

## **TEN CRITICAL STEPS TO THE EFFECTIVE DEFENSE OF A TRANSPORTATION CASE:**

### **The End Drives The Means**

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The first twenty-four to forty-eight hours following an accident are critical to the development of an effective defense to a transportation claim or lawsuit. During this time, police officers will be interviewing witnesses, taking photographs and measurements of the scene, preparing reports, and recording evidence. National Transportation Safety Board (NTSB) investigators, Department of Transportation (DOT) inspectors and/or reconstruction experts may be conducting independent investigations and collecting data which may later be used as a foundation for a lawsuit against a driver, and almost certainly his employer. Since litigation is usually protracted and trial delayed until long after the occurrence, it is essential, both in terms of the potential settlement of a claim, and the defense of any lawsuit, that early steps be taken to properly collect and preserve evidence and testimony that will drive the outcome of the claim. The following guidelines can help you to achieve this goal.

#### **1. Educate yourself and your investigator.**

Before undertaking any investigation, you should first educate yourself and your investigator about the specific goals of your investigation. Different cases call for different approaches. A theory of defense should be fashioned from the outset. This will allow for a more focused and efficient investigative strategy. Prior to developing an investigative strategy, the adjuster and the investigator, must: 1) have an understanding of

the applicable laws in the state where the accident occurred, 2) know what the factual focus of the investigation needs to be in light of those laws, 3) be aware of certain jury dynamics (such as the tendency of juries to place an undue emphasis on police officer testimony, or to be more critical of truck drivers as compared to other drivers), and 4) reach an agreement as to the investigative techniques to be used to mold an investigation that builds a defensible case. Below are a few examples of pre-investigation strategies for specific types of accidents:

➤ ***Rear end accidents***

In Illinois, as in some other states, the mere happening of an automobile accident, without more, does not mean that a driver was negligent. *Rotche v. Buick Motor Company*, 358 Ill. 507, 193 N.E. 529 (1934); *Fahrforth v. Kwiatkowski*, 79 Ill.App.2d 300, 224 N.E.2d 641 (1<sup>st</sup> Dist. 1967); *Cozzi v. North Palos Elementary School Dist. No. 117*, 232 Ill.App.3d 379, 597 N.E.2d 683 (1<sup>st</sup> Dist. 1992); *Schaub v. Community Cab, Inc.*, 198 Md. 216, 81 A.2d 597 (Md.App. 1951); *Phillips v. Noble*, 50 Cal.2d 163, 323 P.2d 385 (1958); *Green v. Castronova*, 9 OhioApp.2d 156, 223 N.E.2d 641 (OhioApp.1966); *Daignea v. Young*, 349 Mich. 632, 85 N.W.2d 88 (1957). Additionally, the mere fact that a defendant rear-ended another driver does not create an inference that the driver of the rear car was negligent, or that he was following too closely or driving too fast for conditions. It is the responsibility of the trier of fact to determine whether the rear driver was acting reasonably under the circumstances or whether the accident was unavoidable. *Abrams v. City of Mattoon*, 148 Ill.App.3d 657, 499 N.E.2d 147 (4<sup>th</sup> Dist. 1986); *Burgdorff v. IBM*, 74 Ill.App.3d 158, 392 N.E.2d 183 (1<sup>st</sup> Dist. 1979); *Kent v. Knox*, 95 Ill.App.3d 223, 419 N.E.2d 1253 (3<sup>rd</sup> Dist. 1981);

*Thomas v. Northington*, 134 Ill.App.3d 141, 479 N.E.2d 976 (1<sup>st</sup> Dist. 1985); *Chapin v. Hunt*, 1975 Tex.App. LEXIS 2608, 521 S.W.2d 123 (Tex.Civ.App. 1975); *Fontilla v. Boyes*, 1977 Minn.LEXIS 1697, 256 N.W.2d 248 (1977); *Beck v. Kessler*, 235 Cal.App.2d 331, 45 Cal Rptr. 237 (1965). In the case of a rear end accident, the focus of the investigation must center on the reasonableness of each driver's actions, and whether the accident was unavoidable. Investigators should focus their inquiries on, among other things, 1) the insured's proper maintenance of distance between his car and the car in front of him; 2) speed compliance; 3) visual focus ahead and in peripheral views; or 4) the fact that the plaintiff may have: suddenly, and without warning, swerved into the defendant's lane and slowed down; started up from an intersection and then suddenly stopped for no apparent reason; or was operating his vehicle with no brake lights or turn signals.

