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Deconstructing the traffic-collision report in a trucking case

HOW TO PROCEED WHEN THE RESPONDING OFFICER DEEMS YOUR CLIENT LIABLE

You get a new case and begin to feel that excitement in your heart because you know that you are about to help an injured victim in need of wise counsel and warm concern. You meet with your client and discover the tragedy he or she went through while driving in a remote part of California. You hear a harrowing story of a semi or tractor trailer crashing into your client's vehicle and causing life-altering, catastrophic injuries that are unimaginable. You feel for your client, and you want to provide the best legal representation. That rage starts to boil within you, and you immediately put together your litigation plan and discuss strategy with your team. You start working on obtaining all necessary evidence, procuring medical and billing records, you find out that the EDR data is inconclusive, and *then the traffic-collision report arrives.*

The responding officer who prepared the report concludes that your client was the primary collision factor. You literally take a step back and pause. You have to make a very important decision and judgment call about your trucking case that will affect how you litigate it.

This article examines how to approach the traffic-collision report in a trucking case where liability has been assessed against your client by the responding officer. Examining the traffic-collision report begins with a few fundamental understandings about how the traffic-collision report is an essential ingredient to your case. The hardest part about having a bad liability opinion contained in the traffic-collision report prepared by the responding officer is that the defendant's trucking insurance carrier is likely to use the officer's conclusion of fault to deny liability.

Not admissible in court

We know as trial attorneys that the traffic-collision report does not come into evidence and the jury never sees the officer's report. In California, traffic-collision reports are generally inadmissible as evidence in court, as stated in Vehicle Code section 20013,

which explicitly states that "no such accident report shall be used as evidence in any trial, civil or criminal, arising out of an accident...."

Traffic-collision reports often contain many layers of hearsay. For instance, the officer's report may include statements from witnesses that are considered hearsay and inadmissible in court. The report will also include opinions from the investigating officer, which are considered hearsay and therefore inadmissible in court as well. Thus, the responding officer who investigated the crash and prepared the traffic-collision report cannot come to trial and testify as to whom they concluded was at fault for the crash.

So, here is the predicament you are in – while the trier of fact will never hear the opinions and conclusions the officer writes in the traffic-collision report as to who is at fault for the crash, the insurance company will use the officer's opinions and conclusions when evaluating liability at the initial stage of your case in prelitigation and then in litigation.

If the officer has concluded that your client is at fault for the crash, you will likely receive a letter from the defendant's trucking insurance carrier stating that their insured is not at fault, and therefore they are going to deny your client's claim. Knowing that this is going to happen, and a denial letter is likely going to be sent to you, means you have immediate steps to take. You should prepare a demand letter to the carrier stating that the officer's opinions and conclusions contained in the traffic-collision report are not admissible as evidence at the time of trial and the officer can never testify in front of the jury as to which driver they concluded caused the crash. Thus, the carrier should be advised in all demand letters that any liability determination based solely on the officer's conclusion of fault has no bearing in a court of law.

Analyzing the traffic report

Read the traffic-collision report a few times when you first receive it. Your gut is

telling you that something is wrong with the officer's conclusion of fault and your client could not have caused this tragic accident with a tractor trailer. The more times you read the traffic-collision report, the better you will be able to analyze it for possible issues that could benefit your client. Start at the top of the report and examine it with a microscope. There are a multitude of ways to do this, and everyone has their own approach.

I look at the date, time, and location of the crash and then immediately look at Google maps to get a visual of the landscape of where the accident took place. Hopefully, you will be able to see the landscape of the roadway over various points in time. I also scan around to see what the surrounding area and roads look like. You can also look at all roads and highways that lead up to the location where the crash happened to understand any possible paths the defendant took to reach the location of the crash.

If you do have a view of the roadway at various points in time, check to see if the roadway has been altered in any of the views. Go to the scene and take photographs. Drive around and get a feel for the area. Remember, the more information you have can only assist you in your discovery strategy and overall litigation plan to help your client.

