

WINTER

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FIVE WINTER RISK TUNE UP

Tune up for winter. And not just your trucks.

Tune up your risk management before the bad weather and the accidents that come with it.

Here are FIVE FIXES you need to do.

PREVENTABLE DETERMINATION

Your preventability program can undermine your defense of an accident by itself. Improperly structured and performed, you could end up unintentionally admitting guilt.

Start with your definition of “preventable.” If your definition is based on the driving failing to do what was “reasonable under the circumstances,” you are doomed.

That’s the definition of negligence. Thus, if you find the accident “preventable” based on that definition, you have just admitted your driver was negligent.

I recently participated in an ATA task force that addressed this with a definition that avoids this admission. It tracks the definition in Section 385.3. Key—it removes the question of the driver’s “reasonableness” and thus does not mirror the definition of “negligence”.

Just wording? Just semantics?

WELCOME TO THE LAW.

Examine your process to determine preventability. The more people involved, the more potential witnesses the other side can depose. Keep it limited.

Email me if you would like the White Paper (three pages and in English) that I did for the ATA.

DRIVER’S MANUAL

When’s the last time you reviewed your drivers’ manual? The new tactic of those who sue trucking companies is to use what is in a company’s manual against them.

Here’s how they do it—if it is in your manual, it is your regulation. If your driver doesn’t do it, he has violated an accepted principle of trucking (your own “regulation”). That by itself is negligent.

Make sure you need what is in the manual. Make sure your drivers can live up to it. Have someone review it from the perspective of “can they use that against you at trial.”

DRIVER TRAINING

Having a fall drivers’ meeting? Make it an “accident procedure” meeting. As someone who deals with the aftermath, you cannot do this enough.

Drive home the points. Remind them to “BE QUIET”. If only drivers would be as closed lipped after an accident as they are at their DOT physical. (“Nope, I’m fine. Nope, nothing wrong....” _)



TUNEUP

Take photos. Send the photos to your company. Get the name and cell number or witnesses. Addresses would be great, too.

TRAIN THE REST OF THE COMPANY

Accidents response is not only for the driver and risk management/safety. Dealing with an accident is a company-wide matter.

First, train whomever takes the call. Give them a check list to go over with the driver who is shaken from the most traumatic event of his professional, if not personal, life. Need a checklist? Email me and I'll send you one.

Also, emphasize to that person the need for accuracy. They are not just jotting down some notes. What they are making is an exhibit for trial.

What they write must be given to the other side. What they record on that report will be etched in stone and held up by those who sue as the "true story" of what happened.

If what they write is wrong, we have to live with it and deal with it, for the entirety of the case. And they are going to have to come in for a deposition by the billboard attorney about what they wrote.

Second, train everyone else...to keep out of it. The more people who get involved (I'm being polite), the people who will be potential "witnesses," and the more chance that something is going to get twisted around against us.

I know people want to "be in the know." That is why we have TMZ. A company's accident is real business. They need to keep out.

PREPARE YOUR RESOURCES

Make sure your resources are ready. Do you have a D & A testing network in place? Is it a network that can get the alcohol test done in the middle of nowhere in the middle of the night?

Are you set with an independent adjuster network? Again, a network that will get someone out anywhere and anytime?

More importantly, is your independent adjuster network ready to do it the right way...your way? What the adjuster says or learns could be discoverable (there are ways to limit that, but that's another article).

You must work on that assumption. You must ensure that you minimize if not eliminate that possibility.

They should not take statements from the driver or even discuss the accident facts beyond the most basic facts. They should not label photos with opinions—point of impact, where lost control, etc. Bottom line, limit the potential of generating information that would benefit the other side.

The change of season means an increase in risk.

PREPARE. PLAN. EXECUTE.