

Apologies in the Face of Tragedy

In dealing with parents after the severe injury or death of their child, sympathy and continued contact are important in helping the family work through the emotional trauma. The law is evolving around the country on the legal effect of apologies. For many years in many states, expressions of sympathy were viewed as admissions of fault. This is changing, so long as the apology does not admit fault. For instance, under a law enacted in 2000 in California, the statement “I’m so sorry you are hurt” now carries no implication of responsibility in California courts. However, “I’m sorry I hurt you” would be admissible as evidence. Several other states have passed similar laws, and other courts have adopted this principle without specific legislation.

An excellent practice prior to a parent mediation following a severe injury or death is to talk with a psychologist as well as your attorney. The psychologist can advise you on well-intentioned—yet imprudent—statements that could inflame the family, such as “I know just how you feel.”

Conservative legal advice may in some cases be correct, but communicating compassion to the family is an important aspect in their recovery. If you feel your attorney is being too conservative by not allowing school administrators to talk with the family, talk with your insurance company about how to establish a compromise with the attorney. The message “we care,” delivered through both words and actions, is one of the great risk management tools.

If you have a safety or risk management question or a suggestion for a topic, please contact Markel's Risk Management Department at safety1st@markelcorp.com.