Violations of the law by defendant

Use the traffic-collision report as a tool and start looking for all violations of the law the defendant committed that you will be able to prove. Discuss your case and the traffic-collision report with a trucking expert and get more information from them to help you create a discovery plan. For instance, you want to know if the size of the defendant semi-truck was allowed to be on the road where the crash occurred or did the defendant drive on a roadway or highway with an oversize truck that was not allowed to be on any particular road leading up to the crash? There will be various traffic signs posted along the roadways for you to inspect and determine if they apply to your case.

For instance, there may be traffic-control signs posted prohibiting trucks over 38 feet from the kingpin to the rear axle that may have been driven by the defendant. Your trucking expert or accident-recon expert can conduct a defendant-vehicle inspection to measure the distance from the kingpin to the rear axle.

When it comes to trucking cases, you will have to investigate whether the semi is up to code and whether the defendant driver has all the required legal permits for the vehicle and all legal permits to drive the vehicle. Occasionally, this information will be contained in the police report but not usually. During discovery or at the defendant driver's deposition you can obtain this information. You will want to know if the tractor trailer requires an oversize permit. If the defendant did not have the legally required oversize permit, you now have ammunition to fight with when attacking the liability determination of the responding officer with the defense attorney or the adjuster.

There is usually an indication in the police report on the first page if any photographs were taken at the scene of the crash. Subpoena all photos the officers took, if noted on the report that photos were taken. Also subpoena all body cam footage worn by all responding officers. Sometimes the body cam footage is not noted in the police report and you find out about it at the officer's deposition. Be proactive and don't wait for the officer's deposition to discover there is body cam footage from the day of the crash. Subpoena all body cam footage early on, so you have it and can watch all of it in advance of all officer depositions.

Also take note of the actual time the accident was reported to have occurred listed on the traffic-collision report. Subpoena all 911 calls and the dispatch call log so you understand how long it took for the responding officer to arrive on scene. Ask detailed questions of your client as to everything they recall about activities that transpired before the officers responded to the scene. If a

trucking accident takes place in a remote part of California, it may take a while before an officer is at the scene of the crash. At times, the fire department or ambulance personnel may arrive at the scene of an accident long before the officers get there. Be aware of how much time passed from when the crash happened and the officers arrived, because you need to find any foundational problems with the police report.

Foundation issues to think about

Here is an example to illustrate a possible foundational problem you may pick up in a traffic-collision report. Let's say the crash took place in a remote location with only one lane in each direction. The fire department arrives on scene first and they must materially alter the roadway before the police officers arrive for safety concerns or traffic flow.

If the fire department first responders have to move crash debris or sweep crash debris out of a lane or into a lane, post-crash debris evidence left on the roadway from the respective vehicles has been materially altered. If the police report contains any information that appears to rely on the physical location of post-crash debris to determine which driver is at fault for the crash, you have ammunition to attack the ultimate conclusions of the officer contained in the report.

Similarly, if the semi or any vehicles are moved before the responding officer arrives, the location of the vehicles at rest after the crash went undocumented. At times, the vehicles or trucks at rest tend to assist the responding officer when they are evaluating liability for the crash. Ask all the right questions and determine whether the scene of the crash was materially altered before the officers arrive.

State-of-mind during questioning

Another area to consider when it comes to knowing how long it took for the officer to get to the scene of a crash, is

having an understanding of what condition your client was in when he or she is being questioned by the responding officers about how the accident happened. I cannot stress enough how important and how seriously you must take your client's state-of-mind after a serious accident. This is highly important if there are any remarks made by your client to the officer that could be interpreted improperly. Many times in trucking cases, the injuries our clients sustain are catastrophic. Therefore, you must be sensitive to your client's state-of-mind.

If your client was questioned at the scene after being involved in a serious crash, you want to know what their mental status was. What was your client's pain level at the time they were questioned about the crash by the responding officer? What if the paramedics administered pain medication and *then* your client was questioned by the responding officer?

The traffic-collision report may also have statements attributed to your client that were obtained at the emergency room after he or she has been heavily medicated. If there is a notation on the police report that your client is medicated or in the emergency room while being asked about how the crash took place, make sure to investigate your client's state of mind further during the deposition of the emergency room physician who treated your client.

