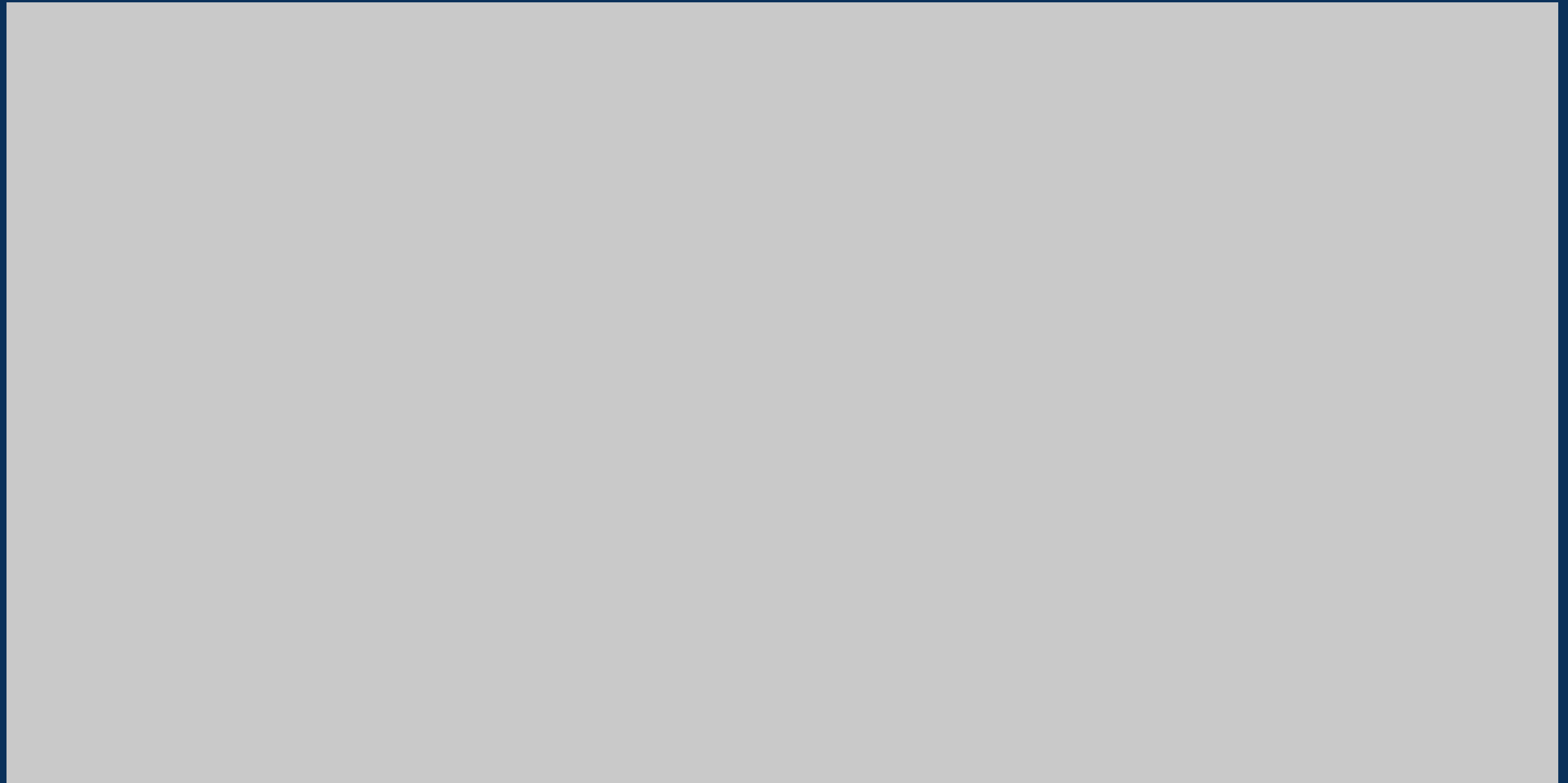




MACSC Accident Investigation

By: Andrew Spaulding, Esq. and
Brendon Saguil





Deal with the Emergency:

Medical Response

- Designated first responders at the project site?
- EMS?
- Local Emergency Rescue Squad?
- Law Enforcement?
- Fire Protection Personnel?



Deal with the Emergency:

Make the Accident Site Safe



- Isolate and Remedy Issue
 - i.e. turn off electric, turn off gas, support failed structures, etc.
- Limit the exposure of other employees/personnel to the accident site.
- **STOP WORK** at the scene of the accident.



Deal with the Emergency: Emergency Contacts

- Contact the emergency contacts of the employee(s) involved in the accident.
- **DO NOT** provide any information regarding the cause of the accident
- **DO NOT** place any blame on anyone for the accident.
- Provide the bare minimum information regarding the happening of the accident.

