



CATASTROPHIC CLAIM RESPONSE



The average cost for settlement for fatalities from truck-only accidents is over \$3 million, and the average cost of non-fatal, bodily injury accidents is over \$200,000.

Motor carriers who have been involved in these accidents understand first-hand the impact of catastrophic claims and the importance of preparation before an accident occurs.

DEFINING A CATASTROPHIC ACCIDENT

When a truck is involved in an accident that causes serious injury or death, the accident is considered catastrophic. These types of accidents can lead to significant financial and legal challenges.

BEFORE AN ACCIDENT

The primary goal for a motor carrier should be to avoid catastrophic losses. However, these types of accidents do occur, and motor carriers who develop a response plan prior to a loss are confidently equipped to respond rather than react.

Like a fire drill, an accident response should be practiced until the response is second nature. Involve drivers and supervisors in response test drills and role plays. Practice drills several times a year. Being prepared to respond to a catastrophic accident could protect your company from severe consequences.

Adequate insurance limits can protect a motor carrier's ability to recover from a major loss. The premium per truck for an additional \$1 million limit in excess liability coverage is a small fraction of the premium per truck paid for the first \$1 million limit on a primary liability insurance policy, and the cost per truck decreases as higher limits are added. Contact **Navigator Truck Insurance Agency** if you would like a proposal with coverage options.





PREPARE

DRIVERS

Your driver's response is critical after an accident. Drivers should be informed that they are not permitted to make formal statements to anyone outside the presence of your transportation attorney. However, it may be determined after an accident, that the driver has already spoken to the authorities.

It's important to learn who the driver has spoken to and what was said. The driver must be prepared and understand his or her responsibilities at the accident scene. He or she should be able to accurately convey information without fear, remain calm and professional, secure the scene, take appropriate photographs, deploy reflectors and seek immediate help from the authorities.

TRUCKS

Equip trucks with necessary supplies for post-accident response. Important supplies include:

- 24-Hour 1st point of contact list
- Accident report form with pens and pencils
- Camera (or cell phone with camera)
- Warning triangles and a fire extinguisher

MOTOR CARRIER RESPONSE TEAM

The motor carrier should identify and communicate to individuals who are responsible for handling accident response and investigation. These individuals should have a basic understanding of the legal rights and obligations that exist in a serious accident. When an accident occurs, a reliable supervisor from the response team should be dispatched to the accident scene immediately. If the accident is far from your physical location, assign a reliable supervisor to direct operations remotely. This person will be actively involved with the insurance company and will serve as your company's representative at the accident scene.

Avoid sending someone who is critical to daily operations; the responsible individual will need to focus on responsibilities at the scene. He or she will work with law enforcement and handle initial regulated activities. The ideal individual will be someone with a level head, who can calmly communicate with both your driver and law enforcement in extremely stressful situations and will be well-practiced in how to respond to an accident.

DON'T FORGET

- 1 SECURE ELECTRONIC EVIDENCE**

The accident reconstruction expert will coordinate downloading all electronic control modules (ECMs) and retrieving any data from dashboard cameras, sometimes known as automated event recorders (AERs). Do not assume that your local truck dealer can perform a download of the ECM or AER. Often, it's much more complicated and may require factory-trained personnel. On certain units, the existing data is wiped out when the engine is restarted. Even if a vehicle is drivable after a severe accident, you should "tow until you know" that a download of the ECM is not necessary.
- 2 CONDUCT DRUG AND ALCOHOL TESTING**

The FMCSA requires that a driver is tested for drugs and alcohol after a catastrophic accident. The FMCSA mandates that the driver submit to testing "as soon as practicable" following an accident when a fatality has occurred, a citation has been given and injury occurred to anyone, or when a citation is given and one of the vehicles involved was towed from the scene.

Many municipalities can issue citations long after an accident. Responders and drivers should be familiar with your company drug and alcohol testing requirements. If the company testing requirements are more stringent than FMCSA regulations, the company's requirements must be followed.
- 3 BE AWARE OF CRIMINAL CITATIONS**

It's possible that your driver will receive a criminal citation, which will trigger different responses, processes and obligations for everyone involved in the accident.
- 4 REVIEW IMPORTANT DOCUMENTS**

Truck litigation is often won or lost on paper. Driver vehicle inspection reports, maintenance and service records, registration files, logs, driver cellphone records and driver qualification files are all important documents that could potentially provide evidence for defense in the event of a catastrophic accident.