You could get a traffic-collision report that only has the defendant's version of events that the officer is relying upon to determine who was at fault for the crash. The defendant's statements to the officer may have obvious biases, since the defendant may not admit they are at fault. For instance, your client may have been airlifted to the nearest hospital before the police arrived, while the defendant driver was still on scene when the officers arrived. Your client could have been so severely injured that he or she was rendered unconscious.

If your client was not able to provide a statement to the responding officer as to how the crash happened, the officer then has only a statement from the

defendant driver as to how the accident happened contained in the traffic-collision report if there are no other known witnesses. Always be mindful of your client's mental state after a crash and how the officer's report is a reflection of that. Then, analyze ways to attack any ultimate findings of fault the officer provided in the report.

Witnesses must be deposed

In any hotly disputed trucking case, you must locate and depose all witnesses listed in the traffic-collision report. You must assume the defense has a private investigator locating and questioning all witnesses about what they recall witnessing at the crash. Therefore, you must do the same. You must be proactive and set witness depositions to lock in their testimony. Memories fade over time and people start losing their impressions of what they saw or heard during the crash, so take initiative and get all witness depositions completed. Most importantly, if there is a witness statement that is adverse to your client's version of events, take that witness deposition. You cannot let that person's bad testimony be heard for the first time, while you are in trial and in front of a jury. This would be a terrible position to be in, so please do not let it happen to you.

Set the deposition of the person who is adverse to your case and see if you have any ways to create your client's version of events through that witness. You never know what will transpire during the deposition of a witness, and you could facilitate the deposition so the witness statement is not as bad as it initially reads in the traffic-collision report. Even better, you may be able to flip that witness, so they are on your side. Stay on your game and be prepared.

Measurements and area of impact

Often, when you read a bad liability finding in a traffic-collision report in a trucking case, the responding officer will cite measurements and area(s) of

impact(s). Review all measurements taken and have your accident reconstruction expert analyze them for you and explain them to you if they are not easily discernible. Before you sit down and depose the investigation officer who prepared the traffic-collision report, you want to have a clear understanding of what the measurements mean.

During the officer's deposition, have the officer explain to you how the measurements were calculated or determined. Additionally, the traffic-collision report will have an area of impact (AOI) or multiple areas of impact, depending on the nature of the crash. If this is the case, take your time to understand all of them, and think of any way to use the AOIs to your benefit.

Responding officer's deposition

A necessary step in proactively litigating your trucking case is to notice the deposition of the responding officer before the defense does. It is always better to be in the driver's seat during depositions, especially if the officer concluded your client was the sole cause of the crash. Additionally, your accident recon expert may be using the measurements and areas of impact when evaluating the accident or creating an animation of the crash. If that is the case, you will need the officer's testimony to lay foundation for your own expert's trial testimony and demonstrative exhibits.

You will learn a lot about the responding officer who prepared the traffic-collision report. You can ask about their education and what courses they took while they attended the police academy. You will be able to determine their level of expertise and more importantly, their level of expertise in responding to a crash between a semi and a sedan or even two semi-trucks.

Look for any mistakes the responding officer made in the report and use those mistakes to your advantage. Always look for ways to create room to argue that the defendant caused the crash. How much

experience the responding officer has can easily translate onto the traffic-collision report. Again, be prepared and get proactive before the responding officer's deposition.

If you ever run into a situation where you cannot locate the officer who prepared the traffic-collision report, you must have your litigation plan ready to go. There may come a time when neither party can locate the officer who prepared the report or neither party will ever be able to depose the officer who prepared the traffic-collision report.

If this happens, keep in mind that your accident-reconstruction expert cannot rely on the police report for the areas of impact or measurements contained in the traffic-collision report, because you will not be able to lay the foundation for that evidence at the time of trial without the testimony from the responding officer. Your accident-reconstruction expert therefore must use other markers on the roadway or other physical evidence to analyze and determine the area of impact(s) for their opinions and investigation of the accident.

Your determination will shine through

At first glance the traffic-collision report may seem like a roadblock or impediment to a good settlement or a good jury verdict. But this is not the case if you have the determination and resolve to strategically litigate your trucking case. Read the traffic-collision report and learn how to open up avenues that help you prove your client's case. You must be proactive, aggressive, and fierce in your unwavering commitment to excellent legal representation.

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