

Identifying, Investigating, and Resolving Third Party Claims

A Plaintiff Attorney's Perspective

Identification of 3rd Party Claims and Early Investigation

Importance of Recognizing Third Party Claims

- Claimant/Plaintiff;
- Employer;
- Carrier.

What Should an
Employer/Carrier Do?

1. Investigate

Investigate and Document

- Employer/Carrier usually have immediate knowledge of an accident;
- Employer often owns the vehicle, product, machinery, or property where accident occurred;
- Employer in best position to gather, document, and retain potentially relevant evidence;
- Carrier should have knowledge and experience in claims investigation;

Think Like a Plaintiff's Attorney!

- Hire necessary experts;
- In significant motor vehicle accidents or other types of cases where WC exposure is high;
- **CHOOSE EXPERTS WHO DO PLAINTIFF'S WORK!!!**
- If Claimant already has an attorney, coordinate choosing an expert and sharing costs.

What Should Carrier/Expert Do?

- Photograph/video/document scene of accident;
- Document and preserve condition of any machines, products, vehicles;
- If MVA, collect and retain all service/repair records for vehicle involved;
- Get statements from ALL witnesses, not just co-workers

Thinking Outside the Box – Identifying Unusual Third Party Claims

1. Motor Vehicle Related Claims

Heavy Truck Claims

- Consider any time a commercial truck driver has an accident;
- Even if only a one car accident;
- Even if driver may have contributed.

Heavy Truck Product Defect Theories

- PCFFF;
- Crashworthiness;
 - Rollover/roof crush;
 - Occupant compartment intrusion;
 - Lack of emergency egress
- Seat design and restraint system;
- Underride

PCFFF



PCFFF Defect Theories

- Tank rupture – too big, too weak;
- Line failure – unprotected, poor materials;
- Leaf spring failure – too close, not wrapped
- Hostile Environment – tanks close to ignition source or sharp components

Rollover/Roof Crush



- Can occur with just $\frac{1}{4}$ or $\frac{1}{2}$ roll.

Occupant Compartment Intrusion



Underride



Vehicle Defect Claims

Potential Automotive Defects

- Rollover/roof crush (usually an SUV);
- PCFFF
- Seat or Restraint Defect;
- Crashworthiness;
- Tire Failure;
- Airbag Defect (failure to deploy; aggressive/premature deployment);
- Sudden unintended acceleration

Roof Crush



Rollover



Seat Defect

Restraint Defect

- Spoolout;
- Inertial unlatching;
- False latch;

Tire Failure



Tire Claims

- Tread/belt separation;
- Tire aging;
- Tire Misplacement;
- Valve stem defects.

PCFFF



Aftermarket Rims



- Cast aluminum
v.
Forged
Aluminum

SUA

Airbag Cases

- Failure to Deploy;
- Aggressive/premature deployment;
- Lack of side curtains;
- Lack of canopy airbags

Other Potential Defects

- Lack of ESC;
- Glazing;
- Park to Reverse;
- Door unlatching.

Industrial/Plant Defects

Stored Energy



Manufacturers of Construction Components/Subcontractors



- Defect Claim Against Manufacturer of Bridge Component;
- Negligence Claim Against Subcontractor Crane Company

Manufacturers of Construction Components/Subcontractors



11.01.2007 1



Machine Guarding



Other Potential Claims

Negligent Security



Negligent Installation



3rd Party Logistics Companies

- Manufacturing businesses often hire third party logistics companies to handle warehouse/forklift operations;
- If a forklift or other injury occurs in an employer's plant, see if they were employees of third party company.

Premises Liability Claims

- If Claimant is a delivery driver;
- If Claimant is injured on someone else's property;

Resolving WC Liens

Take a Long Term View

- Choosing defense IME;
- Timing or conducting of surveillance;
- Cutting off medical treatment;
- Employer speaking poorly about Claimant.

Plaintiff Attorney's Perspective

- I want any reason I can to justify a reduced repayment of lien;
- Fault on part of employer in causing injury;
- Employer/Carriers contribution to 3rd party defense;
- This won't decrease Claimant's total cognizable damages, but will provide justification for need to settle third party case for a lesser amount.