Further, consideration should be given to the effect that the plaintiff's conduct will have on both the plaintiff's right to recover (contributory negligence), and whether the state where the accident occurred has adopted joint and several liability, several liability, or some combination thereof (such as a provision which limits the responsibility of a tortfeasor to pay certain types or classes of damages if a driver is found to have been less than a certain percentage of fault responsible in causing the accident).

➤ ***Pedestrian Cases***

The mere fact that an accident occurs between the driver of a motor vehicle and a pedestrian does not raise a presumption of negligence on the part of the driver. *Eleopoulos v. Dzakovich*, 94 Ill.App.3d 595, 418 N.E.2d 980 (1<sup>st</sup> Dist. 1981); *Morrin v. Bond*, 87 OhioApp. 357, 95 N.E.2d 262 (OhioApp. 1950); *Acree v. Hartford South*

*Incorporated*, 1999 Fla.App.LEXIS 291, 724 So.2d 183 (Fla.App. 5<sup>th</sup> Dist. 1999); *Mutart v. Allstate Ins. Co.*, 1993 La.App.LEXIS 2640, 622 So.2d 803 (La.App. 4<sup>th</sup> Cir. 1993). When a motor vehicle is proceeding along at a lawful speed and is obeying all rules of the road, the driver is not, as a general proposition, liable for injuries received by a pedestrian who darts in front of him so suddenly that the driver cannot stop or otherwise avoid striking the pedestrian. *Morrison v. Flowers*, 309 Ill. 189, 139 N.E. 10 (1923); *Feltner v. Bishop*, 1960 Wyo.LEXIS 47, 348 P.2d 548 (1960); *Alina v. Raschka*, 254 Md. 413, 255 A.2d 76 (Md.App. 1969); *Winters v. Burch*, 284 N.C. 205, 200 S.E.2d 55 (1973); *McAvoy v. Kromer*, 277 Pa. 196, 120 A. 762 (1923). Analysis of the circumstances existing at the time of the occurrence is necessary in determining whether the driver's conduct was that of an ordinarily prudent driver and whether any lack of due care by him caused the accident.

If the pedestrian is a child, other considerations are important to the determination of liability and the building of a defense to a prospective lawsuit. Children under the age of 7 years tend to be immune from a finding of contributory fault. Even older, pre-teen children are often presumed to be faultless unless their knowledge, skill and experience is sufficiently established. If children may reasonably be expected to be in the vicinity of vehicular traffic (a school, park, or other area frequented by children), a motorist, although still held to a standard of ordinary care, must exercise greater care for the safety of those children than he would for adults. *Stowers v. Carp*, 172 N.E.2d 370 (1961); *Murphy v. Head*, 240 So.2d 783 (La.App. 2d Cir. 1970); *Mulligan v. Pruitt*, 244 Md. 338, 223 A.2d 574 (Md.App. 1966). Consequently, whether it should have been obvious to the insured that the accident scene is an area frequented by children, and whether the

driver knew or reasonably should have known that to be the case prior to the accident, needs to be thoroughly investigated.

The focus in pedestrian cases must be on the layout and make-up of the scene of the accident, the conditions existing at the time of the accident, the pedestrian's conduct, and the driver's conduct immediately prior to the contact. The overall goal should be to establish that the driver had no ability to avoid colliding with the pedestrian.

