

## Workshop O

# ***ACCIDENT INVESTIGATION TECHNIQUES***

Presented by

**Bill Noonan**  
**Regional Claim Manager**  
**Turner Construction**

Construction accidents are high-profile events, especially when there are fatalities involved. The minutes and hours immediately following an accident are crucial to the investigation of and final allocation of responsibility for the accident. If crucial steps in the investigation process are overlooked, contractors (and their insurers) may find their ability to mount a defense against any subsequent lawsuits has been compromised. In this seminar, a seasoned professional shares his insights into how to ensure accidents are being properly investigated and documented. Attendees will learn how to respond immediately following an incident, how to monitor the insurer's investigation of the claim, and how to coordinate their internal investigation with the insurer's investigation to avoid stepping on each other's toes.

## **UNDERWRITING THE FUTURE OF CONSTRUCTION**

Too often, the worlds of construction and insurance are driven by number crunching. It is one thing to plug figures into an equation in an office and quite another to work face-to-face, building tailored solutions for your specific needs.

At Construction Program Group (CPG), we stand by our claims of unsurpassed customer service and unmatched expertise as a Managing General Underwriter (MGU) dedicated to the construction industry. We may not be the biggest, but our industry knowledge, team approach and knowledgeable staff makes us the best.

CPG is open to all agents and brokers.

We have underwriting authority for all primary casualty coverage.

CPG has the backing of an insurer rated AIX by A.M. Best and is admitted in 50 states.

We are a leading provider of insurance programs for contractors and for large construction projects.

CPG has the flexibility to provide you with single-source underwriting, no matter the size or scope of your construction projects. We pride ourselves by our quality, reliability and satisfied customers

## **PEOPLE BUILDING A DIFFERENCE**

Quality people are an indispensable element of successful construction and of underwriting services. To meet the needs of clients as varied as industrial and major commercial institutions, we have developed a dedicated staff with core values that drive all our business activities.

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Teamwork and flexibility are the keys to building successful interactions with our clients. Our competitors believe underwriters drive the deal. But we believe having an integrated team that works in tandem with our clients is the only model for ongoing success.



**Construction  
Program  
Group**

A DIVISION OF SPECIAL RISK RESOURCES INSURANCE AGENCY, INC.

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**Bill Noonan**  
**Regional Claim Manager**  
**Turner Construction**

Mr. Noonan is presenting Workshop O, "Accident Investigation Techniques," on Wednesday. He is a regional claim manager with Turner Construction Company. Previously, he was vice president of Special Risk Services in Chicago.

He has 14 years of experience in investigating serious general liability accidents.

Mr. Noonan has earned certificates in accident investigation from Southfield Technical College and crane and rigging accident investigation from the University of Wisconsin. He is also working toward a business administration degree with the California Coastal College.

# ***Notes***

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# ACCIDENT INVESTIGATION TECHNIQUES

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*Bill Noonan  
Turner Construction*

## Can We Be Human and Caring Without Being Held Liable?

- ▶ If your company a nationally known name or locally known company, tell your staff that your company cares about injured workers, their families, and our neighbors.
- ▶ A visit to the hospital to check on an injured worker is not an admission of liability.

## Document, Document, Document....

- ▶ Try to get your people to understand the following principle: “The more you are convinced you have no liability in an incident, the better your investigation should be”
- ▶ In two years when the suit comes, just saying “we had nothing to do with that” won’t cut it.

### **Why Juries Like Construction Claimants???**

- ▶ Often times a hard worker all his / her life.
- ▶ Often times a family man / woman.
- ▶ Often times still has children under age 18.
- ▶ Usually has no other employment training, so their trade career is over.

### **Why Juries Like Construction Claimants???**

- ▶ And more than all the above, jury members relate more to the plaintiff than they do to either the defense or plaintiff attorney, or the corporate defendant.

### **Two Important Mindsets**

- |  |   |
|--|---|
| ▶ Plaintiff Attorney                         | ▶ Jury Member                                       |
| ▶ Skilled at finding a deep pocket to blame. | ▶ Naturally tends to feel sympathy for the injured. |

### **Change Your Thinking Think like a Plaintiff Attorney**

- ▶ You already know your company is not liable, but it's a jury you must convince.
- ▶ Spend less time defending and being right, and spend more time looking for other parties that caused the incident.
- ▶ Step back and think, if I was the plaintiff attorney, what theory of liability would I be creating.

### **Senior Management Buy In**

- ▶ You must take the time to explain to senior management the value and importance of a "proper and professional" post incident investigation.
- ▶ Their cooperation (tearing down walls) is critical to your success.

### **Educate Your Operations Staff**

- ▶ Many times, our way of looking at things is contrary to what they have been taught their entire career. So take the needed time to explain the “how” and “why” of what we do.
- ▶ I like using the example of me (the insurance professional) telling them (the construction professional) how to build a building based on my experience.

### **Crisis Response Plan**

- ▶ Critical that your organization have one in place.
- ▶ Your organization must designate a media spokesperson, and it is best that this be someone in senior management not involved with the actual investigation.
- ▶ Following a serious incident, the project staff is dealing with the emotional and physical effects on its staff, the team responding must bring stability, reliability, and compassion.

### **The Investigation Response Team**

- ▶ Risk Management (Insurance / Claims)
- ▶ Safety
- ▶ Field Investigator / Adjuster
- ▶ Defense Counsel
- ▶ Key Project Staff
- ▶ Senior / Executive Management

### **Initial Meeting**

- ▶ All members of the Investigation response team, key project staff, senior management.
- ▶ Start off with up-to-the-minute facts of the accident known at that time.
- ▶ Divide responsibilities and tasks, and start keeping track of who is generating reports.

