

# 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 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



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# 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.