# Identifying, Investigating, and Resolving Third Party Claims

A Plaintiff Attorney's Perspective

Identification of 3<sup>rd</sup> 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 coworkers

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** 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**



## <u>Underride</u>



#### 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





## **Restraint Defect**

• Spoolout;

• Inertial unlatching;

• False latch;







# **Tire Claims**

• Tread/belt separation;

- Tire aging;
- Tire Misplacement;

• Valve stem defects.





## 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



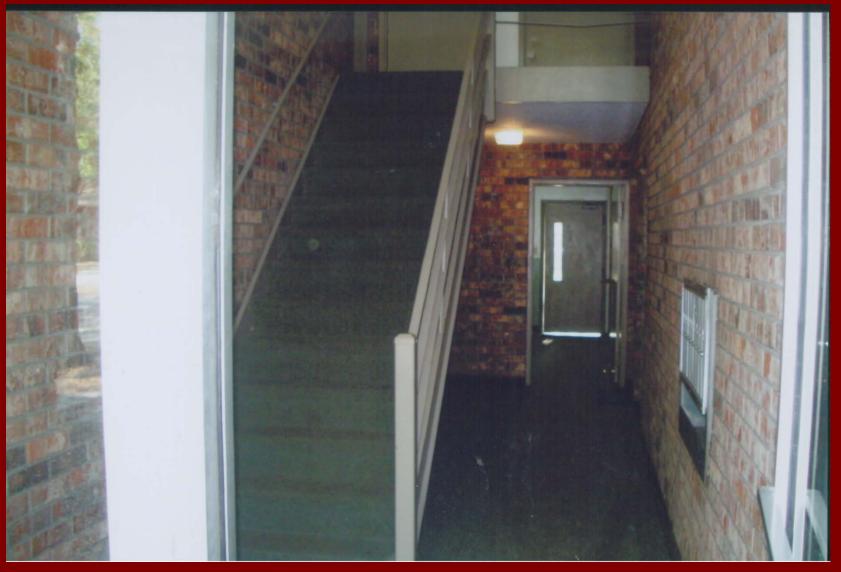


## Machine Guarding



#### Other Potential Claims

# **Negligent Security**



# **Negligent Installation**



# 3<sup>rd</sup> 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 3<sup>rd</sup> 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.