**The layout and make-up of the scene:**

- Was the insured familiar with the area?
- Is it a heavily traveled pedestrian area? (shopping center, school, church, etc.)?
- Were there any permanent or temporary distractions to the driver or pedestrian?
- Was the pedestrian attempting to cross the street in a marked crosswalk? An unmarked crosswalk? At an intersection? At mid-block? (Often there are state statutes or municipal codes granting the right-of-way to drivers at mid-block).
- Were there any vehicles parked on the street in the area where the pedestrian was attempting to cross? If so, were they cars? Tractor/trailers? Vans? Buses? Did they obstruct the pedestrian's ability to see the driver? The driver's ability to see the pedestrian? Did they prevent the driver from making an evasive maneuver?
- Exactly how far from the curb was the vehicle parked? How wide was the vehicle? Did it have a lot of windows allowing the pedestrian to see the driver if he or she had looked? Allowing the driver to see the pedestrian had he or she looked?
- How close to the front of parked cars or other obstructions was the plaintiff when attempting to cross?
- If the pedestrian was a child, is the area one commonly frequented by children? (parks, schools, playgrounds, candy stores, ice cream stores, etc.)

**The conditions existing at the time of the accident:**

- What were the weather conditions? Clear? Rain? Snow/ice? Dry?
- Was the area well-lit? Were there streetlights in the area? When do they go on? Were there businesses in the area with signs or outdoor lights which may have illuminated the area?
- Was there any construction in the area requiring the pedestrian to walk out in the street?

**With respect to the pedestrian, did the pedestrian:**

- Look both ways before attempting to cross?
- Ever see the contacting vehicle before contact occurred?
- Have his or her vision obstructed by other vehicles parked by the curb? If so, did the pedestrian stop again at the edge of the parked vehicles and look for traffic before continuing to attempt to cross?
- Have his or her vision obstructed by any hat, scarf, or sunglasses the pedestrian was wearing? Or by anything she was carrying or using (i.e., a cell phone, a cup of coffee)?
- Run, jog, or walk into the street?
- Was the pedestrian wearing dark clothes at night? Wearing any reflective clothing or equipment?
- Was the pedestrian attempting to cross the street in a crosswalk?
- Was the pedestrian attempting to cross straight across the street, or at an angle? What was his destination? What is the most likely route of travel for that destination?
- Did the pedestrian violate any statutes in attempting to cross where he did?
- Where did the contact occur? Which lane? What part of the car came into contact with the pedestrian? What part of the pedestrian hit the car?

Always try to establish that the pedestrian left a place of safety and walked or ran into the path (or the side) of the vehicle without giving the driver an opportunity to avoid a collision.

**The driver's conduct:**

- Was his car in good mechanical condition? (headlights working, brakes in good condition, horn working and used, etc.)
- Were there any obstructions to the driver's vision of the pedestrian?
- Did the driver attempt to take any evasive action to avoid the collision with the pedestrian? Could he have taken any such action given the area/scene? Did he have the time to do so? Were there any skid marks?
- What was the speed of the driver at the time of first seeing the pedestrian? Was it within the posted speed limit? Less? (due to weather conditions, traffic conditions, construction in the area?) What was his speed at the time of first braking? Impact?
- How soon was the driver able to come to a stop after hitting the pedestrian?
- Was the driver distracted by anything in the immediate vicinity of the accident, such as horns from other cars, heavy traffic, business signs, music or news on the radio?
- Was the driver familiar with the area? Familiar with the amount of pedestrian traffic in the area? The likelihood of children in the area?

➤ ***Vehicles Changing Lanes***

A disproportionate number of accidents occurring on expressways are claimed to have been caused by improper lane changes, most often by a truck or bus. In lane change cases, some factors to focus on are:

**With respect to the vehicle changing lanes:**

- Were there signs (temporary or permanent), or road markings prohibiting the lane change?
- Was the lane change attempted at an intersection? If so, how close to the intersection?

