

EMERGENCY RESPONSE TO CATASTROPHIC ACCIDENTS

It's Friday afternoon at 4:30 p.m. You are sitting at your desk, planning your weekend, when you get a call that one of your company's vehicles has been involved in a deadly accident. Or, perhaps there is an industrial accident where someone is seriously injured or killed. What is the first phone call you make? Retaining an attorney familiar with the emergency response to such catastrophic accidents can save your company time and money, and protect the company's position if a legal claim or lawsuit is made against your company. The company's goals should be to find out what happened and preserve the evidence that is favorable to the company.

The successful defense of a lawsuit arising out of a catastrophic accident starts at the accident scene. The attorney can act as your "quarterback" for the preparation of a thorough investigation of the accident, to find out what happened. This could include assistance in taking statements from witnesses and the company's employees. The attorney can also help draft a proper response to requests from the media and law enforcement.

It may also be necessary to retain an accident reconstruction expert, a photographer, and an investigator to document the scene of the accident and to prepare for any legal claim. The attorney can coordinate this activity and make recommendations for retaining such experts. The attorney can consult with the other members of the emergency response team to decide what evidence should be preserved, what photographs to take, and what statements to be obtained. Careful attention to detail will prevent the perpetuation of "bad" evidence.

Some serious traffic convictions, such as negligent or reckless vehicular homicide, may be admissible in a civil lawsuit against the company's driver and the company. In some circumstances, it may be prudent for the company to retain a criminal defense attorney to represent the driver of the vehicle. Under these circumstances, the retained attorney for the company may not be able to represent the driver and the company due to possible conflicts of interest. This is usually the case when the driver has allegedly violated a company rule or alleges a mechanical defect due to poor maintenance. The company's attorney may assist in retaining a criminal defense attorney for these purposes.

The attorney can also coordinate the "paper chase" by gathering all of the necessary documents and prevent a subsequent claim that the company has improperly destroyed evidence, called "spoliation." Documents to be gathered could include personnel files, driver qualification files, logs, equipment or vehicle maintenance records, and documents generated as a result of the accident, including any incident report.

Finally, the attorney is the last person that will be standing between your company and a jury. Having the attorney coordinate the investigation with such legal implications can be invaluable.

Stuart Mauney is a shareholder with Gallivan, White & Boyd, P.A. He focuses his practice on the defense of serious personal injury and wrongful death cases. He has assisted companies with emergency response to accident scenes and the subsequent litigation and trial of those matters. He has also served as trial counsel for nursing homes and other long-term care facilities.