A circular graphic on the left side of the slide features several overlapping strips of yellow caution tape. The word "CAUTION" is printed in bold black letters on the tape, which is slightly out of focus and angled across the frame. The background of the slide is a solid dark blue.

Deal with the Emergency:

Secure the Accident Scene

- Isolate the accident scene.
- **DO NOT** allow anyone to enter the accident scene other than first responders or those investigating the accident.



Deal with the Emergency: Secure the Accident Scene

- Take vehicles or equipment related to the accident out of service.
 - Do not use again until further notice.
- Document the accident scene
 - i.e., photos, videos, measurements, etc.

This Machine is
OUT OF SERVICE
We apologize for
the inconvenience



Interactions with Police and OSHA

Occupational Safety
and Health Administration

STICK TO THE FACTS

- Only elicit information within your direct scope of knowledge.
- No guessing or opinions.
 - No “I think”, “maybe”, “I believe so”.
- If needed, call a supervisor.
 - A supervisor should be available for contact at all times.



Accident Investigation

- Appoint an accident investigation team or support the accident investigation team of counsel and/or the insurance carrier.
- Identify and record witnesses.
- Complete incident report forms.



Accident Investigation: Experts

- Experts will need to be retained to inspect the scene of the accident
 - Typically retained by counsel and/or insurance carrier.
- Types of Experts.
- Conversations with Experts.



Accident Investigation: Conversations with Experts

- There will be multiple experts.
- **ONLY** have substantive discussions with experts retained by your attorney and/or insurance carrier.
- With those experts be open, honest, and forthcoming.



Contact:

- Insurance Carriers (General Liability and Workers' Compensation).
- Put your insurance carrier on notice of the accident.
- They will likely send an investigator to the scene of the accident.
- Cooperate with your insurance carrier in its investigation.



Stick to the Policy

Post Accident Activity Must Conform to Policy:

- Reports, Statements, Testing, Discipline.
- Discrepancies hurt your defense.

Don't Be Afraid to Change Your Policy:

- Often outdated.
- Subjective components.
- Incongruent with other portions of policy.

Policy

A policy
rule t

Employee Witness Statements

If your policy does not require statements, DON'T TAKE THEM:
many pitfalls

If your policy does require statements:
1. Keep it simple
2. Change your policy

Take advantage of Attorney/Client Privilege
Engage counsel at the earliest opportunity



