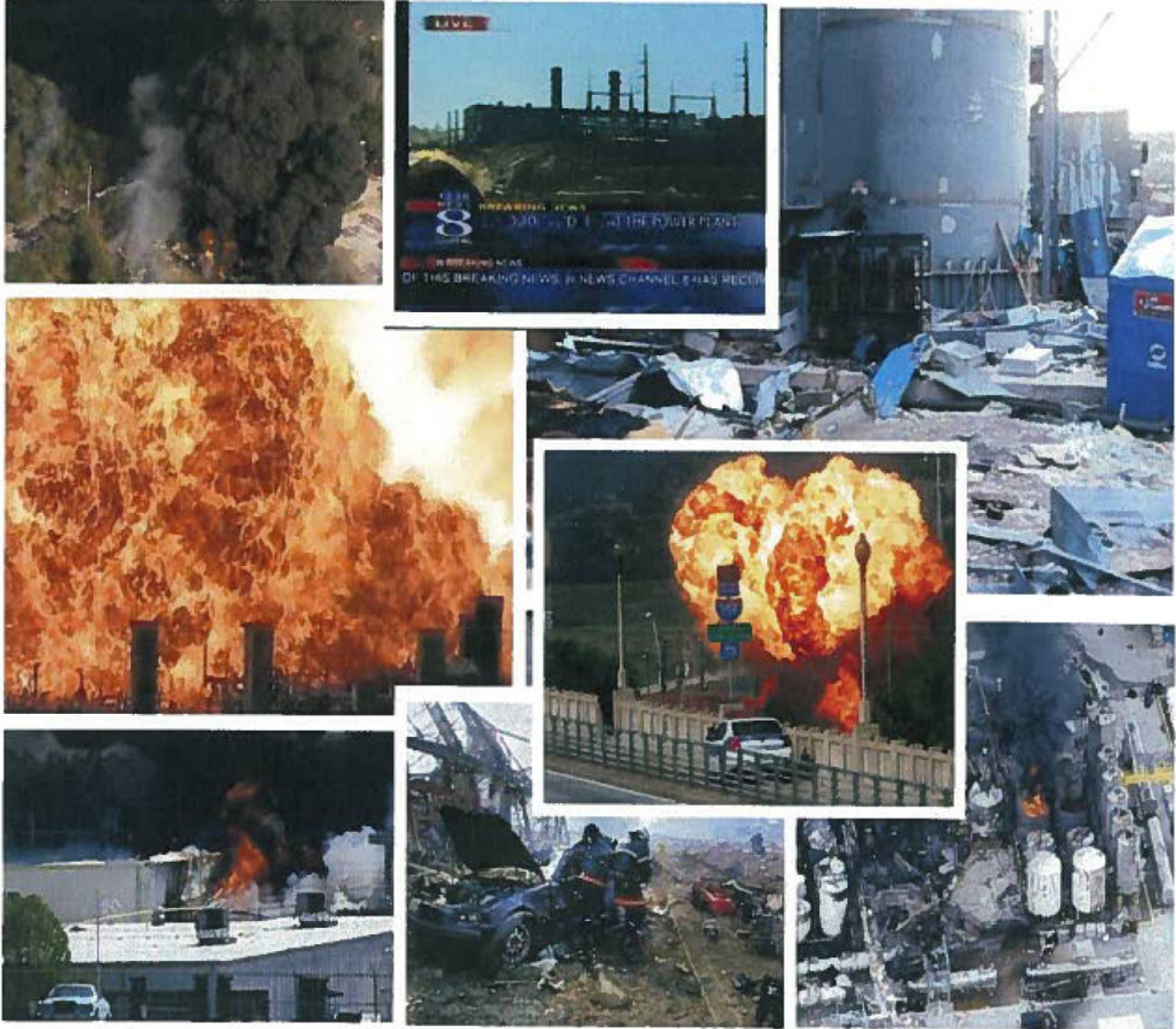


LITIGATION MANAGEMENT
PROTECTING CATASTROPHIC LOSSES WITH APPROPRIATE INVESTIGATION AND EXPERTS –
THE ROLE OF COUNSEL, CARRIER AND INSURED IN MANAGEMENT OF EXPERTS AND OTHER THIRD-
PARTY VENDORS IN MAJOR LOSS LITIGATION