### **Critical Issues**

- ▶ Prompt reporting to insurance company
- ▶ Identification of witnesses
- ▶ Preservation of evidence
- ▶ Identification of other parties
- ▶ Protecting reports from discovery

## **Selection of Field Investigators**

- ▶ You must know not what company, but more importantly what “person”, is responding from your carrier or TPA.
- ▶ Investigating a serious construction loss is very different from a car accident or slip and fall in a grocery store.

## **Field Investigators / Adjuster**

- ▶ Ask your carrier or TPA for the resumes of those they would send to respond to your losses.
- ▶ Review these resumes and pick out a few that have solid construction and investigation experience.
- ▶ Meet and interview a few of your selections.

### **Investigator Qualities**

- ▶ **At least 3 years insurance field adjuster / investigator experience.**
- ▶ **Solid construction and liability experience.**
- ▶ **Some inside claims experience actually handling claims is a plus.**
- ▶ **Ability to work with and interview construction management and building trade employees.**

### **Early Involvement of Defense Counsel**

- ▶ **It gives your attorney the same advantage as the plaintiff attorney, in it from the beginning.**
- ▶ **A trial attorney has a huge advantage by actually seeing the scene of the incident.**
- ▶ **Gets rid of the Monday morning quarterback, as they get to be fully involved in the investigation, from the start.**
- ▶ **Cuts down on discovery time and cost, the attorney is fully aware of the incident, as opposed to learning about it a year later when suit is filed.**

### **The “Right” Defense Counsel**

- ▶ **A Construction trial attorney, not just a “trial” attorney, and not just a “construction” attorney.**
- ▶ **One who has worked with your company, and you have established a good working relationship with.**
- ▶ **Someone who will leave “the lawyer” in the court room, and easily work with and communicate with the project staff.**

### **Prompt Reporting to Insurance Company**

- ▶ **The adjuster has a large advantage.**
- ▶ **Long delays increase our exposure.**

### **Identification of Witnesses**

- ▶ **Obtain the name and contact information of all possible witnesses from the project staff.**
- ▶ **Request a master list of all workers on a project from the project manager.**
- ▶ **Wrap-Up Projects- Certified Payroll Reports**

### **Identification of Witnesses**

- ▶ Visit the site at the same time as the incident occurred
- ▶ What people are usually in that area at the time of the accident? (coffee truck, postal workers, etc.)
- ▶ Obtain all Witnesses listed on police, fire, and EMS records

### **Not Every Witness Is An Eye Witness!**

- ▶ Many times, what happened before an accident (minutes, hours, days,) is very important to our defense.
- ▶ Since most work is performed by a sub-contractor, it is often our supervision and control of a site, that plaintiff attorneys key in on.

### **Witness Statements**

- ▶ Have a Witness statement guide with you when you take statements
- ▶ Under the stress of a serious incident, even a seasoned veteran can forget to ask an important question.
- ▶ Interview Witnesses before you record their statement.

## **Witness Statements**

- ▶ Check with defense counsel and ask if they want recorded statements or interview memos.
- ▶ Only take one statement per witness
- ▶ If a field Investigator is responding, let them take all of the Witness statements.
- ▶ Remember to document what type of Witness you believe the person would make.

## **The Experts Role**

- ▶ Bring in as soon after the accident as possible.
- ▶ You can help the expert help you by bringing them directly to the scene of an accident before it is disturbed.
- ▶ Have the expert work directly for your counsel, not you or your carrier for discovery purposes.

## **Expert Examples**

- ▶ Crane Expert
- ▶ Engineering Expert
- ▶ Auto Accident Reconstruction Expert

### **Preservation of Evidence**

- ▶ All physical evidence associated with a claim should be saved for use as evidence.
- ▶ Some examples of physical evidence are ladders, fall protection, rugs, plywood, slings, wire rope, hard hats, gloves, etc.

### **Preservation of Evidence**

- ▶ Let the Field adjuster or defense counsel decide what to throw out, if you have doubt “save it”.
- ▶ Remove evidence from any areas where it may be thrown out or altered.

### **Protect the Chain of Custody**

- ▶ Until your investigation is complete, and your expert has finished their investigation, have the site protected by security.
- ▶ Keep a log starting with the first security officer and ending with the last.

### **Official Project Paperwork**

- ▶ Copies of all permits (Local, County, State).
- ▶ Copies of all inspection reports.
- ▶ Copies of any previous violations.

### **Special or Hazardous Operations**

- ▶ Examples would be a critical lift (crane), or a blasting operation.
- ▶ Copies of all pre-planning meeting minutes.
- ▶ Copies of any critical lift plan prepared.
- ▶ Copies of any independent consultant report (Engineer, etc).
- ▶ Copies of any special government permits needed for operation.

### **Photographs**

- ▶ Document where claimant was at the time of the incident, and condition of where claimant was working.
- ▶ Always remember that your photos must tell a story, to those that will never see in person what you have seen.

## Photographs

- ▶ No pictures of blood, police, EMS, fire, or claimant with these parties. They will later only be enlarged to get sympathy from a jury.
- ▶ Remember to take 35mm on serious incidents as well as digital.

## Identification of Other Parties

- ▶ Obtain proper names of all sub-contractors, vendors, and consultants on a project.
- ▶ Determine the name of the company/organization of every person you interview, every person involved in the incident, and all parties working on the site at the time of the incident.

## Protecting Reports From Discovery

- ▶ Claim Coordinators should be familiar with “work product” and “attorney-client communication” rules in their specific state. Your local defense counsel can assist you with this information.
- ▶ On serious incidents, all reports should be written to our defense counsel, and copied to only those in the “control group”.
- ▶ Who is in the control group.