

THIRD PARTY LAWSUITS PROMOTE WORKPLACE SAFETY

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Because of the Workers' Compensation Act, injured workers cannot sue their employers, no matter how severe the injuries or how unsafe the working conditions. Injured workers can, however, potentially sue any other company which may have contributed to causing their accident. These lawsuits can not only provide desperately needed financial resources to injured workers and their families, but also promote workplace safety, through re-design of unsafe products, changes in work practices and improved training.

Because of the intense (and inaccurate) propaganda campaign mounted by the insurance industry, the public has become more biased against lawsuits. Many union members are sceptical of injured workers who file a lawsuit; the members may feel reluctant to provide crucial aid in the investigation and development of the claim. Supporting the work of a lawsuit, however, both helps the union brother or sister and helps prevent the same type of accident from happening again. A goal of every "third party" lawsuit should be workplace safety. Here are some real life examples:

Cutting Torch Flashback: Greg took great pride in his skill in using a cutting torch to disassemble truck bodies for parts; he could cut the metal without any metal damage or distortion. One Saturday morning, just as he lit his oxygen-propane torch, a fireball erupted from the rubber hoses entering the torch handle, setting Greg's clothing on fire.

As happens scores of times every year, the flame from the tip of the torch had "flashed-back", traveling up through the torch and burning through the rubber hoses. A simple device, known as a "flashback arrestor", would have safely extinguished the flame inside the torch. The torch manufacturer, however, offered the arrestor only as an "option". Greg sued the manufacturer, arguing that safety should not be an option. Armed with the long (and ignored) history of prior flashbacks, Greg was able to force a settlement of his case. The manufacturer then immediately began re-designing its torches so they would all have built-in flashback arrestors.

Missed Pressure Vessel Inspections: At Workers' Memorial Day, the crowd listened to Roxanne tearfully describe how her husband, Dave, was fatally burned when the built up pressure of scalding water ripped open a large pressure vessel that was part of a steel mill's boiler system. Unqualified welders working for the steel mill (who were immune from any lawsuit) had defectively welded a manway into the vessel. The defects, as well as the absence of a pressure relief valve, should have been detected and the vessel should have been condemned by the Boiler Inspection Company during their annual inspections.

To encourage the settlement of her lawsuit against the Boiler Inspection Company, a videotape mini-documentary was prepared in which Roxanne could talk about the loss of her husband and safety experts could explain all of the Inspection Company's failures. The Inspection Company was not only persuaded to settle Roxanne's claims, but also got her permission to use the videotape as a training tool for all of its inspectors, so the inspectors could understand the real life consequences of their work.

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Forklift Under-ride: As Mark pulled back from a load he had just placed with his forklift, he felt a pressure on his back. A steel shelving support was just high enough to pass over the main housing of the stand-up forklift and was low enough to be under the over head protection. As the forklift drifted back, the shelving support pushed Mark forward, pressing his chest against the controls and preventing him from operating the forklift. With the air pushed from his lungs, Mark couldn't yell for help and slowly suffocated to death.

Mark was more than the five hundredth documented case of a worker being injured or killed in a forklift "under-ride". The manufacturer not only had refused to add a metal post at the rear of the operator compartment that would have protected the driver, but also had destroyed records of prior under-ride accidents as part of its "document retention" program. In Mark's family's lawsuit, the Court was appalled by the manufacturer's conduct and allowed the family to seek punitive damages. The case promptly settled and the next fleet of forklifts from this manufacturer all had the protective metal post.

Stove Tip-overs: Product liability suits promote consumer safety as well as workplace safety. In only the briefest moment that it takes an active five year old to slip into the kitchen, Abraham tried to help by getting his own food off the stove. He opened the stove door and stepped up on it for a better reach. The stove tipped over, toppling a pot of boiling water onto his groin and thighs.

Tragically, every year hundreds of children and the elderly are injured or killed when they place weight on an open stove door, not knowing that only about 35 pounds of weight on the outer edge can tip over even a large stove. The Consumer Product Safety Commission and the appliance manufacturer trade association have ignored more than three decades of children being either burned by falling pots of scalding food or crushed to death when they are caught between the falling stove and door. Lawsuits have prompted local communities to pass local laws requiring that stoves be anchored to the floor with an "anti-tipover bracket" and manufacturers to place warnings on the front and back of stoves and to patent new designs that will prevent tipovers.

What you can do: Union members can support their injured brother or sister, and work to prevent the occurrence of similar future accidents by:

- Making sure that the accident scene for any serious accident is photographed and that any product involved in the accident is saved in a secure place;
- Supporting the injured worker in the decision to consult with a lawyer experienced in representing injured workers in third party cases;
- Responding cooperatively to requests from the lawyer to help the injured worker by obtaining information, providing information about the accident, and, if necessary, serving as a witness.

For any further information regarding this article, feel free to contact Marty Brigham, who was lead trial attorney in the cases described, at: mkbrigham@raynesmccarty.com