



Creating a Crisis Action Plan



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Why?



- **You've probably heard some variation on this topic multiple times in the past.**
- **How you handle the first 24 hours after an emergency is crucial.**
- **Whether or not you are at fault, your response must be the same in every situation.**
- **We will discuss how your company should respond internally and also how to manage the PR after a crisis.**



Immediate Action Matters



- **Preservation of physical evidence**
- **Witness and responding agency (police, EMS) cooperation**
- **Defense Counsel involvement/investigation privilege**

- **A CAUTIONARY EXAMPLE: Your company is served with a lawsuit for an accident that occurred two years ago. Your vehicle was not even involved in the accident, so you did not report it to your insurance company or implement your crisis action plan. The allegation is that your company's vehicle was illegally parked. An expert for the Plaintiff has pinned liability for the accident on your driver.**



A Cautionary Example





Time is NOT on Our Side

- **Catastrophic accidents never happen at convenient times; they can occur at odd hours in unfamiliar places.**
- ***Don't wait for Monday morning!* Contact your insurance carrier immediately. Most insurers have a 24-Hour response hotline available. Call them immediately. "Better safe than sorry" is a helpful rule of thumb.**
- **Assign a *reliable* supervisor. If possible, dispatch the supervisor to the accident scene immediately. If not, the supervisor should direct operations remotely. This supervisor will be your eyes and ears on the ground.**



Reliable Supervisor in Action

If it is possible to get to the scene, the Responsible Supervisor should:

- Report the precise location of the accident.
- Advise law enforcement of his/her presence on the scene.
- Locate and support the Driver.
- Take photographs, but don't forget that any photos you take must be produced in litigation.
- Find a DOT-approved drug and alcohol testing facility.

If it is not possible to get to the scene, the Responsible Supervisor should:

- Determine the precise location of the accident.
- Determine what law enforcement officials are on the scene.
- Maintain cell phone contact with the Driver.
- Direct the driver to take photographs.
- Find a DOT-approved drug and alcohol testing facility.



Help is on the way!



- **Your insurance carrier may direct one or more of these professionals to the accident scene:**
 - **Local counsel;**
 - **Field investigator;**
 - **Accident reconstructionist**
- **Involvement of a local counsel ensures that the investigation is *privileged*. Local counsel will also serve as a conduit between our Driver and police, ensure compliance with FMCSA post-accident regulations, and give valuable insight into the particular venue and investigating agency.**



Managing the Driver



- **Your driver is the most critical piece of the post-accident puzzle.**
- **In a “perfect world,” the Driver should not be permitted to make a formal statement to anyone (including the Field Investigator) outside the presence of Local Counsel, in order to maintain attorney/client privilege and best protect the investigation.**
- **By the time the Reliable Supervisor is in contact or on the scene, however, the Driver may well have spoken to the authorities. It is important to learn to whom the Driver has spoken and what was said.**
- **Just get the facts. The Driver should be encouraged to be honest without fear of the blame game.**



Driver Responsibilities



- **Remain Calm**
 - Your driver is likely the only professional at the scene when the accident happens. Remain professional.
- **Stop**
 - Keep vehicles in place.
- **Get Help**
 - Contact 911. Do not try to render aid if not qualified.
- **Secure the Scene**
 - Put out reflectors and follow protocols.
- **Get Witness Information**
 - Train drivers not to coerce witnesses, just get their information.
- **Notify the Company**
 - The person receiving the call must remain calm and professional.
- **Take Photos**
 - Consider Making a Laminate “Cheat-Sheet” for Drivers to Reference.



Driver Drug/Alcohol Testing

- **FMCSR § 382.303:** The Driver must submit to a drug and alcohol test “**as soon as practicable**” following an accident when:
 - A **fatality** has occurred;
 - A **citation** has been given within 8 hours* of the accident; and
 - Bodily injury occurred to anyone who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - One or more of the motor vehicles involved in the accident was towed from the scene.
- **ALWAYS FOLLOW YOUR COMPANY POLICIES, AS THEY MAY BE STRICTER THAN THE FEDERAL REGULATIONS.**



Dealing with Law Enforcement



- **A catastrophic accident is typically investigated by numerous law enforcement authorities (Emergency Response, Commercial Vehicle Enforcement Unit, and Accident Reconstruction teams)**
- Do not expect Law Enforcement Officials to be communicative or cooperative, especially at the scene.
- A hostile, uncooperative or combative response by company officials gains nothing and may be detrimental to the investigation.
- **Criminal Citations:** These trigger different obligations for everyone involved in the accident; the Driver has Constitutional Rights that must be considered at all times. This is **not** the time to “go-it alone.”
 - **Have a plan in place to determine under what circumstances you will pay for a criminal defense attorney for the Driver, if any.**



Preserving Evidence



- **Electronic Control Modules (ECMs)**
 - While more common, ECMs vary widely in the type of data recorded, the amount of data recorded and the ease of access to the data.
 - On many units, the existing data is “wiped out” when the engine is restarted.
 - Typically, we insist that we “tow until we know” what we were dealing with. We also demand data downloads of the other vehicles involved.
- **Automated Event Recorders**
 - You must PRESERVE THE DATA on these recording devices!
 - Do not allow the digital information to be downloaded by anyone other than trained technicians.
- **Driver Logs, Driver DQ/Personnel Files, GPS Data**
 - Work to immediately collect and preserve all of this data.



Repair and Return to Service



- **Many times, soon after the accident, a conflict arises: you want to return your truck to service, but your insurance carrier and Local Counsel object. Why?**
- **Evidence spoliation**: to avoid accusations by the injured party that the company “spoiled” the truck by repairing it to hide evidence of its fault, we typically preserve the vehicle in its post-accident state until we have given the other party a fair opportunity to inspect and photograph the equipment.
 - Spoliation allegations and causes of action add value and costs to a claim and must be avoided when possible.



Spoliation Example





PD Spoliation Example





Media Management / PR



- In a “YouTube” and “Twitter” world, where everyone has a video camera on his/her smart phone, you can expect media coverage (or social media coverage) almost immediately. **Under no circumstances should the Driver ever speak to the media.**
- If contacted by the media, you should contact your insurance carrier immediately. Don’t try to handle the media on your own.



Outreach



- Compassion is part of being human; expressing the company's concern and sympathy is entirely appropriate, but only if done properly.
- Your insurance carrier should be consulted before any outreach is made.
- Our experience has taught us that when, how and by whom outreach is made makes all the difference.
- Odds are that you have never had to make such an outreach before. So, take advantage of our collective experience before inadvertently making a bad situation worse.



Repetition



- You should prepare for and practice what to do in the event of a serious accident. Like a fire drill, make it a routine for your operation.
- **Important Tips for Your Response Drills:**
 - Drivers must be involved;
 - Company Spokesperson should be picked and run through a full dress rehearsal;
 - Challenge your Reliable Supervisor through the drills.



Questions?

