



# DEALING WITH DEATH

A death among staff brings shock and grief for the entire organisation. But dealing with the issue quickly could lessen the blow, writes **Samantha Freestone**

If you are a transport operator you know very well that an on-road fatality is the worst possible situation to have to deal with, and one most operators invest in heavily to avoid.

Safety standards and responsible management are a given, but what happens when, despite all best efforts, you are faced with such a tragedy?

The most recent statistics from the Department of Infrastructure show there were 148 crashes involving heavy articulated

vehicles in the past year to March. The figures show 183 people died as a consequence of these incidents. If you include all 'heavy trucks' both of those number rise significantly.

According to a report into road safety by the Australian Transport Safety Bureau in 2004, the majority of fatal crashes involving articulated vehicles were in non-urban areas, occurred between a truck and another vehicle, and in 2000, single vehicle crashes accounted for 25 percent of all crashes involving articulated trucks.

Fatal road accidents impact everyone involved for the rest of their lives, from the families to the companies who employed the driver and especially the driver if he or she walks away.

Despite the emotional and fragile nature of the issue, if you don't represent your company effectively in the first hours and days of a fatality, the costs could be significant years later, experts warn.

Operators are not always represented adequately by evidence secured from the scene.

It can take years for these cases to commence after police have covered the scene. In some cases, two to five years can pass from the initial investigation before the case is heard in court.

As a result, lawyers and third-party investigative specialists agree you must act fast if you are to defend yourself properly in the years to come.

*ATN* spoke to specialists in this sensitive field to find out what they believe is the best way to deal with the very real tragedy that is a highway fatality.

## THE INVESTIGATION EXPERT

Delta-V Experts are the self-proclaimed 'CSI'

of road-scene investigations. The company is often called upon to provide expert evidence in coronial inquests, by major government bodies and by transport operators at the time of a trial.

They strongly recommend they are called in as soon as practically possible following an incident, as this gives the opportunity to provide the best support in the event the incident proceeds to legal action.

Roger Sanders, a past member of Victoria Police, is the company's Principal Investigator. He says many businesses leave themselves exposed, not realising such a service is available at the time of an accident.

"They are terribly exposed because there

is only one investigation that is undertaken and often the transport operator doesn't know how exposed he is [because of that]," he says.

"Some of the more proactive companies engage with us to attend at the same time as the police. Whilst the police are there it is their scene, but once the police go we have every right to investigate the scene.

"The transport operator, under the direction of a lawyer, then has an independent assessment of the causative issues right from the word go. Unfortunately for them transport operators mostly don't get us in until two, three, maybe four years after the event when the case is at court."

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He warns many factors change over such a long span of time.

“The road may have been rebuilt, there are many factors, but if we are there within a day or two of the accident happening, it is still fresh in the mind of witnesses and there is every chance that the scene is the same as it was at the time of the accident,” he says.

With the police investigation often limited by time, there may be details overlooked that could help you down the line. Delta-V Experts employs specialists in fields such as civil engineering, forensic engineering, mechanical engineering and even specialists in biomechanical injury and computer modelling.

One of the company’s founders, Dr George Rechnitzer, an engineer with a career spanning almost four decades, says

engineering expertise often makes all the difference. Engineers reconstruct the incident using physics and a sound knowledge of the principles of collision reconstruction, creating a report that can potentially save thousands of dollars in court-related costs down the line.

“Usually engineers are involved because what we are looking at in any incident involves equipment, and to investigate the failure of such systems ... understanding of impacts, structure dynamics, vehicle and road design, all the engineering and scientific factors that go into it,” he says.

“Then there is the process; how people are taught to do things. It covers anything to do with the [scene].”

Delta-V Experts conducts independent investigations for a range of different clientele. They have done “expert reports” on behalf

of roads authorities, law firms, insurance companies, and others including transport operators who contact them directly.

“It could be a matter of fraud or a failure of some sort ... if there is a dispute of negligence by the insurance company, for instance,” Business Manager Max Shifman explains.

Roger Sanders adds: “If you have a rollover and there is a dispute over negligence with the insurance company, we are easily talking \$500,000 with the truck and trailer. If you can establish you were not in the wrong, you can save you self so much money.”

At times, Sanders says, operators are inappropriately represented at scenes.

“They believe ‘it’ll be right’ but they really need legal representation and expert investigation at the time,” he says.

