

The Importance of Dotting i's and Crossing t's in the Post-Accident Investigation

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A new leader of a client once asked me, "Lew, what can we do to help you do your job better?" Great question! Potentially scary answer; what do you tell the new guy? After a few moments, I came up with that as a transportation company, the client was great; but the company had other core businesses that it did not think about. It also was an information management company, and far too many times the information management side of the company created problems or exacerbated already problematic situations with missing records, inconsistent procedures, and lackadaisical retention.

Meeks v. Great America, LLC, 2017 IL App. (2d) 160655, is a reminder of what can happen when the data management side of the business exacerbates an already problematic situation. Meeks was injured while riding a waterslide owned by the defendant. Nobody knew exactly what went wrong, but the plaintiff suffered severe cuts to her hand and wrist while on the slide. During discovery her lawyer requested incident related information from the defendant. The defendant failed to produce accident reports and did not turn over the names of all of the witnesses during discovery. On the eve of trial, the defendant disclosed company generated incident reports and the names of company employees who previously had not been identified and according to the defendant could not be easily located at such a late date.

In response the plaintiff moved for a default judgment or, in the alternative, sanctions. The trial court concluded that the defendant's failure to disclose the witnesses and documents did not warrant default, but did permit the plaintiff to offer a modified version of Illinois' dreaded missing witness and evidence instruction. After the jury awarded a seven figure verdict for the plaintiff, the appellate court affirmed the decision finding it was not an abuse of discretion to instruct the jury that it may draw an inference adverse to the defendant because of the missing evidence and witnesses.

This case is yet another reminder of the critical importance of dotting i's and crossing t's. The transportation litigation landscape is littered with the carcasses of companies that endured adverse jury instructions or worse after courts determined that they failed to properly preserve information or identify witnesses. Before an event occurs, have a plan of what to do and how to do it,

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and after the event, follow it. Our attorneys routinely work with transportation companies on developing these best practices – dotting i's and crossing t's.

And that client I mentioned at the start of this note? A few months later he called and told me I brought up a good point. We were able to help him identify and improve areas where the operations side of the company could do better.

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