

It's a Safe Bet That Curiosity Killed the Case

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Acknowledging your company follows established safety protocols, conducting safety training and re-training your drivers, and incorporating the latest technologies into your fleet can all be thwarted by a single behavioral characteristic – curiosity. Curiosity, among the most common of human traits, can be damaging if not fatal when injected into aftermath of a commercial vehicle accident. In contrast to the focused inquiry that is vital to the investigation, the “need-to-know” of peripheral parties can plague a case for its duration.

After any accident the immediate assembly of information is crucial. Immediacy is our greatest advantage of any trucking company, never to be matched by any advertising attorney and never to be squandered. However, it is important that the immediate investigation be focused and purposeful. It must be directed to determine the facts and evidence necessary to defend against any claim.

Some company employees are too often driven by visions of “CSI”, “NCIS” and “Law and Order”. They frequently have well-meaning, but misdirected notions of “solving” the accident by determining “what really happened.” Others may have an insatiable need to be





in the know. They thrive on being the one with the inside information.

Whatever the motivation or reason, the dissemination of information threatens to

complicate, if not undermine, the defense of the case. It can create unnecessary trouble borne from rumors, misunderstandings, and misinformation.

Unnecessarily requiring the driver to document a post-accident version can undermine credibility at trial and inflate the verdict. Performing non-required drug and alcohol testing or vehicle inspection can result in settling a defensible case.

The key is to limit information to a finite group of pre-designated responders all have a pre-determined role in the response and information for which they are responsible. From the person designated to take the call, be it dispatcher, safety director, or risk manager, to the adjuster, the attorney, and accident reconstruction expert, each participant should have specific information they are to obtain.

In making these assignments, consideration should be given to the potential discovery of this information. For that reason, the driver's discussions should be with the attorney to afford the protection of attorney-client

privilege. The adjuster and reconstruction expert reporting to the attorney can provide the protection of attorney work product in many cases.

It is important to limit the migration of information between responders to the extent that is needed by another. For example, the on-scene findings of the adjuster may be a necessary factual foundation for the reconstruction of the accident.

Intermingling information beyond what is necessary is often problematic. A responder's possession of information that is not vital to their role may expose that information to discovery and undermine elements of the case.

The framework of responder responsibilities and the limitations on the exchange of information can be established in your accident response planning. It must be maintained by the disciplined execution of your plan.

Curiosity of persons other than the core responders is an element of human nature, but a potential threat to the defense. While their desire to be "in-the-know" is understandable, it must be not only discouraged, but effectively deterred.

This nonessential nosiness can undermine the careful planning and design to afford maximum protection. This inquisitiveness can take many forms.

Often a driver is asked to provide multiple statements after the accident. These include written accident reports, recorded insurer interviews, or other misguided mandates to memorialize the driver's version.

Statements should be limited to verbal reports to one designated individual. If the accident is of such severity or the situation permits it, then the statement should preferably be made to an attorney.

Everyone who asked the driver “what happened” is a potential deponent (one who gives evidence). Each of their respective recollections increases the potential for inconsistency that may undermine credibility by contradicting or conflicting with other statements.

Those who are curious should be advised of its potential price - a day away from their duties to endure unpleasant questioning from an unsympathetic attorney that could result in financial damage to the company. Their best protection from such a fate is to suppress their desire to be in the know and enjoy the gift of deniability.

Similarly, we should not generate evidence that is not necessary and could only be harmful. While well intended, this could also result in undermining a defensible case.

Drug tests should not be given in the absence of a regulatory requirement. If the law enforcement officer

on the scene does not find a basis to subject the driver to a test, we have no independent need to prove the driver’s absence of substances. Our best evidence is the trained officer.

Similarly, if a qualified law enforcement inspector finds that our truck is completely in compliance, there is no need to risk finding flaws by subjecting it to another inspection. Again, we have the testimony of the trained law enforcement official. Leave it at that.

Stop the curious inquiries before they occur. Disseminate the order that only designated individuals may inquire as to the occurrence. Inform all of the potential consequences. Make clear that drivers be tested and equipment inspected on at the direction of a designated individual.

The challenge of defending against these claims is challenging enough without having to deal with self-inflicted damaging evidence. The direction and discipline to squelch curiosity is vital in this regard.

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