

INCIDENT FIRST RESPONSE

Speakers:

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Powerpoint by Christina Comacchio, Law Student

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Incident First Response



Incident First Response

This presentation will cover:

- Legislative duties of transportation companies
- Relevant ministerial powers
- Briefly – civil liability & insurance coverage
- Strategies for handling incidents

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Michael Guy

- With Charles Taylor Adjusting since 2009 with focus on major/complex Transportation, Commercial Property & Construction, Business Interruption, CGL and Environmental / Pollution Liability Losses.
- Currently Branch Manager, Toronto, Ontario, formerly manager of Commercial Industrial Division of Charles Taylor Adjusting in Calgary, Alberta.
- Bachelor of Business Administration (BBA) with Honors, Wilfrid Laurier University.
- Fellow Chartered Insurance Professional (FCIP – Risk Management) accredited by Insurance Institute of Canada.
- Canadian Risk Management (CRM) designation through the Global Risk Management Institute.
- Risk Management Certificate from the University of Calgary.
- Adjuster's licences held in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Yukon, Northwest Territories and Nunavut.

**Charles
Taylor**
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Rory Barnable

- Lawyer since 2002, with transportation practice involving multimodal cargo transport, environmental claims, collisions, derailments, and groundings.
- Additional experience includes insurance coverage, class actions, fraud actions, D&O actions, defamation claims, environmental and municipal law matters.
- Member of the Law Society of Upper Canada, the Law Society of Newfoundland and Labrador, and the Ontario Bar Association.
- Chair of the Claims and Loss Prevention Committee for the Canadian Board of Marine Underwriters, contributing editor of the construction section for the Toronto Lawyers Association Law Journal.
- Has appeared before the Supreme Court of Canada, and all levels of court in the Provinces of Ontario, and Newfoundland and Labrador.
- Formerly partner at large litigation firm, now founding lawyer of Barnable Law P.C.
- B.A., McGill University; LL.B., University of New Brunswick; LL.M. University College London.

Highway Traffic Act

Ministry of Transportation (MTO) Powers:

- Compliance audits: *Compulsory Automobile Insurance Act & Dangerous Goods Transportation Act*
- Roadside stops
- International Registration Plan (IRP) inspections

Your Duties

- Pull over when directed
- Comply with inspections & assist MTO officials
- Document surrender

Environmental Protection Act

- Section 15(1) for fuel spills if it causes or is likely to cause an adverse effect on the environment in Ontario
- Very broad MOE reporting obligation

“When in doubt, report”

Castonguay Blasting Ltd v Ontario (Environment) 2013 SCC 52 at para. 2.

Ministry of Environment Powers

- Sue for compensation of cost of proper clean up
- Sue in negligence
- Punitive damages

Civil Liability & Insurers

- Liability can be very far reaching
- Courts look at:
 - Driver distraction
 - Size of vehicle & cargo
 - Speed
 - Weather conditions
 - Expertise of driver
- Higher standard of care for professional drivers

Criminal Liability

- Increase in criminal negligence charges
- criminally negligent: who does anything or omits to do anything that is in his/her duty to do that shows “wanton or reckless disregard for the lives or safety of other persons
- “Duty” = duty imposed by law
- June 2016 Highway 400 crash

Strategies for Transportation Companies

1. Preliminary plan design & incident command system
2. Pre-emptive record keeping
3. Methodology for record delivery
4. Designated party role & media response
5. Future risk prevention

Preliminary Plan Design

- Incident Command System (ICS) model
- Standardized Plan
 - Command
 - Control
 - Coordination

