

# The Audacity of "Nope"

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**D**o not take a post-accident written or recorded statement from your driver." My simple, declarative statement in a recent safety and risk presentation ignited a lengthy debate regarding the wisdom of the advice.

The safety and risk attendees were surprised at the notion. For most, the driver's post-accident statement is a standard, accepted practice. "How else can we learn the facts of the accident, address driver behavior, and document the file?" they asked.

I appreciate their reservation. I understand their concerns. I agree that change must be preceded with thoughtful consideration of the alternative. My perspective, however, is from the field of litigation. My job is to defend trucking companies and their insurers in suits arising from accidents.

From that perspective, I have seen the abuse of these statements by those who see any unfortunate accident, no matter the magnitude or the fault, as an exploitable opportunity to prey upon the carrier. I have seen the mischaracterization of any written documentation of the driver by those who view your units as eighteen-wheel ATMs.

In the end, the utility of any statement should be weighed against the cost or potential cost in litigation. The following are some considerations from my perspective in defending truckers and trucking companies in lawsuits.

## **Statements Help the Plaintiff**

A statement from our driver greatly benefits those who sue us. It rivals the police report as their most useful documentary evidence. It tips the playing field in their favor.

Think of the great benefit we would have if we could get a statement from the plaintiff to lock him into his version of the accident. Rarely, if ever, are we able to do so. His attorney precludes contact and prevents this from occurring.

So why serve up our driver's version on a platter by taking his statement post accident? This statement, generally discoverable, is then used against us in depositions or at trial to parse conflicts with other versions of the driver or facts of the case.

Should you have any doubt as to the value plaintiff attorneys place on our self-generated statements, you should see their reactions in those cases in which we do not provide a report—incredulity bordering on skepticism. The driver statement is among the first things plaintiff attorneys request, and they often cannot hide their disappointment when they discover we've broken this age-old tradition of doing their work for them.

Without our post-accident statement, the plaintiff attorney is faced with having to get the facts by discovery. In other words, he has to work for it just like we do.

## **Limitations in the Recollection of the Event**

An accident is multi-elemental. It is the convergence of time and distance, speed and force. Every time our driver is asked about the accident, he is invariably asked to relate a finite quantity to

each of these particular components of the accident based upon his instantaneous assessment in the fractional seconds of the event.

"How fast...?" "How far...?" "How much time...?" We seek to elicit specific facts supposedly gleaned by a driver in the instant of the occurrence as he is trying to perceive and react to the unfolding events. We ask him to remember particular facts of a time when his focus was on reacting within a fraction of a second to the unfolding events.

This is the reason that most police departments refrain from taking a statement from an officer immediately after his use of force. The ability to recall the specifics of an instantaneous occurrence is limited at best.

Why, then, should we place our drivers in the position of being forever committed to such finite facts immediately after the accident?

***"Do not take a post-accident written or recorded statement from your drivers"***