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How to protect the corporation after a motor vehicle accident

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Accidents are going to happen. As a result, so are lawsuits. People involved in an accident may sue the fire department or ambulance company, regardless of who is at fault. However, if a citizen is injured in an accident, and if the citizen sues your corporation, the corporation must defend itself. If a private citizen causes the accident that injures a volunteer or employee, these same steps can assist in prosecuting a lawsuit against that person. Certain simple steps can protect or assist the volunteer/employee, while other actions can increase the chances of successfully defending a lawsuit.

1. Be careful of what is said after the accident

Admissions of fault are admissible in court and are difficult to overcome. They will often be discovered by the person suing and therefore must be avoided at all costs. Thus, drivers must be careful what they say and to whom. A person's first reaction may be to apologize. Apologies should be avoided by the driver, but be recorded exactly as stated if the other driver provides an apology or admission of fault.

2. Steps to take after an accident

Employees and volunteers should be instructed that they should take the following steps:

- a. Report the accident to the dispatcher over the radio. Do not give any details that could give the impression that the driver caused the accident or was at fault. Request medical assistance as needed. Have the police respond to complete a report, especially if the other party was at fault.
- b. While speaking to the other party will be necessary to determine if the other party is injured and to obtain insurance information, do not apologize.
- c. Instead of making a statement to the police, the employee should request that the police contact him after he has spoken to his supervisor.
 - i. If the fire or EMS personnel know the police conducting the investigation, do not appear to be openly friendly with the police. This might give a witness the impression that the police are biased in their investigation.
- d. A supervisor should report to the scene of the accident to begin an investigation. Do not rely on a police officer to conduct a complete investigation.

- e. Quickly determine if the person was wearing a seatbelt. If someone was injured and removed by other EMS personnel, make sure to determine if a seatbelt was removed by EMS or was fastened when the patient was approached. The failure of a person to wear a seatbelt could significantly impact the amount of an award received in court.
- f. Either the supervisor or the employee should begin the following, as soon as possible:

Photograph:

- 1. all vehicles that were present during the accident. Note their locations if they have moved. Note the damage to the other vehicles.
 - 2. any temporary conditions, such as rain, snow, potholes, oil.
 - 3. all traffic control devices.
 - 4. All persons watching the accident scene. This will assist to prove where a witness was standing during an accident, or if they were even present.
- i. Obtain names, addresses and phone numbers of witnesses.
 - ii. Obtain statements of witnesses if they are willing.
 - iii. Obtain the names of all drivers of other vehicles involved. Obtain the names and addresses of all passengers in vehicles that were involved.
- g. If the vehicles were moved after the accident, a diagram should be created showing the exact location of all of the vehicles involved.
 - h. Contact your attorney. Ideally, communications regarding the accident should be conducted with the lawyer. Most communications with lawyers, and subsequent statements in writing, will be protected by the attorney/client privilege. This privilege protects statements from being discovered and reviewed by the person suing.
 - i. Obtain a copy of the police report. Police complete an MV-104 form. A copy should be obtained from the police as soon as it is requested, with copies of all photographs and drawings.

Do not complete any "unusual incident reports" or provide any written statements to the corporation if possible. The corporation should not take any notes that indicate fault or the progression of the accident. While those involved in the accident must be encouraged to be truthful, writing them down could be dangerous, and such statements may be discoverable and admissible in court. Thus, the lawyer might be the best person to conduct this interview.

Do not create a policy that permits written statements if someone else was at fault but prohibits statements if the volunteer/employee was at fault. This could lead to the conclusion that the absence of a statement is indicative of the volunteer's/employee's fault.

10. Call your insurance company.

Many insurance companies require that you notify them of any incident which could result in a lawsuit. Often, there is a time limit for such notification, after which time, the insurance company can refuse to provide a defense or insurance coverage. Often times, the insured has ninety (90) days to notify the insurance company. However, there is no reason to wait to provide such notification. Waiting only increases the risk of forgetting. Do not assume that just because the persons involved in the accident did not "appear" to be injured, that there will be no lawsuit. Do not assume that just because the other driver or passengers were kind, that they will not sue. Finally, do not assume that just because the other person was at fault, that s/he will not sue.

Notification to the insurance company should not be just a simple phone call. The notification should be transmitted in writing, by certified mail, to the address required by the insurance company. Do not transmit any facts in this notification, other than the company vehicle or volunteer/employee was involved in an accident on a certain date, at a certain location and time. Provide a person to be contacted by the insurance company. Instruct the company, once you are contacted, about all of the items acquired in your investigation.

11. Driving policies can increase chances of being at fault

Generally, policies that impose a standard of driving conduct which are more strict than the law are not admissible in court. However, this rule is not absolute. Therefore, policies that impose driving conduct or prohibit driving conduct that is permitted by the law should be avoided.

For example, Vehicle & Traffic Law Section 1104 permits an emergency vehicle to speed so long as it does not endanger life or property and so long as the driver operates with due regard for the safety of other persons. Thus, there is no maximum speed limit imposed. However, the NFPA does have a model policy that prohibits exceeding the speed limit by more than ten (10) miles per hour. This policy will result in an investigation and line of questioning during the trial as to how fast the driver was traveling and a theory that the driver violated the standard of care by traveling beyond ten miles per hour over the speed limit.

Additionally, this same NFPA model policy provides that all vehicles must be able to stop at a controlled intersection. Note that the policy does not state that the vehicle must be able to stop only at red lights, but all lights and stop signs. New York state law, however, only requires that the vehicle slow down as necessary at red lights and stop signs. Thus, if the NFPA driving policy was

adopted by a fire company, then the driver could be liable for not being able to stop its vehicle at a green light, even though the driver of the fire apparatus had the right of way. We all know how difficult it is to quickly stop an engine with 1500 gallons of water or a type III ambulance.

Therefore, avoid driving policies that impose any requirements other than those as required by the NYS Vehicle & Traffic Law. If a driving policy is strongly desired, title such policy a "Best Practice Guideline".

Conclusion

Becoming involved in accidents is a normal hazard of driving an emergency or personal vehicle. Taking simple steps to prevent liability and to ensure insurance coverage is important. Training your volunteers and employees in safe driving practices is the best means to prevent accidents.

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