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The First 48 Hours: CSI

Tips for Training an Effective CSI (Claims Scene Investigations) Team!

I. Why the “First 48” is crucial.

The popular A&E television show “The First 48” follows the investigations of real-life detectives during the 48 hours immediately following a homicide. In the words of comedian Tom Segura, “The reason that time distinction is so important is that after 48 hours they give up on that murder.” Although a joke, this statement emphasizes the effect of time on response to an acute situation: Over time, the urgency of response cools, crucial information is lost, and new situations arise which refocus attention.

These same factors are present during the initial phase of claims investigations as well: Evidence and information present at the scene of claims and accessible immediately afterwards can be lost in the weeks, months and years between an incident being reported and a claim leading to litigation. In the interim, other tasks and events arise which reduce the urgency to find and preserve information. Witnesses relocate, contact information is lost and once-valuable accounts of an event are muddled by time.

Knowledge is power, and the quality of initial information gathering and preservation is crucial to preserving knowledge and maximizing the effectiveness of initial claims response and later defense experts. This is true whether the information preserved is perceived as “good” or “bad” for the defendant: both are crucial to assessing liability and exposure. It is therefore important to make the most of a client’s Claims Scene Investigations in both the personal injury and worker’s compensation contexts to increase their early collection of evidence to improve their later efforts to assess, manage and defend claims.

II. Goals for Successful Investigations and Outcomes

Effective investigations and successful outcomes begin before an incident occurs. Prior to ever setting foot at the “scene of the claim”, proper training is key to ensure personnel serving as the insured’s Claims Scene Investigators (“CSI”) understand not just *what* to investigate, but *how*. In many situations, the person reporting an incident may be

a customer, client or even employee of the insured – or perhaps, personal or business acquaintance of someone with direct ties to the insured. How their report is handled can determine whether a report becomes a claim, but also whether a relationship is lost.

Persons reporting an incident should be handled with compassion and respect. How a person is treated during an investigation can color their future disposition towards the insured and the choice to file a claim. CSI must be trained in advance to keep in mind the need to maintaining guest or client relations during claims investigations. In worker's compensation situations, the claims investigation process should focus on healing and maintaining the employer/employee relationship & culture, as well as promoting understanding between employer locations and local providers. CSI must also understand the difference between *reacting* and *responding* to an incident.

In addition to the general training described above, special training should be given when claims have the potential to involve minors or persons with mental or physical limitations. There is a high risk of emotional components to these claims from the involved person or potential caregivers, and CSI should be trained in advance to respond respectfully and compassionately while still collecting information necessary to investigate and evaluate the incident. Their investigation may also need to broaden to include details about the caregiver, their whereabouts at the time of the incident, and any notice given or not given to the insured which might have affected the circumstances of the incident.

Finally, CSI and insureds must have a plan in place in advance as to how, when and in what circumstances to involve counsel to protect the interest of the insured as well as the confidentiality of claims investigations. Early involvement may be especially important in claims involving minors, persons with special needs, or incidents of catastrophic injury or criminal activity where cooperation with local media and/or law enforcement may be necessary.

III. Initial Investigation – Broadening the Scope

The 5 W's

Once the above framework is established for *how* to investigate, more specific training is needed about what information to gather. An easy rule of thumb to impress upon CSI personnel is the “5 W's” – Who, What, Where, Why, and When. But CSI personnel must be trained *before* incidents happen to look beyond the immediate incident or injury to assess a broader scope of what the 5 W's encompass.

“Who” should be more than just the injured: Surrounding witnesses are equally if not more important, as are persons accompanying or interacting with the injured person at the time of or immediately before and after the incident; witnesses who saw the incident occur and circumstances leading up to it; employees who investigated the incident, participated in any remedial action or took photographs of the area, as well as those on duty in surrounding areas or departments at the time of the accident. For each, complete

information must be gathered including full names, contact information and identifying employee titles or departments. In the event any such witnesses are employees of the insured investigating the incident, information from their employee file (cell phone #, Social Security #, Drivers' License #, address and next of kin contact information) should also be preserved in case the witness is no longer employed by the insured at the time a complaint is filed.

