

Preparation and execution are the keys

"Coach wants to see you. Bring your playbook." Those words I spoke dashed the dreams of mammoth men. Their hopes of fame in the NFL had come to an end. Growing up in Carlisle, one of my jobs as a go-fer at the Redskins' training camp was to give the word to the soon-to-be departed. Coach Allen's words were perfunctory. They knew what was coming. I had told them.

"The lawyer wants to see you. Bring your check book." Don't be the one who has to utter those words. Don't be the go-fer of your company, giving "the word" that a lawsuit due to an accident has rocked the financial foundation of your company.

The similarity between football and transportation safety is striking. Preparation and execution are the keys in both. Success in each depends on the ability to respond immediately to the situation presented.

We cannot ignore reality. We live in a suit-happy society. The odds are that one of your units will be involved in an accident. Regardless of fault, you will be a target in the suit because of the million dollars of coverage you are required to carry. Right or wrong, these are the facts. These facts are accompanied by myths. The most accepted myth is that there is nothing you can do until suit is filed. Yet another myth is that there is nothing you can do about the amount of money you will ultimately pay. Those who accept these myths leave the financial fate of their company in the hands of chance.

A quality football team will dictate the action. It executes its well prepared plan and makes the other team react. It does not stand idle, only reacting to the action of others.

You can reduce your exposure to potential financial damages by immediately preparing to act swiftly and effectively to any accident. You can then take the offensive and relegate the opposition to the role of reaction.

A football team can't wait until game time to think about what action it is going to take. It must have a game plan that has been practiced by and ingrained in the players. Anything less is a prescription for a blowout.

In our business, when the suit papers arrive, it is too late. You must have a game plan action that is conveyed to and practiced by your team. You must then execute that plan immediately at the time of the accident. Anything less is a prescription for financial disaster.

The odds are that you will be sued, that your commitment to safety will be challenged, and that your driver will be blamed. Now, before the accident occurs, is the time to pre-

pare for the suit that is likely to come.

PREPARE NOW TO DOCUMENT YOUR COMMITMENT TO SAFETY

You are committed to safety. You properly do all you can to protect the lives and property of those who share our roads. Further, it is good business to avoid expense liability to others and damage to your property due to accidents. However, if you have not documented your commitment to safety, anything you do after the accident will look contrived and self-serving.

The key question is this - how are you going to convey your commitment to safety to the jury that you will inevitably face? What can you show them that would demonstrate that you are doing everything in your power to make your fleet safe and to protect the motoring public?

In a trial, a jury faced with deciding which side to believe will be barraged by words from both sides. Mere words are cheap. Deeds speak louder. Deeds documented by evidence, particularly evidence of your safety efforts before the accident, speaks louder yet. Documentation of your efforts by records and statistics is persuasive evidence. It is tangible proof that you meant what you said and lived up to your words.

What do you have to persuade the jury that you have done all you can to make the road a safer place? If you have a safety program, live it. Failing to meet the standards that you have set for safety can be as bad as not having a program. If your program includes meetings, hold them. If you say you are going to audit logs, do it. Your volumes of documents will run over your opponent's empty accusations, like Lombardi's power sweep. The jury is given the choice between your documented deeds and your opponent's empty allegations.

SELECT YOUR PROFESSIONALS

Larry the Cable Guy says everyone makes fun of a redneck until you need your car fixed. Everyone makes fun of lawyers until they are sued. Those of us considered redneck lawyers are the brunt of many jokes until someone is sued because their truck is in an accident. Then they come to us to "git-r-done."

When the financial life of your company is on the line, your lawyer is the sole voice with which you speak. He must have the background and experience in transportation and accidents to analyze the evidence, work with the experts, logically convey your position to the jury, and persuade them of the correctness of your cause.

Nothing can make or break your case, and perhaps your company's financial security, as the attorney that represents you.

So why wait until after the accident to choose your lawyer? Worse yet, why leave the selection in the hands of others, particularly if their primary concern is price rather than quality?

Selecting your attorney now gives you the chance to get to know them. Early selection allows you to change if you don't think they are the right choice. Otherwise you may be stuck with putting your financial fate in the hands of someone with whom you don't feel confident or comfortable.

It also gives the attorney time to learn about your business. He can work with you in documenting your safety efforts and preparing your emergency response plan. He can introduce you to and coordinate the efforts of experts.

Many great teams have been the product of a close relationship between a coach and his quarterback. They study films in the off season and practice situations. In the key situations, they are ready. You would greatly benefit from such a relationship with your attorney and experts.

Bill Walsh didn't pick Joe Montana after the game started. Why should you wait until after the suit papers are served to select your attorney and experts? Now is the time to choose the professionals to protect your company.

PREPARE FOR IMMEDIATE RESPONSE TO THE ACCIDENT

Football coaches spend the off-season analyzing potential situations. They design plays to meet specific situations. They determine who they want on the field to run the play. When it's fourth and inches with seconds remaining, coaches have their play ready and their personnel selected.

When you get that 3 a.m. phone call, do you have your play ready? Is your team ready to hit the field? You must have a plan to implement immediately. You must have your attorney and experts ready and available 24/7. The financial security of your company demands it.

It is easy for transportation providers to feel sorry for our situation. While more accidents are caused by four-wheelers, motorists see truckers as road risks. Trial lawyers salivate at the thought of our deep pockets. Jurors view corporations with suspicion if not doubt.

It is too easy to overlook the one huge advantage we possess - immediacy. We know about the accident before any of the other side's attorneys or experts. This is an enormous advantage. We cannot squander it. We must capitalize on it. Like a two-minute offense, we must have our response planned, our roles prepared, and are ready to execute with precision when the time arises.

Crucial evidence at the scene of the accident, such as skid marks and debris, is available for a very short period of

time. The immediate response of qualified professionals allows you to document and analyze this evidence that would otherwise not be available. Technical experts can then obtain immediate access to the raw evidence.

Additionally, witness recollections can be preserved. The closer to the time of the accident that a statement is taken from the witness, the more likely the recollection will be uneroded by the passage of time.

Immediacy allows us access to evidence at a time and in a manner unavailable to the other side. This gives added credibility to our proof and persuasiveness to our arguments. The only way to capitalize on this advantage is to prepare for it in advance and act immediately. The time to begin that planning is now. This is your off season. When the accident occurs is too late.

DICTATE THE PACE

The third-string quarterback on those mid-70's Redskins teams saw little action. Yet he went on to coach an over-achieving team to the brink of Super Bowl success in 1988. Sam Wyche took the Cincinnati Bengals to the verge of a championship by using the no-huddle offense. The no-huddle dictated the pace of play, deprived the defenses of the luxury of time to regroup, and controlled the flow of the game.

The same strategy can lead to success when you are sued. Seize the initiative by immediately responding to the accident. Done properly, your attorneys and experts can be prepared to try a case within four weeks of the accident.

Too often, parties wait for suit to be filed and act only in response to their opponent's actions. This is a prescription for failure. Take the initiative and maintain it. Fully prepared by your immediate action, you can respond to the suit by carrying the fight to the other side. Once you have the initiative, don't let up. Dictate the pace of discovery. Deprive your opponents of the luxury of time to prepare their case. Make them react to your actions.

When a lawsuit is filed, the stakes are high. The most severe accidents may threaten the financial security of your business. Why should you put any less preparation and effort to protect what you worked so hard to build than the teams that compete in the game of football? Apply their techniques and tactics to defend your company.

*Article submitted by Douglas Marcello -
Thomas, Thomas & Hafer*