Case Study 1



Case Study 1: Standard Pack & Ship

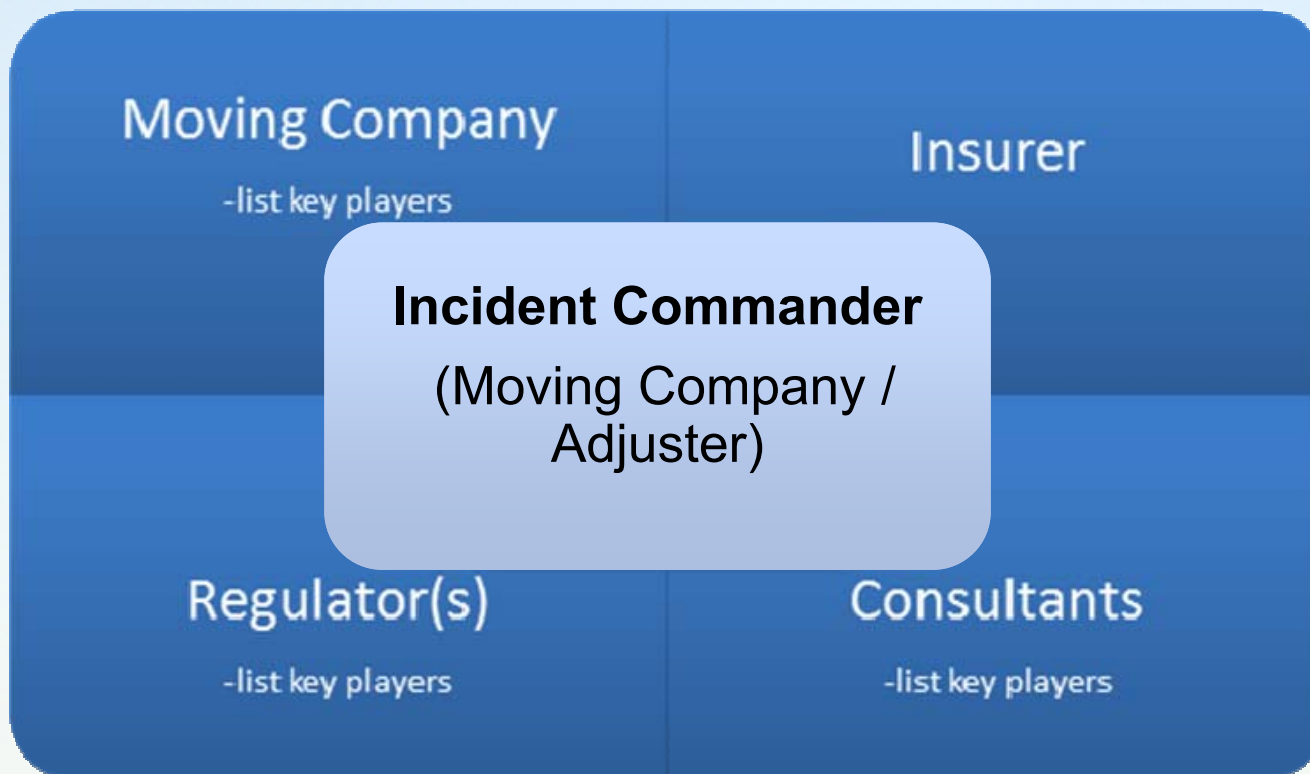
- Standard “pack and ship” of TP household goods
- Shipment: Vancouver to Toronto (long haul)
- Toronto delivery – missing boxes and damaged goods

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ICS Model



Critical Information

- **Moving Contract** – terms and conditions are key
- **Packing** – who performed i.e. owner or moving company?
- **Manifest** – records of items, conditions pre-shipment of valuable items, etc.
- **New Technology** – electronic bar code logging

Response: Assessment & Handling

- Predefined claim processes – online report, packaged forms, written process
- First contact experience
 - Listen!
- People have emotional connection to personal belongings
 - Sympathy/empathy
- Exposure is limited by contract terms
- Skilled consultants

Possible Legal Issues

- Suspected fraud
- Disagreement on valuation
- Disputed contract terms
- Adherence to Department of Transport regulations