The "What" of an injury must also go beyond the immediate report of the cause of the incident to note the surrounding circumstances. Did the person slip, or trip, or fall? On what? Where were they coming from and where were they going? What shoes were they wearing? What part of the body does the injured person say was first struck or injured? What time was it? What was the lighting like? What was the person doing or carrying when the incident occurred? Photographs become important here, and CSI personnel must be trained not to photograph the injury, but instead to document the "scene of the claim" – lighting, ground conditions, weather conditions, the injured person's clothing or footwear, and things present in the environment or "at the scene" which are mentioned by the injured person as contributing to the incident. Equally important would be documenting the *absence* of any observable cause for the incident or conditions reported by the claimant.

Hand-in-hand with "What" is "Where": Proper description and documentation of the area of the incident includes specific details to help orient the later reader to exactly where the incident occurred. The incident report and photos should combine to work as a map for anyone later picking up the information to be able to enter the premises and locate the exact area where the injury occurred without further assistance. This broader scope also applies to "Why" and "Where": In addition to the suspected cause of the incident, CSI should attempt to discover the reason claimant was in the area of the incident; in addition to the time of the incident, circumstances and activities immediately before and during the incident are important.

Witness Statements

Witness statements taken immediately after an incident can preserve valuable details for later claims handling, but they can also risk the privilege of the insured's investigative materials. CSI must be educated to ensure the statements are taken and recorded in such a manner as to preserve the privilege of other investigative materials. In situations involving Workers' Compensation, witness statements should be timed to ensure needed documentation or records are obtained in advance. The timing of statements must also be considered, due to concerns of "Comparing notes" between witnesses, the employer, and claimants. Timely response and investigation are key.

Statement of the Injured Employee (WC)

In workers' compensation claims handling, the adjuster's investigation extends far beyond the details of the accident description and the injury that occurred as a result. During the initial contact with the injured employee, particularly when lost time from

work is a factor, the adjuster should obtain a recorded statement during the conversation in order to memorialize the description of the accident. Equally as important information to collect includes: confirmation of job title and basic job description, physical description of the injured employee (height/weight), confirmation of address, marital status, whether there are any dependents in the home, co-morbidities, medical history and use of medications, in addition to confirmation of date of birth and social security number.

Many carriers and third party administrators today employ the use of predictive analytics, which uses a variety of these additional data elements during the onset and for the life of the claim, in order to ensure the right resources and attention is given to the claim and the injured employee, at the right time. Failure to obtain all needed information at the onset can have detrimental outcomes to the claim, in the long term.

IV. Beyond the Incident Report

Preservation of evidence.

Effective CSI goes beyond the taking of the incident report to encompass information likely to be sought during discovery. Relevant evidence encompasses more than just photos of the scene: it includes things which will allow claims personnel and defense counsel to combat inferences of negligence. This includes physical items (i.e. ladders, rugs, any item involved in the incident) as well as records of employees working in the area, inspections, work orders, receipts, gate histories, surveillance or other video evidence, warning signs, and preventative measures. Especially as relate to physical evidence and retention of photos/surveillance, Insureds and their CSI must have procedures in place to avoid Spoliation of evidence and the negative presumptions that lost evidence can create.

Internal Communications following incident

Often investigations extend beyond the date of the incident to include later internal communications with witnesses and even the claimant. Records of these conversations and the information gathered is crucial to refreshing witness recollections years down the road, and a failure to preserve any information gathered by emails or written communications can set up a spoliation argument by a claimant. CSI must be instructed how, when and where to document important details obtained from statements or internal communications for later use. This is especially so in Workers' Comp situations, which come with their own special factors which must be investigated and confirmed. Due to the nature of Workers' Compensation and the guidelines associated with this coverage, there will be ongoing communication with the injured employee (absent attorney representation), so the establishment of a good rapport at the onset of the claim is crucial.

V. Conclusion

Risk managers, claims adjusters, insureds and defense counsel depend on the information collected during the claims investigation process to properly assess, evaluate and defend later claims and litigation. Thorough investigations and preservation of information ensure a better ability to do so efficiently and effectively. By properly training personnel to adopt a CSI-mindset, a broader purpose and scope of investigations is established in advance to ensure the first response to an incident is a quality response.