



CLM 2014 Transportation Committee Mini Conference
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Finding Exit Ramps in Transportation Cases Through the Use of Technology

I. Movement Toward Early Resolution

Refine Litigation Management Strategies

Many insurance companies are moving toward assessments of total case costs which includes costs, the cycle time of a case, as well as the indemnity paid. Defense firms need to modify strategy according this trend and evaluate cases at the outset to minimize expenses and cycle times.

Hyper Focused Efficiency with a Metrics Driven Analysis

As part of litigation management reform, many insurance carriers will utilize a metric driven analysis across all areas of litigation. In an effort to promote efficiency, insurance companies will utilize (1) counsel report cards, (2) billing/file management observations, (3) invoice data, and (4) closed file audits. The data gathered through those metrics enables adjusters to pinpoint areas in which efficiency can improve. Additionally, firms will be evaluated on many factors such as shorter case cycles which can be achieved through proactive strategies such as early liability detection.

Early Resolution

A thorough post-accident investigation often allows the defense to gain a clear understanding of the facts, liability, and potential exposure. With this complete picture, insurance adjusters, together with counsel, are able to develop a plan to minimize the case cycle. The knowledge gained through post-accident investigations is a significant tool in moving cases in accordance with cost saving metrics discussed below.

II. Metrics

Counsel Report Cards

Evaluations by a client likely consist of a number of parts that come together to form a holistic view on firm performance. Counsel Report Cards may be utilized to evaluate the law firm personnel immediately after the completion of a file from the

vantage point of the client file handler. This likely includes assessments on the knowledge, skill and service provided by the involved firm team members.

Billing/File Management Observations

Another evaluation opportunity comes from a client's review of the submitted invoice activities on the file from the firm. The invoice details identify whether the firm utilized efficient workflows to accomplish tasks, assigned the tasks to appropriate timekeepers and executed on strategies to help move the file to a productive and timely outcome.

Invoice Data

The data from the invoice submissions serves as another source of helpful evaluation information. Through the use of the UTBMS code system, a client can identify billing trends by analyzing the task, activity and expense codes. This information can be viewed from a phase level to determine where the majority of work was completed and assess outliers that may suggest that strategies undertaken were not successful to the overall goal for the file.

Closed File Audits

Evaluation information obtained from closed file audits allows a client to perform a deeper dive from an objective, post file platform to assess the file handling for more global concepts. This vantage point allows for a better macro level consideration of file strategies, milestones and overall return on investment to the effort provided.

III. Post-Accident Investigation Data

Vehicle Data

For well over a decade, vehicles have been equipped with event data recorders (EDR) which are able to provide pre-cash data such as speed, braking, and accelerator control. However, harnessing the safety benefits of this technology was lost as a result of the divergent applications. Recently, there has been reform to standardize these technologies. In September of 2013, the U.S. Department of Transportation National Highway Traffic Safety Administration 49 CFR 563 EDR Rule took effect to standardize all new passenger vehicles and light trucks that are equipped with an event data recorder. An expert engineer will be able to harness the EDR data and advise whether it is available for all vehicles involved.

Other types of vehicle data analyzed during the post-accident investigation include crash data retrieval information, Global Positioning System information, Drive Cam Data, and repair/maintenance history.

Roadway and Scene Data

High-definition survey [HDS] laser scanning creates a 3-D accurate rendering of the accident scene and vehicles. The HDS scan collects data through the use of a dense “point cloud” to document accurate dimensions of vehicles, roadways, poles, wires, and other components of the accident scene. The models produced by the HDS scan becomes an invaluable exhibit at trial as it allows the jury to picture the scene as a 3-D model rather than a less persuasive photograph. Additionally, the client will be able to analyze the data to be presented to the jury well in advance of trial.

A post-accident investigation also allows for accident reconstructionists to exam the yaw and skid marks as well as gouges on the roadway. These are critical pieces of evidence which enable accident reconstructionists to reenact the accident with a high degree of accuracy.

Expert and Witness Data

Being present at the accident scene gives counsel an advantage as they will be familiar with the responding emergency personnel. Counsel will have spoken directly with the driver to gather a first-hand, protected account of the incident.

Furthermore, the post-accident investigation data will give counsel an opportunity evaluate their witnesses, as well as a better idea of how to cross-examine plaintiff’s witnesses.

IV. Benefits of Technology throughout the Litigation Process

Reduction of Spoliation of Data

Prompt arrival at the accident scene enables quick identification of first responders, witnesses, and vehicles involved. Thus, witnesses statements can be taken while the facts are fresh rather months or years later. Photographs will preserve the images of the accident before the roadway is clear. Additionally, vehicles involved will be preserved until scans of the vehicle are taken and the ECM data is downloaded. Additionally, if necessary, treating hospitals can be notified to preserve any blood tests or other tests which would be relevant to the accident.

Quickly Assess Liability

Understanding the value of the case prior to litigation is defense counsel’s strongest advantage. Before a civil action is even brought, the technology utilized in the post-accident investigation gives defense counsel a clear picture of liability and allows the defense the opportunity to settle the case promptly. Often, the technology will show a defensible matter with no liability. In these instances, counsel can often prevent a case from being initiated.

Understanding How to Prepare and Question Witnesses

Time, speed, and distance are three of the most important factors in a transportation case. These measurements can all be determined through the post-accident investigation analysis, then incorporated into preparing and questioning witnesses. It is crucial that fact witnesses do not estimate these values as fact while speaking to any first responders or while being deposed. In fact, if a local attorney can speak with a driver before first responders collect a statement, the defense interests can be immediately protected.

The Defense Edge in Negotiations

All of the above techniques put the defense in the driver's seat from the time the accident occurs through trial. These technological advantages bring to light every exit ramp available throughout litigation, either through settlement, mediation, or case dismissal. Knowing more about the indisputable facts than your opponent at the onset of the case will foster cooperation and lead to an amicable and efficient case resolution.