- What was the speed of the driver attempting to change lanes? Was it within the posted speed limit? If so, was that speed reasonable given the traffic conditions existing at the time of the accident? What were the traffic conditions at the time of the accident?
- Did the driver use a signal to alert other drivers of his or her intention to change lanes? Was the signal working? Did the driver signal with sufficient time to warn the other drivers of his or her intention?
- Did the driver have sufficient space to begin the lane change? What distance separated the two vehicles at the time the changing vehicle began to leave its lane?
- Was there construction in the area, a street sweeper, disabled vehicle, debris in the roadway, standing water, or other condition or emergency which precipitated the lane change? If so, was the driver keeping a lookout for these conditions and did he recognize those conditions in a reasonable period of time to make the lane change smoothly, and with proper warning?
- Was the driver's vehicle properly equipped with all mirrors, and were those mirrors properly aimed to allow the driver to see any vehicles in the lane he was attempting to enter? Did the driver look in the mirrors? If so, how many times? When did he first look? When did he last look? Was his view of the lane obstructed by sunlight, headlights, or other vehicles?
- Did the driver see the other vehicle before colliding with it? If so, when? Did the driver try to re-enter the lane he was leaving? Could he have? Was there any traffic or other condition in that lane preventing him from doing so?

**With respect to the other vehicle:**

- How long had it been in the lane it was in at the time of impact? Had it just changed lanes into that lane? If so, which lane was it in prior to that change?
- What was the speed of the vehicle? Was it going too fast for conditions? Did its speed prevent the driver who was changing lanes from completing a safe lane change?
- When did the driver first see the other vehicle begin to change lanes? Was the change rapid or gradual? How close was his vehicle at that time? What was the speed of the vehicle at that time?

- What did the driver do when he first saw the vehicle changing lanes? Did he attempt to change lanes? Could he have changed lanes? Did he slow down? Brake? Skid? Flash his lights? Honk his horn?
- Was this driver aware of any upcoming conditions which may have alerted him to the possibility that the other driver may have to change lanes? (Such as upcoming construction, merging traffic, lane closures, toll booths, other lane restrictions).

The above is just a brief listing of some of the factors to focus upon when developing an effective investigative strategy. After educating yourself and your investigator about the law, and once you have determined the proper focus of the investigation, the following steps should be undertaken to mold the case into a defensible posture. Direct the investigation toward the answers you want, and avoid open-ended questions to a potential plaintiff or defendant.

## **2. The Scene Visit.**

It is essential that the scene of the occurrence be visited as soon as possible after an accident to collect information and take photographs. In an era when road construction seems to be unending, the scene of any accident can change many times before the filing of a lawsuit. Proper preservation of evidentiary details of the scene requires a thorough scene inspection that includes the following:

- A detailed sketch of the roadway showing, lane demarcations, dimensions, shoulder measurements, lighting in the area of the accident, signage, entrance or exit ramps, the makeup and condition of the road surface (such as, concrete-new; asphalt-rough, potholes, etc.). If there is construction in the area, note the presence of all barricades, horses, cones, warning signs, obstructions or other temporary signage or lane closures.
- It will be beneficial to take a video camera to the scene of the accident and videotape these areas for later reference. If the accident occurred at night, record the scene first during the daytime so that all reference points are clearly visible, and then return to the scene at the approximate time of the accident

and take additional footage of what the scene would have looked like to the driver on the night of the accident. If it was raining or snowing at the time of the accident, secure footage of the area under similar conditions. Be sure to have the sound off at the time the footage is taken, for any sound that is recorded may be admissible into evidence, and subject the investigator to possible deposition or trial testimony.

- Take measurements of any and all skid marks on the roadway, and note on the sketch of the scene of the accident where the marks begin and where they end. Also note the color (dark or light) and thickness of the skid marks, along with any periods of skipping or yawing.
- The locations and identification of vehicle debris should be chronicled.
- Note any and all obstructions to the driver's visibility which may have contributed to the accident, or distracted the driver, such as glare from store windows, heavy pedestrian traffic in the area, confusing entrance or exit ramps, etc.
- For intersectional accidents, obtain traffic light timing sequences, as well as maintenance records.

