



CLM 2014 Transportation Conference
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The Early Bird Gets the Evidence: Investigating Motor Vehicle Collisions

I. Urgent Response Required...Or Not

For any claim, an adjuster must determine whether whatever evidence exists must be preserved or if it can be ignored and lost forever. The first choice requires quick action; the latter requires none, but can have far-reaching consequences if the matter becomes the subject of litigation and charges of spoliation of evidence are alleged.

There is a small window of opportunity to document roadway evidence. The timeframe for documenting damage to the vehicles is larger, but it is restricted.

The adjuster and the attorney (if one is already involved) must determine who can most easily document the accident scene and the vehicles, and who can best document the scene and the vehicles. Then they must decide whether ease or accuracy is more important.

Along with these issues, the panel will address when the duty to investigation leads to a duty to preserve and what happens if that duty is violated. *Silvestri v. General Motors Corp.*, (4th Cir. 2001); *Molinari v. Smith*, 236 NYJL, Sup. Ct. Richmond Co. (2006); and *Ogin v. Ahmed*, 563 F.Supp. 2d 539 (M.D. Pa. 2008)

II. Early or Late: What Difference Does It Make?

Some collisions, such as low-speed, “fender-bender” impacts, provide little or no roadway evidence, and very little vehicular evidence. Yet the absence of broken glass and crushed metal does not correlate to the frequency of injury claims.

In other cases, there is a very small window of opportunity for documenting roadway evidence. In the case discussed, if a claims adjuster had not gone to the scene and taken photographs, there would have been no evidence that the crane was not within its traffic lane when the collision occurred.

In multi-vehicle, multi-impact crashes, the roadway evidence and the vehicular positions must be recorded before any of the vehicles are moved. In these cases, there is

only one chance to properly document the accident so that it can be reconstructed correctly. If the scene is not properly documented, it may be impossible later to determine who hit whom and the order in which the collisions occurred.

This naturally leads to the questions of how this evidence is preserved, for how long it must be preserved, when can it be destroyed and what opportunities must be afforded to a claimant's attorney to inspect the same? Does this duty expand if the carrier receives an "evidence preservation letter", and what legal implications do these requests have? *DeGraffenried v. RL Hannah Trucking Company*, 856 S.W.2d 51, 57 (Mo. Banc. 1993); *Brissette v. Millner Chevrolet Co.*, 479 S.W.2d 176, 182.

III. Help Your Expert Help You

The key to success in any endeavor is clear-cut goals and communication. Claims adjusters, lawyers, and engineers speak variations of the same language. No two clients or attorneys or experts are the same. Some clients may prefer a speedy resolution. For others, the goal may be to limit damages. In some situations, a client's preferences may change. Understanding a client's objectives in each situation is the key to successful working relationships between insurance adjusters, attorneys, and engineers and other experts.

Clients, claims adjusters, attorneys, and experts need to think big-picture and high-level to determine what information is important to the ultimate outcome of the matter. Once that decision has been made, a clearly defined scope of work will ensure that the experts understand what is necessary. Everyone involved should be aware of what the client will consider a "win." Measurable, easily quantifiable metrics should be used to track progress toward the desired goal.