

Construction Site Accident Claims: Complicated and a Malpractice Trap for Clueless Attorneys.

By Christopher Russell

Construction site accidents where serious injuries are sustained are chalk full of unseen complications and insurance crossover issues. To the new attorney or even seasoned attorney who do not have the experience in handling hundreds of these types of claims as my firm has handled, it is a legal malpractice trap waiting to take place.

Let me explain. When someone is hurt on a construction site many times the injuries are serious due to the nature of the construction business. Typically workers are standing on newly built, unstable platforms or they are working with heavy machinery or are elevated off the ground to where if they fall, the injury sustained is going to need more than just a Band-Aid.

The first claim that should be asserted when someone is hurt on a construction site is a Workers Compensation claim. The [Workers Compensation](#) carrier is supposed to pay for medical treatment and 60% of the pay being earned prior to the injury. (Whether they actually pay what they are supposed to pay is a fight in of itself and the subject of another upcoming blog.) In the world of personal injury claims, attorneys handle either workers compensation claims or "third party" claims (when someone other than yourself outside of your employer causes the accident). Russell & Lazarus is one of the few law firms of which I am aware that actually has the ability to handle both types of claims simultaneously which is very important in coordinating medical treatment and the eventual resolution of all potential claims.

Secondary claims that can be asserted but that are missed by many attorneys handling only the workers compensation claim are claims against sub-contractors, the general contractor and product liability claims. There are significant limitations in pursuing a claim against the general contractor as is outlined in the [Privette vs. Superior Court](#) case but claims can and should be pursued via creative pleading of the lawsuit.

A classic example of a claim that can be pursued on multiple fronts is a recent claim that came into my office wherein the client was severely injured when an industrial shredding machine malfunctioning on a construction site amputated his arm above the elbow. That claim will involve a Workers Compensation claim, a claim against the manufacturer of the shredding machine and a claim against the electrician who installed the machine. There may be other parties brought into the lawsuit that will be filed.

It is important to file the lawsuit early on to determine what other theories of recovery can be pursued. The big mistake many law firms make is waiting to file the lawsuit until the 2-year statute of limitations is upon them. If they wait that long, many times other parties that could have been named as defendants can no longer be brought into the action because the statute of limitations will have expired.

My next post will deal with how the above claims are coordinated since "coordination of claims" is sometimes the most significant issue that needs to be addressed in relation to what the injured pocket sees going into his or her pocket. This is because the Workers Compensation carrier, under most circumstances, is entitled to be reimbursed all of the money it has spent on the claim before the injured worker sees dime one from other insurance carriers which may also be involved in the claim. There are creative ways to not have to pay anything back to the workers Compensation Carrier, but that will be part of the discussion in my next post.

Christopher E. Russell is a compassionate, personal injury lawyer His firm, Russell & Lazarus, APC, represents victims throughout Orange County, Los Angeles County, Riverside County, and San Bernadino County. If you or a loved one has been injured in an accident, contact Russell & Lazarus for a free consultation 800.268.9228 / <mailto:info@lawrussell.com>