Case Study 2



Case Study 2: Executive Move to Canada

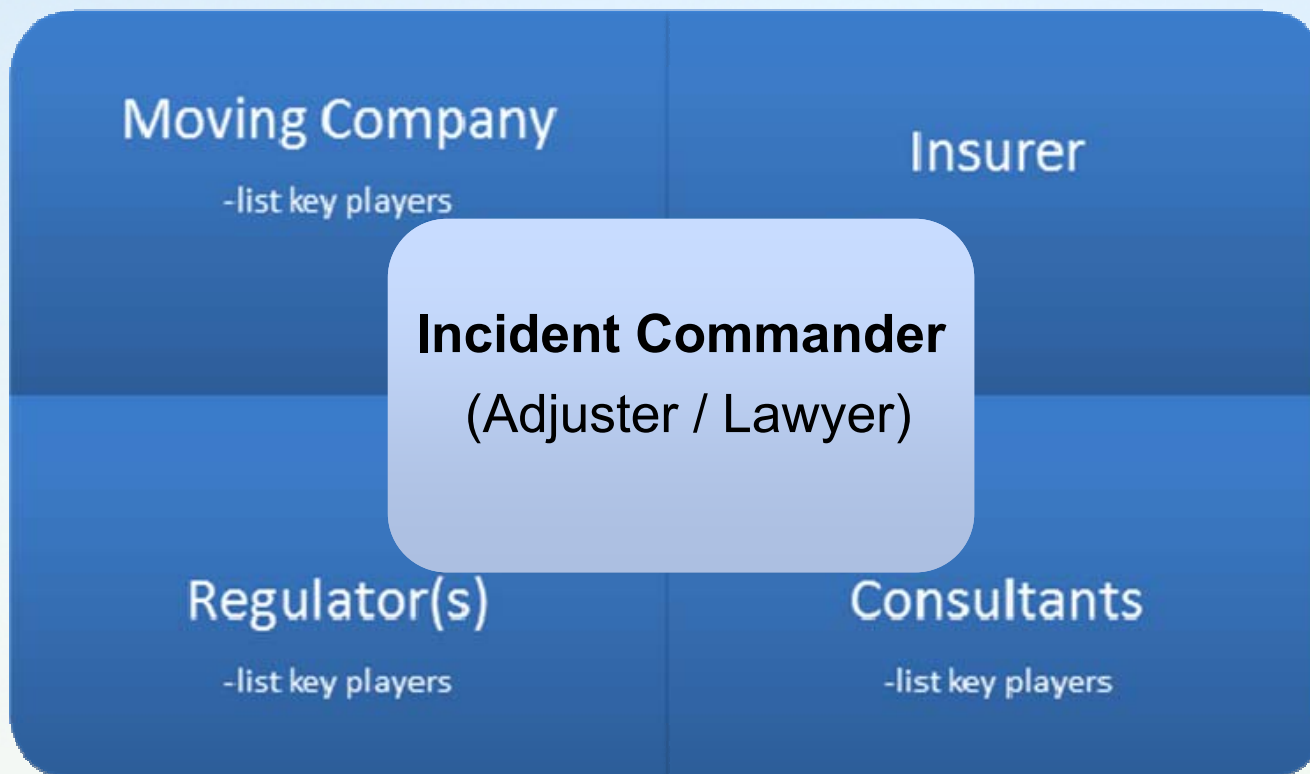
- Overseas executive move back to Canada
- Long standing corporate client
- Family (2 parents & 3 kids) living in partially furnished house
- Delivery of goods – find mold when unpacking
- Family complains of illness due to mold

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ICS Model



Critical Information

- Moving contract
- Packing: who performed it?
- Manifest/shipping order
- Discovery details
- Country of origin of the shipment – foreign bacteria concerns?
- Health considerations – TPs, staff, etc.

Response: Assessment & Handling

- Early contact and fact collection – TPs and staff
- Control/prohibit any entry into the house
- Collaborative approach with TP
- Engage consultants – educate and advise
- Transparency with the findings and plan
 - Avoid bad faith!

Response: Assessment & Handling (Continued)

- Understand the exposure
 - Foreign bacteria – notification to the Ministry of Health
- Test first/report after – privilege documents?
- Private medical assessment and evaluation
- Establish action plan i.e. restore, dispose, decontaminate
- Same process as Case Study 1 for contents