If you are in the position of having to deal with a fatality or a major road-based incident, the group say legal representation is critical, and to ask lawyers to then contact an external investigation specialist, so independent evidence is secured.

“Because of the nature of their job, the police don’t always go into the depth of investigation that we do because they don’t have the resources or the time,” Sanders says.

“If the police employ the major crash investigation unit, they will sometimes go into the same detail as we do, but they don’t always go to that length. Not always is all of the evidence portrayed, as the police often have a different focus with their investigations.

“The operator might think ‘I’ve got no problems’ and they often think they can



defend themselves. You might think you are in the right and then because of certain circumstances ... there are many times when things don’t go as you expect.”

### THE LAWYER

Michael Hammond is the Partner at law firm Deacons within its occupational health and safety team in Melbourne. He specialises in dealing with road-side fatality.

His experience includes spending the first phase of his career as a member of Victoria Police and working with the Traffic and Accident Commission (TAC). He knows how to deal with evidence.

“I get in there and do the job. It is important to get to the scene as soon as possible,” Hammond says.

He is described around the firm as a “real Mr Fix-it” on workplace incident management.

“Where employers have found themselves under investigation or charged with OH&S offences, he is pragmatic and steadfast in their representation,” one colleague says.

ATN met with Hammond to discuss the hypothetical situation of a road-place fatality and how to deal with the situation from a legal perspective.

“My mobile is on 24-7,” he says with a steely gaze suggesting he has seen many crash scenes. He has, but insists it is part of the job and he doesn’t let it affect him.

“You don’t have to have a lawyer through the whole process ... it can be years between the accident and the trial. But, initially, it is important to get to the scene to gather evidence of your own,” he says.

He moved into law in the mid 1980’s specialising in OH&S and was, at the time, a rare bird.

But today, even though “most law firms have a workplace relations team who deal with OH&S”, the Deacons lawyer says he and the national safety team are the only dedicated safety law specialists that he knows of in Australia.

A road fatality is, he explains, an OH&S legal issue, a criminal issue, an issue of road safety legislation and general safety law “because the vehicle that the employee driver is sitting in is a working environment”.

“The way the OH&S law feeds into a road-side accident is that, according to law, the employer must provide a safe working environment. Apart from the OH&S issue there are so many other areas of regulation that the transport industry falls under. What I’ve got is a group of people together who are



safety experts from a legal perspective.”

Hammond says the process is much the same legally, if a driver comes to him or a company.

“If you have any reason to believe you may be in line for litigation at that point, you ought to get some legal help straight away as there are several things that need to be dealt with very quickly,” he says.

When a road-side fatality takes place, there are many investigative authorities on the scene such as WorkSafe, road authorities and the police.

“The scene of an accident is bedlam,” Hammond says.

“Everyone is running around like headless chooks. I don’t know as a transport operator how they could possibly keep up with that while still running their business.”

Hammond, just as Delta-V Experts recommends, says the earlier the evidence is gathered the better. Once that initial and critical work is completed you may not need to liaise with a lawyer for years to come, but when the time does arise you are prepared.

“They make sure a thorough investigation is done, and done under privilege [and from a legal perspective]. I can offer more in the first three days then I can for three years down the road,” he says.

But, when asked about defending a driver or company, Hammond was quick to point out his role in the process.

“If they are guilty, they are guilty, that is not the point of a lawyer. The point of a lawyer is to make sure that your legal interests are managed,” he says.

“What you are safeguarding yourself from is criminal charges. With these situations there are a whole variety of legal exposures: road safety law, criminal law, safety law, there is the possibility of a coronial inquiry, there are insurance issues, injury, the transport



company’s clients banging on the door saying ‘where are the goods?’; there are a whole series of potential legal risks.

“What we say to industry is that what we can do is manage that for them. It doesn’t mean that we would necessarily handle every part of it.”

Hammond recalls a particular “Ballarat case”, where the driver was charged with no less than three separate counts of culpable driving.

“I received a call very early on, and called Delta-V Experts straight away. I sent one of my senior associates up there with Roger [Sanders] ... they were up there within two or three days.”

He explains the “psychology” of dealing with and collecting evidence, and points out because of a range of different factors police often miss evidence that could possibly result in charges being dropped.

Does it happen often?

“All the time,” he says quickly.

“The driver involved in this certain case was charged with two counts of culpable driving and in the end he was acquitted largely because of the work we did with Delta V Experts and the evidence we were able to secure very early on in the piece.” ■