As soon as an accident occurs, records should be assembled that may be needed to defend the claim. It is far easier to assemble data immediately after the accident than months, or years later when a suit is filed. Failure to preserve this information could also lead to separate claims. Similarly, evidence that has been lost or somehow spoiled, will lead to the judge instructing the jury to assume the reason is because it was incriminating.
- 5 CONTACT THE INSURANCE COMPANY AND YOUR INSURANCE COUNSEL IMMEDIATELY.**

In a technology-advanced world, you can anticipate media coverage almost immediately. If the media calls, contact the insurance company immediately. Avoid trying to handle the media on your own. Professional guidance will help protect your reputation and avoid media bias intended to sensationalize and attract an audience. All drivers and employees should be reminded that it is inappropriate to comment on, or discuss the accident on any corporate or personal social media channels.

CLAIM RESPONSE

1. INITIAL RESPONSE

A first responder has one primary goal: to assess the situation and determine the best response to minimize injuries and damage to property. If there is a threat of serious injury or loss of life, local emergency responders should be contacted immediately.

Talk with legal counsel before talking with others. Communication with an transportation attorney has client attorney privilege protections. This is not true with an agent, adjuster, police, or anyone else. Knowing and talking with an transportation attorney very early on may protect information from being discovered.

2. REPORT THE CLAIM

Insurance companies focused on trucking are typically available and ready to respond to claims 24/7. The accident response team will depend on specific details of the accident, but could include transportation attorneys, field adjusters, investigators and other experts.

The claims adjuster will identify witnesses and potential claimants, conduct interviews, collect evidence including photos of the scene, and determine the severity of injuries. The adjuster may also transport the driver to receive DOT approved drug and alcohol testing, and will identify first responders including police officers, emergency medical technicians, firefighters, tow truck operators and others that may have been present.

If a fatality or critical injury occurred, special care should be taken with claimant communications. Take advantage of the experience and expertise of the insurance company who specializes in trucking before inadvertently making a bad situation worse. Call the insurance company before reaching out to any claimants.

3. INVESTIGATE THE ACCIDENT

It can be tempting to skip an investigation when initial information indicates that your driver is not at fault. However, it is difficult to determine fault immediately following an accident due to the limited information available.

Lawsuits are based on the potential recovery of monetary damages, and not necessarily fault. Even small acts of negligence contributing to an accident can result in significant amounts of monetary damages. Consequently, the response to an accident should never be dependent on fault. When an accident occurs, the appropriate authorities should be contacted, and evidence preserved.

Important details include:

- Names, addresses and contact info for all witnesses and victims, including insurance policy information.
- Description of other vehicles (make, model, and license/VIN numbers).
- Information about injuries or property damage.
- Information about responding police department, tow truck and ambulance service.
- Accident details
 - Time of accident
 - Location of accident
 - City or Town
 - Street and closest crossroad
 - driveway
 - parking lot
 - Direction of travel
 - Number of lanes on each (including turning lanes and shoulders)
 - Description of lane markings
 - Traffic controls or signals (locate and identify type)
 - Speed limit
 - Weather (visibility, condition of road surface)
 - Sketch diagram of the accident including the positions of the vehicle and the direction of travel
- Road conditions
- If there are surveillance cameras in the immediate area of the accident, ask for copies of the video footage





CATASTROPHIC CLAIM RESPONSE

WORK WITH
A TRUCKING
ATTORNEY

It is important to involve a transportation attorney right away, because the attorney-client privilege allows open sharing of accident details.

A transportation attorney has expertise on the rights and obligations of a motor carrier, and can help with direction on contacting the appropriate parties including field claims adjusters, accident reconstruction consultants, and other appropriate experts.

Need a referral to a trucking transportation attorney? Navigator maintains relationships with trucking professionals including transportation attorneys accountants, and compliance consultants.

4. RECONSTRUCT THE ACCIDENT

An accident reconstruction expert may need to be included in the response team. The reconstruction expert preserves all electronics for download, documents all physical evidence and engages in strategic surveys and photography. A failure to collect and preserve this information in an accident where you may have a viable liability defense could result in the inability to assert that defense if a claim is made at a later date.

CONTACT US

At **Navigator Truck Insurance Agency** we work hard at being accessible, helpful, and results-oriented. How can we put our exclusive focus to work for you?

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