing suit.

How did we get to this point? How did a minor matter blow into full-fledge litigation? More importantly, are your ready to aggressively respond to this dark side of our legal system?

The sad reality of today's society is that yours is not just a fleet of trucks. Instead, it is a covey of eighteen-wheel ATM's, carrying a million dollars in mandatory insurance coverage.

Further, the financial perversity of the litigation reality is that any case, be it minor or without liability, bears a burden to you, including costs, fees, and risks. This burden gives weight to the claimant's argument that any minor incident is worth something even if fault is dubious at best.

The weight of this argument is based upon two elements. First, it looks at each accident in **isolation**. Second, it assumes that you were neither prepared to aggressively respond nor had the stomach to fight, but would instead rather toss money at the claimant...and, of course, his attorney.

Viewing the financial impact of a minor accident in isolation ignores the reality of the overall effect of these accidents. The cumulative effect of these minor scrapes is the hemorrhaging of your money which your drivers logged thousands of miles to earn.

How many miles were needed to earn the money you paid on "business decision" settlements last year? What could your company have done with that money? More importantly, how much could you have added to the bottom line with that money?

Stop the bleeding. Prepare for these accidents, execute your plan, and defend these claims where it is either not your fault and/or there were no injuries. Turn the tables on the plaintiffs' attorneys and give them an economic downside by making it clear they are in for an uphill fight that will be fought to the end.

Several summers ago, I had three trials in which I defended minor impact claims. In each case, we admitted fault for the accident, but denied that we caused any injuries. In all three cases, the jury did not award any damages to the plaintiff.

In the last of the three cases, the jury came back with a question. What was there to ask? We admitted liability. The only question left for the jury was whether we hurt him and, if so, how much did we owe? What possible question could the jury have?

The question was whether they could make the plaintiff pay my client's legal fees. After informing the jury that under our system, they could not do so, the judge told plaintiff's counsel and me, "Don't go far, boys. They'll be back soon." They were. No damages.

The point of this story is not that you can win all minor impact or no liability cases. The point is that not all cases automatically warrant throwing money at the plaintiffs. Proper and aggressive preparation, execution, and defense can limit, if not eliminate, the financial hemorrhaging that these cases produce.

The keys to the low impact case are to PREPARE, EXECUTE, and DEFEND aggressively.

## 1. PREPARE

Minor accidents will happen. The law of averages establish that in the millions of miles traveled by your vehicles through thousands of intersections in hundreds of towns at least one of your trucks will come in contact with a four-wheeler.

Accidents will happen. Most will be very minor. Have you prepared to protect against a later proliferation of the claim?

Some basic steps can give you a basis for a defense. These begin with equipping and training the drivers.

The plaintiff's claims are frequently based on their testimony. To explain the minor damage and absence of immediate pain, they describe a delayed onset after they left the scene. To magnify the significance, they tell of infliction of constant pain into their life of perfect health.

Their case is founded on the words that describe and bemoan their fate. Words are ethereal. They can be conjured at will to serve the interests of a witness. The truthfulness of the statement is left to the jury's judgment of credibility.

The defense of a low impact claim requires giving the jury solid evidence, not just words. The cumulative effect of that evidence must make incredible the plaintiff's claim of liability or significant injury.

The defense should be based on what I describe to the jury as the "foundations of the truth." This is evidence the natural product of the accident, not generated for the expediency of a lawsuit. It is evidence that is objective, such as photographs or documentation by impartial individuals who had nothing to gain or lose from the case.

Use a safety meeting to review how to respond to an accident. Give them a checklist for this response. A checklist for what to do at the accident scene and a list of photos to take will give guidance to the driver who just suffered an accident. Laminate the lists and put them in each truck.

Photographs are the powerful proof. Our common sense leads us to believe that the horrific accidents in which cars are crunched result in severe injuries and warrant substantial compensation.

Conversely, photographs of minimal damage lead common sense to question how an injury could have resulted, let alone a substantial, life changing trauma. The jury can see the photo with their own eyes and reach their own conclusions, uncolored by the testimony of a self-serving claimant.

You can be armed with such evidence by preparing and training your drivers. Equip them with cameras. Disposable 35mm cameras are a cheap check on a claimant who, absent such photos, can fictionalize the damage to meet his needs.

It is common for such a camera to be on every table to memorialize a wedding, even though statistics tell us has the nuptial has a 50% chance of failure. Can't you spare a few dollars to memorialize the minimal damage to avoid being legally extorted for some future payment to a claimant?

The absence of damage and complaints are important evidence in minor accidents. Drivers should photo both their trucks and the other vehicle even if undamaged to document the minor impact.

They should document the absence of physical complaints by the other driver and his passengers. They should photograph and document other evidence of low or no impact, such as undamaged freight, particularly if it is fragile.

Further reinforce the driver's by training the dispatchers and providing them with a checklist. As "mission control", they should ensure that everything that can be done is done.

## 2. EXECUTE

When the accident occurs, the plan should be employed. While any situation may require minor adjustments and deviations, these should be minimal. In low impact accidents, just as in a catastrophic loss, the prepared plan should be implemented and executed. This ensures that available documentation and photographs are gathered to establish the absence of damage.

The drivers should be verify that the other driver is not injured and does need care. They should then document it. The driver should confirm with the police that the other driver is uninjured and “suggest” that they document it.

In many jurisdictions, no police report is issued when the vehicles can drive away and there are no injuries. Your safety department should follow up with the officer to confirm that is why no report was issued.

Photographs of the vehicles, either undamaged or minimally damaged, should be kept on file with the documentation. The result should be a small portfolio of objective evidence.

### 3. DEFEND

When the claim comes in, defend. Start with the documentation in your file. Proceed to discover the post-accident course of the claim.

When did he first seek treatment? What were the complaints? Are the complaints that follow consistent with the initial complaints? Is there any objective documentation (X-Rays, MRI's,...) of the professed problems?

What was his condition before the accident? Ever complain or treat for complaints in that part of the body? If there is objective evidence of injury after the accident, are there any pre-accident films or tests that show a similar or progressive condition that explains the current condition?

Run an Index for other claims. Check the workers' compensation bureau for claims. Check court records for civil actions.

In the end, it must be our photos, documents, films, and impartial witnesses against their story.

It sounds like hard work to keep from spending a little money. It is.

But how many miles did it take for you to earn that money? How many miles are you going to drive every year to earn the money you are going to pay for claims you don't owe? How long are you going to put up with this?

Prepare. Execute. Defend. Stop the financial hemorrhaging.