### **3. Inspect the vehicles involved in the accident.**

A thorough inspection of the vehicles involved in the accident should be done as soon as possible after an accident. All sides of the vehicles, including all points of impact, should be memorialized in photographs, and the severity of the damage should be assessed. If the accident involved a tractor/trailer, an inspection should be performed on both the tractor and the trailer. Inspections should be conducted with an expert well acquainted with the Federal Motor Carrier Safety Regulations ("FMCSR") and accident reconstruction principles. The following essential items should be inspected:

- A thorough inspection should be made of the tractor and trailer braking systems. Attention should be directed to the thickness of the brake linings, the adjustments of the brakes, and the hoses comprising the compressed air system. All findings should be documented and photographed, and if the vehicle is a total loss, such systems should be maintained as evidence.

- The steering mechanism should be inspected to affirmatively establish the lack of any deficiencies or excessive slack, which may later be argued to have impeded the ability of the driver to perform an evasive maneuver necessary to avoid the accident.
- Tractor and trailer tires should be checked to determine tread groove pattern depth and compliance with §393.75 of the FMCSR.
- Lighting devices should be tested to determine if the lights were on at the time of the accident. The presence (or lack) of all reflectors, on both the tractor and the trailer, should be noted on a detailed drawing of the tractor and trailer. Photographs should be taken to document the condition of all lights and reflectors.
- Physical areas of damage must be memorialized in photographs to indicate the points of impact and the severity of damage. This evidence is necessary to adequately document not only the points of impact, but also can be very helpful in disproving the severity of the impact as claimed by a plaintiff.

#### **4. Witness interviews.**

Probably the most crucial step in the effective defense of a transportation claim or lawsuit is the interviewing of the driver of the truck or bus and all witnesses to the occurrence. Statements provide the adjuster with an accounting of the events of the accident so as to enable him or her to determine whether liability for the accident rests with the driver or the claimant. They also provide the adjuster with necessary information that enables him or her to set an appropriate reserve on the case. Most importantly, statements taken of drivers and witnesses to an occurrence preserve the testimony of the witness for use at a later time. This is important since most lawsuits are not filed until just before the running of the statute of limitations, which is commonly two years from the date of the accident.

Clear and concise recorded statements of the driver and all witnesses detailing the events of the accident can be a very effective tool in the resolution of a claim and in the

defense of any lawsuit. Before any recorded statements are taken, witnesses should be thoroughly interviewed in order to learn the nature of their expected testimony. Witnesses with information beneficial to the defense of the case should be carefully interviewed and prepared for the giving of a recorded or written statement prior to its undertaking, just as if the witness was going to be giving a more formal deposition. Consideration should be given to the taking of an affidavit from the witness in lieu of a recorded statement. Affidavits not only record and preserve the witness' testimony for use at a later time, but also are evidentiary, and can be used to support motions, such as motions for summary judgment.

Careful thought should be given to the taking of statements from witnesses adverse to the defense of the case. It must be remembered that most statements taken from witnesses are discoverable once suit is filed. If the pre-statement interview identifies the witness as adverse, it may be more beneficial not to take a recorded or written statement from him, thus avoiding the documenting of favorable testimony for the plaintiff.

#### **5. Document Retention.**

Upon notification of an accident, an "accident file" should be started and all documents concerning the accident and the vehicle involved should be maintained in that file. A complete accident file should be labeled "Confidential Work Product" and contain:

- The driver's personnel file comprised of all qualifications and testing requirements of §391 of the FMCSR, including results of drug and alcohol screens which may have been taken after the accident.

