

Ten Winning Ways to Enhance Product Liability Investigations

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Product liability investigations are no piece of cake. It's not some careless driver one must go up against. It's almost always a sophisticated, well-financed manufacturer who has probably already been the target of many ill-prepared plaintiffs attorneys. The most common mistake is forgetting about the basics of a thorough investigation.

Whether a staff member of a law firm or an expert investigator, it's the attorney's job to ensure the field investigator doesn't overlook the following ten strategies:

1. Maintain complete control of the defective product. Without the product, there may be no case. For the sake of this article, let's assume the product is an automobile. It's vital that the investigator immediately place the vehicle in secure storage. And they shouldn't just let it off to the first tow truck driver who comes along. The investigator should make certain not to damage or lose vital evidence during the transportation process. Videotape and photograph the entire process. It's important the storage facility keeps copious records if anyone else should have access to or permission to inspect the vehicle. The log should include the name of the person given access, the reason for the access, the date and precise time of the access or inspection and the manner in which the person inspected the vehicle.
2. The field investigator shouldn't tip his or her hand by leaving behind any investigative clues. The more pictures the investigator takes, the better the chances of winning. But if the investigator uses a Polaroid camera and carelessly leaves behind the negatives, there could be trouble. It's not difficult for the other side to find them, make original prints from them and learn the areas upon which the investigation might be focusing.
3. The investigator should carefully inspect the product. Sure, someone is going to take photographs, but they should first use their own eyes. They should look at it under different light conditions. They should write down what they saw. And they should go beyond just the visual; they should use the other senses. The investigator should carefully touch the product to find flaws, indentations, changes in material, bulges, creases or wetness. And they shouldn't forget to use the nose to smell for any telltale substances that might have leaked or parts that might have burned or overheated. And they should listen. They should tap things to see if they're hollow, solid or if things are loose on the inside.
4. The investigator should take tons of photos and video. Just taking a few snapshots will not do. The investigator should take still photos and videotape to tell the story of the dynamics of the accident or product failure and how it caused the injury. The visual depiction should speak for itself and tell the story of the event. The investigator should be certain that the photos, the negatives and the video are stored in a secure place that is far from extreme heat or cold. It's always a good idea to make several prints of each shot and to make a dub of any video that's shot. In the case of an outside investigator, the lawyer should ask him or her about pictures, film or video for which they might not have billed.
5. The investigator should take a walk in the victim's shoes. Ultimately, counsel should be able to describe the second-by-second experience of the victim. If someone doesn't put on his shoes, wear his glasses and get into his state of mind, the case could lose vital perspective. This is where the interview is so crucial. The investigator should use open-ended questions and encourage the victim to provide as much detail as possible. He or she should remember to ask the victim about more than sights. And he or she should remember to ask about things he felt, heard, smelled and imagined.

6. A good investigator will canvass the scene for witnesses. There are always more people around than the victim might have imagined. Who was driving or walking by? Who might have been looking out the windows of their homes or businesses? What cameras might have been taping the scene or somewhere near the scene? Who is regularly scheduled to be in that area? When the investigator finds witnesses, he or she should treat them with respect and courtesy. If they haven't already talked to the other side, chances are they will. It's important that the first impression be a positive one. The investigator should go so far as to take their pictures and ask them who else might know something. And, of course, the investigator should make sure to write down every possible way of finding them in the future. It's not a bad idea to ask for the phone number of someone who would always know where they are. And the field investigator should think about others who might have been on the scene but not reported their observations: the tow truck driver, a traffic officer, medical rescue personnel, etc.

7. The investigator should return to the scene of the product failure. A good investigator will return to the scene at the same hour as the product failure on the same day of the week. The bold ones have been known to wear sandwich signs reading "Did you see that accident here last Wednesday night?" Others approach people walking by or even chat with drivers who have stopped at signals. Some post and distribute fliers. It's amazing how many people witnessed something but didn't want to get involved at the time. Most people have a good conscience that will command them to openly answer an investigator's questions.

8. The investigator should take the time to carefully inspect the scene of the product failure. There is nothing that he or she will see that isn't a potential clue. The investigator should try to account for how everything got where it is. If it's out of place, they should make note of it. They should take small items back to the office after photographing their locations. What doesn't make sense today might emerge as the key piece of evidence tomorrow.

9. The attorney needs to communicate with the investigator. Too often, attorneys don't provide the investigator with all the detail available. The assumption is the investigator is a professional, so the attorney should trust him or her to be able to interpret all the information on hand.

10. If a law firm has hired an outside investigator, someone close to the case should study his or her invoice very carefully. It will often reveal more about what he or she did than what the report depicted. The invoice will include things the investigator might not have thought were relevant. He or she might just have the very thing the attorney thinks are missing and it's spelled out on the invoice.

This is only a beginning. Produce liability cases are complex and complicated. Too often it's the basics someone overlooks. Even on a limited budget, an experienced, professional investigator can greatly increase the chances of victory if they follow these steps.