

SUE THEM FIRST

By Doug Marcello, Marcello & Kivisto, LLC

Take the offensive. Take the fight to the billboard lawyers. Be proactive instead of waiting to react and allowing the plaintiff's attorney to take the offensive.

In this time of nuclear verdicts, we must be innovative and aggressive. One of the tactics we frequently use is to sue the car driver. We do this before they sue our client.

We can do this in instances when there is a question of fault and our client has suffered damages, either property damage or cargo or both. If we have these requirements, then we can sue the four-wheeler.

Why would we want to do this?

First, to keep the suit in the county where the accident occurred and avoid being dragged into a more "plaintiff friendly" jurisdiction. In Pennsylvania, the county in which the first complaint is filed determines where the case will be tried.

If we don't, plaintiffs will file in Philadelphia, a place that one plaintiff's attorney referred to with a smile as "that magical place." Too often, the mere fact of being there will give more value to the case.

While it is not a guarantee, when we filed suit in the county where the accident occurred, the case has stayed in that county in all but one case. We have been successful in doing so in a number of fatal cases. And that keeps down the value of the case.



Second, we get the jump on the plaintiffs. An insurance company attorney will represent the car driver, not the plaintiff attorney. This allows us to depose the car driver and subpoena records before the plaintiff attorney is even in the case.

Third, if we can prove we are not at fault, we can shut down any plaintiff's case. The plaintiff can be bound by a decision on fault in our favor.

I recently had a case in which two cars cut in front of our truck into the left lane to make a turn and then stopped suddenly. The second car hit the first car before we contacted the back of the second car.

We had this all on in-cab camera. Armed with that video, we filed suit against both cars. A court arbitration found the car drivers were each 50% negligence. And we were 0% negligent.

The result? We had a legal judgment that the car drivers were at fault, keeping them from being able to sue us.

Sounds easy, right? The toughest part is to overcome the lack of foresight of those who cannot grasp the concept. I've had multiple attorneys with whom I work out of state who had a mindset that kept them from grasping the concept.

I've had insurance companies balk at paying for the expenses of the suit because it is not in the policy—even though they are the ones to benefit by keeping down the amount of the potential verdict.

However, we have been able open their minds and overcome these speed bumps.

In this era of deductibles and retentions in a hard insurance market, the first chunk of money is yours. You have to protect yourself.

In this era of nuclear verdict, you can't sit back and let others call the shots. We need to be aggressive and innovative and take the fight to the other side.

You can't afford not to.