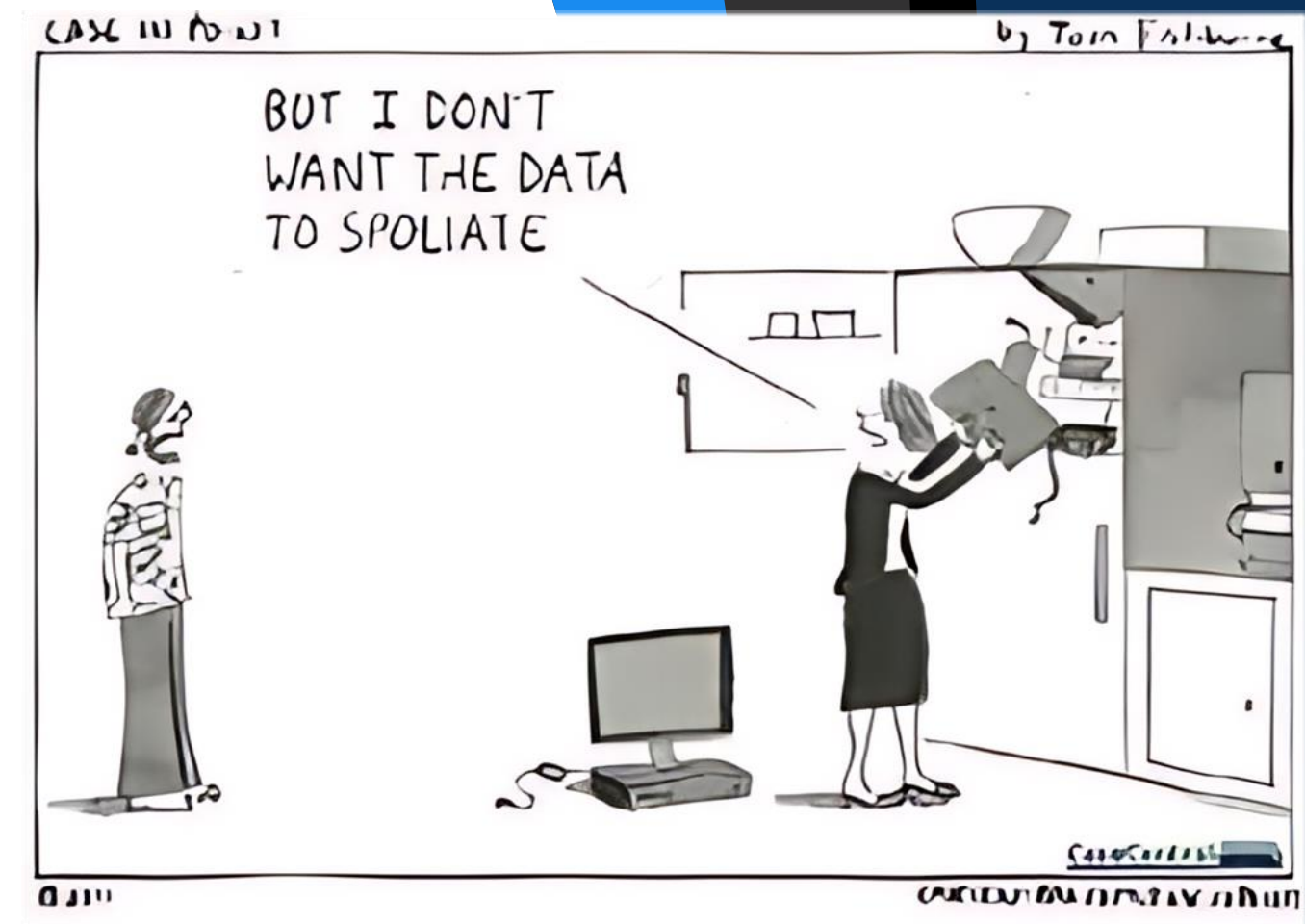






Avoid Spoilation: Preserve Evidence

- **DO NOT** discard any items, things, or other physical evidence that is in any way related to the accident.
- **DO NOT** delete any photos, videos, or digital evidence related to the accident.
- **DO NOT** destroy any documents, physical or digital.



Incident Reports: Completion of Accident Reports

- WE HATE THEM
- Why?
 - The impacts on liability.
 - No matter how accurate the report is, the company adopts the theory contained within the report.
 - Minimizes our avenues during litigation.
 - Limits potential “exit ramps”.



Incident Reports: Completion of Accident Reports



Follow

Follow your requirements under your contract and handbook



Avoid

Avoid opinions and conclusions



Engage

Engage counsel if necessary



Preserve

Preserve evidence

Incident Reports: Completion of Accident Reports

- Hasty.
- Non-Privileged.
- Details Matter.
 - *times, speeds, distances, etc.*
- Preventable/Non-Preventable
- Is it helpful?



Importance of Company Retention Policies

- With this information readily available to fleet managers, defined policies regarding retention become increasingly important.
- 30, 60, 90 days? Your company must decide what is best and most manageable for your needs.
- If a retention policy is in place, it should be strictly followed in order to avoid discovery discrepancies should litigation occur.
- Must also retain data in a way that protects privacy.



Why should a lawyer be the one to take statements?