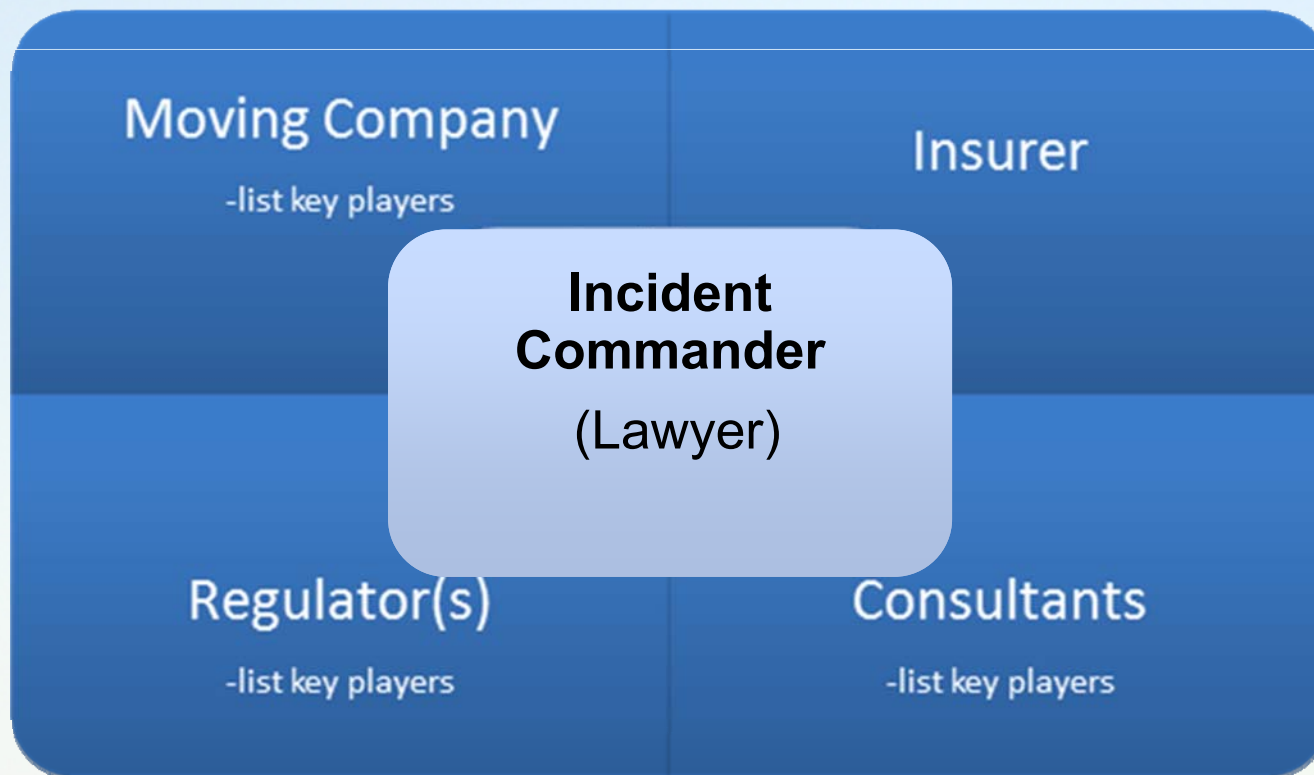
Case Study 3



Case Study 3

- Accident during transit with non-commercial passenger vehicle
- Severe injuries to the TP driver and passengers
- Moving truck off the road with ruptured fuel tank
- Scene is under the control of authorities and regulators
- Media is on site
- Damaged goods in transit

ICS Model



Critical Information

- Privilege of documents
 - Define path of information sharing
- Loss Details – who, what, where, when, how, etc.
- Driver Logs – manual and fleetmatics
- Location of Accident – identify local consultant partners, police, etc.
- Manifest/Shipping order

Response: Assessment & Handling

- Action plan/ICS
- Confirm access to the site and ability to perform investigation i.e. cooperate with authorities
- Attend the site – document, document, document!
- Dispatch traffic control (if necessary)



Response: Assessment & Handling

- Assist injured staff
- Engage consultants
- Early liability assessment is key to controlling exposure
- No admission of liability
- Investigate & document the TP- BI exposure

Scene Cleanup

- Establish action plan to investigate environmental exposure
 - Reporting to MOECC
 - Dispatch a spill responder
- Dispatch a recovery & scene cleanup contractor
 - Tractor, trailer & cargo
- Same process as Case Study 1 for contents

Pre-emptive Record Keeping

1. Present records in a way that reflects carriers' efforts to comply with best practices & relevant regulations;
2. Have properly trained point persons responsible for regulatory records & inspections; and
3. Have properly trained point persons & counsel ensure that oral interviews & written reports are properly addressed

Methodology for Record Delivery

- Records can subtly advocate on company's behalf
- goal of responsive strategies is to present requested factual information as neutrally as possible alongside positive facts

Designated Party Role & Media Response



Future Risk Prevention Strategies

- Continuous value of a designated point person
- Gather post incident data to improve company practices
- Policy review
- Deficiency identification

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Thank you!

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