CASE STUDY

You are a claims adjuster, counsel or an insured. At 8:00am on a Friday, during rush hour, you learn of a major explosion at the plant that belongs to you, your insured, or client. The plant was remodeled two months ago after a \$5 million upgrade. One of the newly installed major systems failed, sparked, ignited and reacted with the energy chambers causing major explosions. News coverage on the internet and television is non-stop, emails are flooding in and your phone is ringing off the hook. There are injured workers and bystanders. The threat of further explosions is imminent and the financial damage and loss to the plant and its operations, even as the result of the initial round of explosions, will easily exceed \$10 million. Debris is flying into the air, some of which may be toxic and is landing on nearby streets.

Luckily no fatalities occurred as a result of the loss but 12 injuries occurred. Two of the insured employees, 6 employees of other contractors, 2 owner employees and 2 motorists that avoided debris, were all injured in various degrees.

Phase I: Immediate Response

Claims, the injured and counsel have distinct and significant roles in responding to this loss/emergency and getting prepared for potential litigation. There are initial inquiries to consider during the immediate responses and planning for these involved parties for a variety of different, but united, interests and goals.

What are the roles of claims, counsel and the insured? What are the important initial significant tasks that need to be accomplished and issues to be explored? How does this group efficiently organize the proper teams, experts and reactive and preemptive protocol? How do you best provide aid to injured workers and civilians? Protect and barricade the site? Control the explosion and prevent further damage, while preserving key evidence, witness statements and documents?

How do you take the claims control from the investigation phase into the preventative litigation phase? It is distinctly possible that by reaching out to the claimants and getting their statements, as well as to their counsel once claims letters are sent that litigation can be completely avoided and significant defense costs can be saved and indemnity dollars mitigated.

Phase II: Expert Retention and Trial and Deposition Testimony

The loss is now controlled, cases and claims have been settled but some litigation has been instituted nonetheless. Due to the complex issues that exist and because of those that may arise, early expert and/or consultant retention is crucial.

As demonstrated in the video clip of this expert accident reconstructionist, during his deposition, improper, lazy or bad decision making by counsel early on during the retention process can lead to testimony that can damage your client's case and potentially your reputation with the jury. Once it is videotaped, it is preserved forever. Your witnesses, experts, consultant, etc., will, at trial, all be a reflection of your client, insured and your firm. Experts must be retained with trial in mind so mistakes like this do not happen.

There are some basic expert/consultant inquiries to think about. When should they be retained? Should you retain a consultant or an expert, and what are the benefits, drawbacks or complications of those decisions? Should you use pre-litigation evidentiary consultant or a trial and testifying experts? What are the benefits and drawbacks of those decisions? What evidentiary issues need to be considered?

What went wrong in the sample expert deposition clip? What did the witness do wrong? How did the witness need to be prepared for the basic type of inquiry posed to him during the deposition? How should the witness have answered the questions to prevent him seeming unprepared, angry or overwhelmed? Should there have been any useful objections to protect the expert?

What should claims, counsel and the insured/clients' roles be during expert retention to best streamline the process? What are the goals and expectations during this process from the carrier, insured or counsel?

The actual engagement also needs to be carefully thought out as well. What types of issues are present with retention and engagement letters? What language should or should not be used in the retention and engagement written communications? How do you best propose the consultant or expert's budget or fee at this early stage? What are the ramifications of leaving this up to the expert?

Are there other vendors that need to be considered? Document and Data Retention and Extraction Experts can be quite expensive? Is this a case where experts can be shared among various defendants?

Phase III: Budgeting

This is usually a difficult subject and one with potentially competing interests with respect to cost control and doing what is necessary to protect the interests of the insured.

What are some concerns and goals of claims, counsel and the insured? How detailed should the budget be and what entries/tasks should be listed? What stages should the budgets account for? What records should the expert review? Have access to?