- The driver's log books being held by the motor carrier. Pursuant to FMCSR 395.8(k), a motor carrier shall retain all records of the driver's record of duty status (log books) and other "supporting documents" for a period of six months. Since a lawsuit is usually not filed until a year or more after an accident, a driver's log books (which include not only hours of service, but also details of pre-trip and post-trip inspections) should be maintained for at least a 30 day period prior to an accident. The pre and post-trip inspection portions of the logs can be used as evidence of compliance with the FMCSR if they show that vehicle was properly inspected and in working order prior to the accident. In order to prevent inadvertent destruction, a driver's log books should be collected and kept in a separate accident file so as to ensure that those records are not destroyed.
- Maintenance records for the tractor and trailer. Under FMCSR 396.3(c), all inspection, repair and maintenance records must be kept for a period of 1 year, and 6 months after the vehicle leaves the motor carrier's control. Just as with log books, all inspection, repair and maintenance records should be kept for vehicles involved in an accident in the event that a lawsuit is filed. Keeping these records in the same location as the driver's log books will prevent their inadvertent destruction.

The failure to retain records can cause irreparable harm to the defense of a case, and lead to drastic results. In Illinois, if records are destroyed, the plaintiff may be entitled to a jury instruction which creates a presumption that the evidence, if produced, would have been adverse or harmful to the defense of the party failing to produce the documents. (IPI 5.01). This inevitably leads jurors to the unwarranted conclusion that the defendant is hiding damaging documents or is not trustworthy.

## **6. Document Acquisition.**

In addition to preserving the motor carrier and driver's records as part of an accident file, other documents should also be obtained to complete the claim file. These records include:

- All police reports, reconstruction reports and diagrams, and supplemental reports, including photographs, evidence logs, written statements, [and all Major Accident Investigative Section (MAIS) reports, if the case involves a death or serious injury].
- Upon authorization from the injured party (via their attorney, if one has been retained) copies of all medical records for treatments received, including copies of all lab reports and tests, if alcohol or drug use is in question.
- A wage loss verification should be obtained from the injured party's employer if lost wages are being claimed as a result of injuries sustained in an accident.
- Copies of all damage reports or estimates should be obtained, as well as any photographs taken by an adjuster for the injured party as part of the estimate/repair process.

#### **7. Interview Investigating Police Officers or DOT Inspectors.**

It is imperative that the police officers responding to the scene of the accident be interviewed as quickly as possible after the accident. There are two reasons for this sense of urgency: First, police officers investigate numerous accidents every year, and in most cases, they have very little time or patience to prepare a detailed report. The police report itself is inadmissible into evidence; however, the report may be employed to refresh the police officer's recollection of his or her investigation of the accident. *Safeway Insurance Company v. Hister*, 304 Ill.App.3d 687, 710 N.E.2d 48 (1<sup>st</sup> Dist. 1999); *Harris Bank Hinsdale, N.A. v. Caliendo*, 235 Ill.App.3d 1013, 601 N.E.2d 1330 (2<sup>nd</sup> Dist. 1992); *Riggins v. Mariner Boat Works*, 1989 Fla.App.LEXIS 3411, 545 So.2d 430 (Fla.App. 2d Dist. 1989); *Wilder v. Classified Risk Ins. Co.*, 47 Wis.2d 286, 177 N.W.2d 109 (1970); *Mainor v. Hayneville Tel. Co.*, 1997 Ala.Civ.App. LEXIS 1013, 715 So.2d 800 (Ala.Civ.App. 1997). If the officer is willing, an affidavit should be prepared and

signed by the officer confirming the findings in his report, and if the report has already been prepared, but lacks sufficient detail, those details should be attested to by the officer in an affidavit so as to preserve them for trial, and to refresh the officer's recall of those events should he be called at trial. If this is not done, the officer's recall of his investigation may be limited to what is contained in his report, which may not be a complete accounting of the events of the accident.

Second, it is no secret that juries tend to give greater weight to police officers' testimony when called at trial. Facts memorialized in a police report or contained in an affidavit signed by a police officer will carry a lot of weight with a jury, especially if those facts prove your theory of defense. The affidavit can also be an effective tool in *eliminating* issues from a case. For instance, a police report may make no mention of the fact that an inspection of the tractor/trailer was made at the scene of the accident and no violations were found. If, during the interview of the police officer, the officer indicates that he inspected the tractor/trailer at the scene immediately after the accident and he found no violations of the FMCSR, an affidavit should be prepared reflecting that a thorough inspection was conducted by the officer at the scene of the accident, immediately after the accident, and that the officer found the tractor and trailer to be in full compliance with all applicable provisions of the FMCSR.

