



## ANATOMY OF AN INCIDENT

It's an energetic, warm summer day. The wind is blowing through your hair as you stand outside the office and the final tour of the day has just taken off in the UTV to start their tour. This is somewhat of a glorious feeling as you reflect back on everything you have accomplished this summer. You have seen the highest number of participants than any previous year, alongside the most amazing staff! Just as those warm thoughts begin, you hear a very disturbing and chilling sentence come across the radio.

“ **Call 911! Call 911! A participant rolled over 30 feet down the bank.  
I am going down to them now, call 911!** ”

Just reading this creates a gut wrenching feeling, even if this frantic scenario has never happened to you. The question then becomes, what next? After medical attention is received, what is next? How do I document this incident? How much detail do I go into? All of these points are valid questions. In this article, we are going to talk about the **Anatomy of an Incident**. Not just **what** you do, but **how** you do it and even most importantly, **why** you do it.

### Medical Attention

First and foremost, the number one priority is getting the person the proper medical attention they need. A couple of hard and fast rules governing medical attention:

- An ambulance or professional medical attention should always be offered for **all** injuries. If they decline, have a section on your incident report that they initial testifying that they declined medical care.
- **NEVER** transport the participant yourself to the hospital or to medical care.
- If the participant is unconscious or cannot move themselves, be **VERY** careful about moving them. If they have head, neck, back or spinal pain then do **NOT** move the participant.

### Post Incident Follow-Up

Following up with the participant(s) to see how they are feeling, how the medical visit went, etc. is a highly suggested practice. It means something to people when you care about them and check-in on them. Document these conversations on the back of the incident report or even have a specific section dedicated to “Post Incident Follow-Up Notes” on your incident report. Make sure to date these conversations. If they ask about insurance and how it may pay for this event, please consult your agent or broker for specific advice regarding this.

### Who do I call first?

After an incident, if you work with an attorney, they should be the first person you call. The reason is, you can continue the “investigation under their direction” and all evidence will be secured under client-attorney privilege. If you have any questions about this, please consult with your attorney.

After that, your next call should be to your insurance agent (Hopefully Granite Insurance!).

## Documentation: Reports, Witnesses Statements, Photos

When completing all of the documentation and reports, keep the following fact in perspective. It may be two or even six years (depending on the state) before you are served with papers naming you in a lawsuit. This is intentional from the opposing attorney! They will wait until the last several days before the statute of limitations expires hoping that with the years that have passed since the incident, staff involved are no longer there, nobody remembers the details of the incident, you may have lost the waiver, etc. That being said, all of these reports, witness statements and photos that are taken should be created in such detail that the incident could be replayed from these documents six years later.

**Incident Reports:** The incident report should be **FACTUAL**. Do not ask any opinionated questions or accusatory questions (i.e. what could have prevented this accident from happening?). Incident reports are not the place to address fixing the causation of the issue. Simple questions: Who? What? When? Where? That's it!

Only managers and higher level than manager staff should be completing incident reports. Typically these level of team members understand the long term effects of what they write on an incident report. I would suggest an annual training facilitated by your agent or broker regarding "Dos and Don'ts of Incidents/Incident Reporting" for all of your management staff.

**Other Reports:** Go ahead and collect the following reports after the incident and put them in your file for this incident.

- If a vehicle is involved, most recent maintenance records
- If equipment is involved, most recent equipment log
- Daily Inspection Log (from the day of the incident)
- Training Logs for the Employees Involved in the Incident

**Witness Statements:** Collect 2+ witness statements from guides/managers involved in the incident and 2+ witness statements from participants that witnessed the incident (that are NOT part of the family/friends the injured participant came with). The following information is all that should be included and nothing more:

- Name
- Contact Info (phone, address and email)
- Please describe how you witness the incident, in as much detail as possible
- Signature
- Date

**NEVER** ask the witness, who is a novice to the industry, what they feel like the causation of the accident was. Let's leave this up to the experts!

**Photos:** Having to recreate the accident two or even six years later is a difficult task. Especially if the guides, employees or managers that were part of the accident are no longer employed by the organization. Photos make this a lot easier! Here are the items you should take photos of:

- General area where the incident occurred
- Equipment. Photograph all equipment that was involved in the incident
- Participant rules and procedures that are posted. This is to document that these were in place the date of the incident

## Preserving Equipment and Evidence

All equipment that is involved in the incident should be retired and tagged ‘DO NOT USE. EVIDENCE.’ until further directed by your attorney. If you put this equipment back into circulation before being directed to do so, or before the opposing attorney has the chance to inspect the equipment then you could be accused of “destruction of evidence”.

**If an inspection is going to be done on a particular piece of equipment to see if it was functioning properly, always use a third party inspection company other than the manufacturer.**

If the manufacturer is inspecting their own equipment, and they know an incident has happened, the chances of them admitting product failure is very slim!

## The Legal Battle

Keep in mind that this whole process and legal battle could take place over many years. Some cases have been on-going for more than six years. That being said, don’t let the process emotionally drain you. Accept that this will be a long process, stay focused on your company and leave the legal battle and administration of the legal battle to the claims professionals and attorneys.

The process for the legal battle can take many shapes and forms, however here are some very common steps that it may take:

- 1. Initial Settlement Attempt.** Most likely you will not first be notified with a legal suit. A settlement attempt will be offered prior to filing the suit. Please keep in mind that all settlement attempts should be handled by your insurance company! Not allowing them to do so could breach and void your entire insurance contract and coverage.
- 2. Attorney Selection.** While the insurance company does assign your legal counsel, you can have some input in this. I would recommend working with an attorney that has experience in this industry and understands what the word zipline and ACCT means. If your agent specializes in this industry, they should be able to help guide you to an attorney that has defended several cases in this industry.
- 3. Suit.** If the settlement attempt is unsuccessful or the insurance company does not think the incident warrants the requested settlement, the injured participant will file suit or it may simply go away. If the injured participant decides to move towards a suit will be “served” and have a certain number of days to respond. Since you only have a certain number of days to respond, it is very important and time sensitive that you get your insurance company a copy of the suit ASAP!
- 4. Discovery.** Once the response has been filed, the initial phases of discovery happen. This is when all your dirty laundry gets aired out! They may request incident reports, training logs, prior incident reports, inspections, resumes, etc. The GREAT thing is you collected all this information several years ago, because you read this article and followed the above steps. All the information they are requesting is ready to go, in its original form and you don’t have to recall this information from memory.
- 5. Judgment/Settlement/Verdict.** The process will continue of turning over evidence, depositions, mediations, expert witnesses and studies, etc. until both parties (and/or jurors) can agree on whether the company was negligent for the incident. If so, how much at fault? Keep in mind, many cases will involve multiple parties (operator, builder, and mfg.) and assigning at-fault percentages may be part of this process.

As you can see, the Anatomy of an Incident is a very complicated process! However, doing the steps and processes correctly in the first several steps (documentation, reports and evidence) is key to a successful outcome. As Abraham Lincoln stated, “Give me six hours to chop down a tree and I will spend the first four sharpening the axe.”