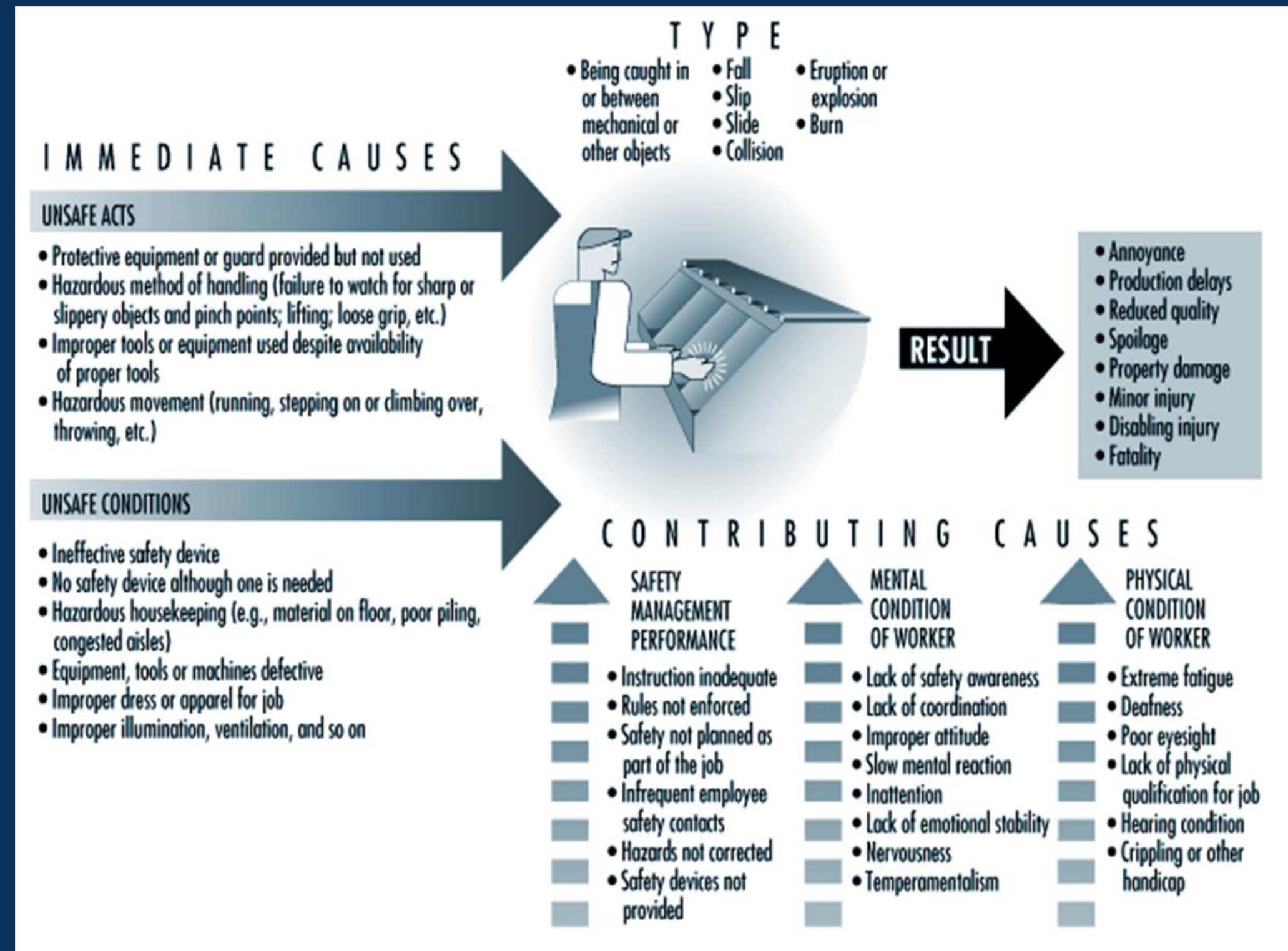
Attorney-Client Privilege: A legal privilege that works to keep communications between an attorney and their client secret. the privilege is asserted in the face of a legal demand for the communications, such as a discovery request or a demand that the lawyer testify under oath.

Work Product Doctrine: Protects materials prepared in anticipation of litigation from discovery by opposing counsel.



Root Cause/Risk Analysis

- Early in the process
 - We are not experts
- Strategic Importance - if privileged
- Accident Committe?
- Identify:
 - the root cause of the accident
 - parties who may be responsible



Document Collection

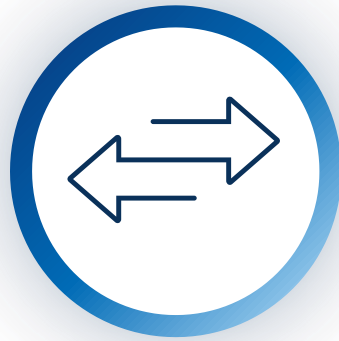
Easier now
than later

Identify
problem
documents

Evaluate
contracts

If you're not thinking
about spoliation,
documents could get
discarded:
Spoliation

Strategic Decision Making



**Risk Transfer
/ Tender
demands**



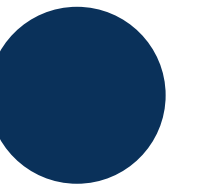
**Early
Negotiation**



**Early and
Informed
Strategic
Decision
Making**



**Identify Bad
Evidence**



Continuing Work at the Job Site

- Okay to continue work?
- Future precautions taken.
- Remedial measures.



Communications

- With owner.
- With subcontractors/vendors.
- With officials:
 - **DO NOT** provide any documents to any party, including governmental agencies, without discussing with counsel first.
- With other insurance carriers, brokers, adjustors, or investigators:
 - **DO NOT** provide any statements to anyone other than your attorney, your adjustor, or your investigator



Press Communications

- Appoint one spokesperson for the company to deal with all media communications, or have all media requests directed to the legal department/counsel handling the incident
- Provide **ONLY** known facts to media, **NOT** speculation
- Maintain a positive message about the company's role as a good corporate citizen that is working with all governmental agencies investigating the accident
- Demonstrate that the company is taking the accident seriously, is fully investigating the accident, and is doing all it can to ensure the accident will not re-occur.



OSHA Violations

- \$1.8M in federal penalties for Minnesota contractor for exposing works to trenching hazards for the fourth time since 2019
- \$180,000 in citations issued to New Jersey contractor that exposed workers to energized power lines
- \$484,401 in proposed OSHA penalties for a Pennsylvania dumpster manufacturer for exposing workers to widespread safety, health hazards
- \$82,149 in penalties for Oklahoma contractor after project manager's death in trench collapse



Thank You! Any Questions?

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M	S	McNulty
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