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Rethinking 'Deny, Delay, Defend'

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As the ongoing storm hovers over the trucking industry, some carriers are so busy hunkering down that they have forgotten to look for the silver lining in those clouds, but that doesn't mean it isn't there. Economic hardships can cause trucking businesses to look for and apply efficiencies that otherwise would go unnoticed. The resulting innovations provide companies with a competitive advantage that puts them ahead on the other side of the storm.

One important area in need of rethinking by some trucking companies is their usual response to accidents involving serious injuries and death.

When dealing with meritorious claims involving clear liability — or in certain circumstances, questionable liability — for the company, traditional “deny, delay, and defend” tactics can drag out cases for years and incur huge — and often unnecessary — costs. Some companies spend 4% to 5% of their entire revenue on accident claims and related insurance costs and expenses. And with its less-than-compassionate treatment of grieving families, the traditional approach also can violate companies' standards of fairness and damage their reputation.

That's because even when the trucking company is clearly liable and the resulting damages are large, the traditional strategy:

- Ignores a claimant until a suit is filed, which results in a buildup of resentment and hostility and pushes some claimants to insist on enormously inordinate compensation.

- Wastes time and resources in a lengthy, inefficient discovery process.

- Builds a mountain of fees, expenses and other costs.

- Lacks empathy toward claimants, incurring even greater emotional and financial damages on families entangled in a bitter and lengthy litigation process — reflecting negatively on a carrier's reputation.

Why do some trucking firms continue this inefficient practice? One important reason is the extreme power of the status quo, i.e., “That is the way we have always done it.” But now a compelling incentive to try something new has arrived, a case of hard times rewarding a business for its introspection and resulting changes to long-established company practices.

To that end, some leading carriers are employing a better approach to handling accident claims involving death and very serious injuries, one that cuts costs dramatically, saves time for executives and legal counsel, and treats families that possess legitimate claims with a dignity appropriate to the enormity of their loss.

This approach to serious claims resolution has two tracks:

- First, the defense counsel investigates the accident, advises the client on the law and defends the client if a lawsuit is filed.

- Second, instead of ignoring contact with opposing counsel involved in a catastrophic accident claim until the lawsuit is filed, “negotiation

counsel” — either in-house counsel or outside counsel specializing in what is sometimes called the Negotiation Counsel Model — pursues early reasonable settlement through a firm but genuinely compassionate approach to resolution.

I have had first-hand experience with this model, having spent six years as general counsel for a major trucking company, where I developed the Negotiation Counsel Model and worked with others to build a successful record of early, reasonable, humane settlements. For the past three years, I have worked as outside negotiation counsel for other trucking companies operating some of the largest fleets in the United States.

In this new model, soon after an accident, negotiation counsel meets face-to-face with the claimant's counsel — in some cases with the claimant present. Negotiation counsel conducts himself or herself with proper respect by expressing sincere condolences for the injury or loss of life and, where authorized by the client, offers financial assistance for the family's immediate needs: funerals, mortgage payments and other bills previously paid by the deceased or injured. In cases where negligence by the trucking company's driver caused the accident, this assistance helps grieving families avoid home foreclosure and the loss of cars and medical insurance.

This unexpected service and sincerely compassionate attitude often helps build a relationship of mutual respect with the claimants and their counsel. It frequently opens the door for rational and more amicable early informal exchanges of information (mitigating the need for lengthy and costly formal discovery) and results in mediation and settlement on reasonable terms months or, in many cases, years earlier than normal.

This fair approach frequently saves companies substantial sums of money. Because claimants have far less hostility toward the trucking company and have not already spent many thousands of dollars in expenses and years in litigation, settlements usually come at a lower cost to everyone involved. Claimants and their counsel often are more than willing to settle a claim at a reasonable discount.

Meanwhile, claimants also end the process more satisfied, having avoided years of emotional turmoil in litigation. In the end, it's a win-win for trucking companies and claimants — the carriers save money and treat others with dignity, while the claimant receives reasonable financial compensation and emotional closure much sooner.

Scopelitis, Garvin, Light, Hanson & Feary serves the legal and business needs of the transportation industry from its Indianapolis headquarters and branch offices, including Chattanooga, Tenn., where the author is based.



Opinion

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