

Presented by Sullivan and Associates, LLC

**PRODUCT LIABILITY
SEMINAR**

Introduction

By reviewing an actual products liability case, participants will receive a summary of the common theories of liability, how thorough pre and post litigation investigation together with the application of mechanical engineering concepts and learn how such information can benefit the defense during trial.

- Identifying Significant Issues in Products Liability Claims
- Reviewing a Summary of Mechanical Engineering Concepts
- Reviewing a Summary of Products Liability Theories of Liability
- Learning How to Apply the Benefits of Good Pre and Post Litigation Investigation to Mechanical Engineering Concepts and Theories of Liability in Defending Products Liability Claims

Facts of The Case

- Plaintiff is a 25 year old laborer working for a snow removal company
- Plaintiff while oiling the chain and sprocket system to a commercial sanding unit catches his clothing on a sprocket, is pulled into the sander and is severely injured
- Defendant XYZ Company designed the commercial sanding unit with various engineering safety features, but not a physical guard at the point of operation
- Plaintiff's theory of liability is design defect alleging the product was unreasonably dangerous because it did not have a physical guard at the point of operation
- Defendant maintains product was designed with "guarding by location" sufficient
- Defendant also asserts product was altered and misused by the plaintiff on the day of the accident



Theories of Liability For Defective Claims

- Negligence
- Breach of warranty
- Failure to warn/
Duty to warn



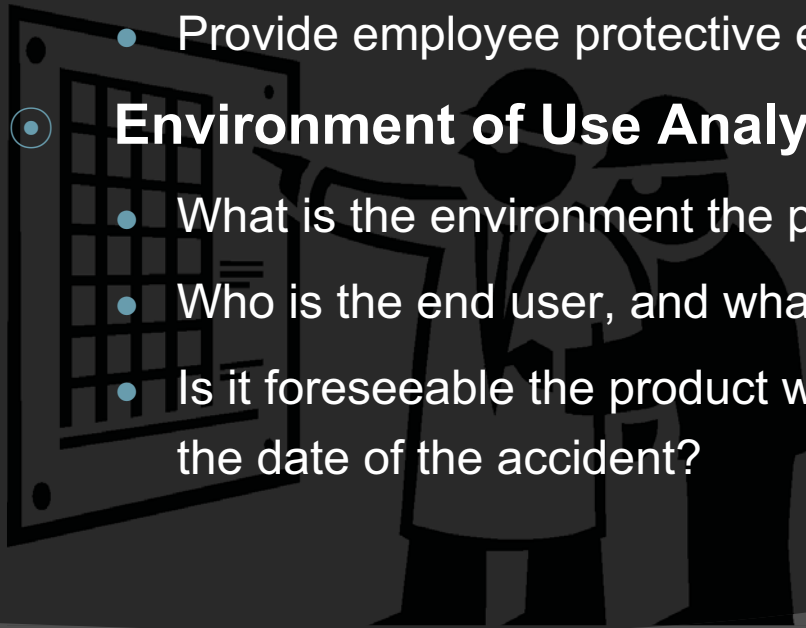
Product Design Issues

● Safety Hierarchy Analysis

- Eliminate hazards by designing out known hazards
- Reduce risks by guarding against known hazards
- Warn end users of hazards
- Apply administrative controls through training; and
- Provide employee protective equipment

● Environment of Use Analysis

- What is the environment the product will be used in ?
- Who is the end user, and what experience have they had with the product ?
- Is it foreseeable the product was used in the manner the plaintiff used it on the date of the accident?



Early Identification and Evaluation of the Design Strengths of the Product

- How long has the product design been in use;
- Has any government agency approved or reviewed the design to be incorporated into any government program;
- Is the product designed in compliance with government or industry standards;
- Is the product design used by competitors in the industry;
- Does the defendant with this product have a good track record of little or no:
 - *Complaints*
 - *Accidents*
 - *Lawsuits*



Early Identification and Evaluation of the Potential Negatives of the Design Process



- Failure to identify known hazards
- Failure to guard against known hazards
- Failure to warn against known hazards
- Failure to properly train and instruct employees on use of machine regarding known hazards
- Has the product been the subject of any recalls (voluntary or involuntary?)

Pre-litigation - Plaintiff Vs. XYZ Corp

- Equipment
- The Plaintiff
- The Event/Accident

Equipment

- ⦿ Maintenance of Product and Preventative Maintenance Programs
- ⦿ Interviewing the insured
 - Significance of 4" set back is discovered during communications with insured
 - Photos of equipment as delivered to customer at point of sale; and
 - Help identify altered product / change in design at early stage of Investigation
 - Photographs of working products of similar make and model
 - Compare safety features to competitors
 - Compare lack of safety features (guards) to competitors; and
 - Compare other safety design features (barriers, interlocks, shields, hand controls; foot pedal controls, gravity mats, locks, etc)





Unguarded nip-point

The Plaintiff

- **Statements:**
 - Plaintiff
 - Plaintiff employer
 - Police / Fire / EMT
 - OSHA; and
 - Independent witnesses
- **Medical records:**
 - Plaintiff counsel produced in demand
 - HIPAA authorizations; and
 - IME
- **Index check for past claims**
- **Witness statements**
 - Attached to Police / Fire / OSHA reports
 - Recorded Statements and statements obtained by private investigators



The Event

A description of the Accident

- ⦿ Demand Letter (surprising admissions on occasion)
- ⦿ Plaintiff Statement (rare)
- ⦿ Photographs (compare to product for alteration)
- ⦿ Police report (compare to plaintiff position for inaccuracies)
- ⦿ OSHA report (compare to plaintiff position for inaccuracies)
- ⦿ Communications (outside of litigation dynamic)
 - Emails
 - Facebook
 - Website (example: plaintiff selling life story)

Litigation

- Subpoena – Continuing Discovery
- Retaining Expert Witness
- Inspection of the Product



Conclusion

Product liability cases can be difficult to defend, even in cases where the product is defective and the Plaintiff can establish a breach of warranty. Don't give up. In these circumstances, causation (or the lack of causation) can be a defendant's/insurance company's best friend. A thorough evaluation of all the facts will allow for a determination of which cases should be settled and which should be litigated to trial.