Indiana Court of Appeals Finds that Post-Accident Reports Do Not Constitute Subsequent Remedial Measures

By Codie J. Ross

In a matter of first impression, the Indiana Court of Appeals recently decided that a post-incident investigation is not an inadmissible subsequent remedial measure under Indiana Rule of Evidence 407.

In J.B. Hunt Transport, Inc., and Terry L. Brown, Jr. v. The Guardianship of Kristen Zak, 45A03-1506-CT-670, the Guardianship of Kristen Zak sued J.B. Hunt Transport Inc., its driver Terry Brown Jr., Kristen Zak’s boyfriend Matthew Robinson, the Indiana State Police, and others after the car in which Zak was traveling in with Robinson left a snowy roadway and struck a disabled J.B. Hunt tractor-trailer in the median of I-65 in January 2006. The accident left Zak with severe brain injuries.

After two mistrials, a jury found Hunt, Brown and Robinson negligent, apportioning fault of 30 percent, 30 percent and 40 percent respectively. Hunt and Brown appealed, raising numerous arguments. One of the appealed issues was whether the trial court erred by admitting reports generated following the trucking company’s review of the accident, as well as the deposition of Brown’s former supervisor. Brown was fired after the accident.

The appellants claimed the evidence constituted inadmissible subsequent remedial measures, barred by Indiana Evidence Rule 407. As there was no Indiana case directly on point, the Court of Appeals turned to other jurisdictions, who agree that post-incident investigations and reports of the investigations do not constitute subsequent remedial measures. Several federal and state jurisdictions were cited within the decision. For example, the 10th Circuit Court of Appeals found remedial measures are those actions taken to remedy any flaws or failures indicated by the test. Rocky Mountain Helicopters, Inc. v. Bell Helicopters Textron, 805 F. 2d 907, 918 (10th Cir. 1986).

The Indiana Court of Appeals also leaned heavily upon the reasoning offered by the Supreme Court of Alaska, which pointed out that subsequent measures are those actions taken that “would have reduced the likelihood of the accident if they had been taken previously, meaning before the accident.” Since an accident investigation cannot take place until after an accident occurs, such investigations “cannot be a measure that is excluded”. See City of Bethel v. Peters, 97 P. 3d 822 (Alaska 2004).

Analysis
In Indiana, defense objections are often made to the production of post-accident reports. However, those objections are often made under the argument that the reports were made in anticipation of litigation or as part of the insurer-insured privilege. See Richey v. Chappel, 594 N.E.2d 443 (Ind. 1992); Potts v. Williams, 746 N.E.2d 1000 (Ind. Ct. App. 2001). Even those objections fail depending upon when the post-accident reports were made. The Court of Appeals has now made it clear that using Indiana Evidence Rule 407 as a different avenue for excluding post-accident reports will not be allowed.

Keeping this recent decision in mind, these reports remain potentially discoverable material. It is important to ensure their contents are concise and objectively investigative in nature. If you have any questions regarding this recent decision or the impact of post-accident reports in Indiana, Ohio or Kentucky, please call one of our Trucking and Commercial Transportation Practice Group members.

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