## **8. Freedom of Information Act (FOIA) Requests.**

Some accidents may be so serious that they are investigated by governmental agencies, such as the National Transportation Safety Board (NTSB) or the National Highway Traffic Safety Administration (NHTSA). In the event that one of these

agencies performs an investigation, Freedom of Information Act (FOIA) requests should be sent to the agency requesting any and all findings of fact, statements taken of parties and witnesses, photographs of the scene, and any reports prepared as to the cause of the accident.

Once all of the reports and supplemental reports have been received, they should be reviewed by the defense expert. Pursuant to 49 U.S.C. §1154(b), “no part of any report or reports of the National Transportation Safety Board relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such reports.” See also, *In Re Air Crash Disaster At Sioux City, Iowa on July 19, 1989*, 780 F.Supp. 1207 (N.D.Ill. 1991). Although the reports themselves are not admissible into evidence, the factual findings of the investigators are admissible, either via the testimony of the investigator (by way of deposition only pursuant to 49 C.F.R. §835.5) or through the testimony of the defendant’s expert who can rely upon those findings in reaching his or her conclusions as to causation. *Wilson v. Clark*, 84 Ill.2d 186, 417 N.E.2d 1322 (1981); *Sikes v. Seaboard Coast Line R.R.*, 1983 Fla.App.LEXIS 18789, 429 So.2d 1216 (Fla.App. 1<sup>st</sup> Dist. 1993).

#### **9. Traffic/Criminal Hearings.**

If the insured’s driver was issued a traffic citation, consultation with and representation by an attorney should be afforded the driver both prior to, and during, any resulting traffic or criminal proceeding. The driver and motor carrier need to be advised of the ramifications of a plea of guilty, made as a matter of convenience, or otherwise. Any guilty plea made by the driver at the hearing or trial may be admissible against the driver and motor carrier in subsequent litigation as an admission of fault. It is also not

uncommon for plaintiff attorneys to appear at the traffic hearing and attempt to take a recorded statement of the driver, who may not realize the significance of such a statement beyond the resolution of the traffic citation.

#### **10. Investigate The Claimant/Plaintiff.**

An accurate determination of the injuries which may have been caused by an accident cannot be made unless an investigation is first conducted into the condition of the claimant/plaintiff prior to the accident. A search should be conducted to determine whether the claimant/plaintiff has been in any other accidents, and if so, whether those accidents resulted in other insurance claims or litigation. Copies of prior lawsuits, answers to discovery, and certainly deposition transcripts of the claimant/plaintiff should be obtained, if possible, to determine whether the injuries claimed to have resulted from the accident indeed were caused by the accident, merely aggravated by the accident, or neither. A substantial amount of background information can be found through research on the internet (see for example, *www.Knowx.com*).

Subsequent accidents are also important, in that a subsequent injury may cut off the causal connection between an earlier accident and future medical treatment if the injuries sustained in the later accident were more severe and involve the same parts of the body. In the event of a prior or subsequent injury to the same part of the body, expert testimony may be required in order to prove a causal link between that prior or subsequent injury and plaintiff's claimed damages resulting from the accident at issue. *Brown v. Baker*, 284 Ill.App.3d 401, 672 N.E.2d 69 (5<sup>th</sup> Dist. 1996); *Cancio v. White*, 297 Ill.App.3d 422, 697 N.E.2d 749 (1<sup>st</sup> Dist. 1998); *American Airlines v. Stokes*, 120 Md.App. 350, 707 A.2d 412 (1998).

## **Conclusion**

Notification of an accident should not only trigger a quick response by police, fire and ambulance personnel, but it should also set into motion a quick response by insurance adjusters and their investigative team. The initiation of a thorough and focused investigative plan will help you steer the investigation toward your intended goal, and will lay a solid foundation for the building of a defensible case. Remember that the end should always drive the means.



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