



Gallivan, White & Boyd, P.A.  
ATTORNEYS AT LAW

# Product Liability Claim Checklist

If your product, or one of your insured's products, is involved in an incident in which there is property damage, personal injury, or death, early action is imperative. This is true regardless of whether there are known allegations of a product defect at that time. Plaintiffs often wait years to file lawsuits, and while they spend that time gathering evidence to support their claim, manufacturers and other potential defendants often sit idly by while evidence favorable to their future defense disappears.

Recollections fade, photos are lost, and employees leave the company. Further, a lack of control over information related to the incident could result in errant statements by employees who do not fully grasp the facts of the incident. When used by plaintiff's counsel out of context, these ill-advised statements often become quite damaging at trial.

In sum, the defense of a product liability lawsuit can hinge upon what action is taken in the days following an incident. The following is a checklist that can be used to properly protect your interests in the event that one of your products was involved in an incident:

- If applicable, notify any insurance carriers.
- Preserve any newspaper articles, social media, or other information about the incident.
- To the extent possible, statements to media outlets should be avoided. If the company decides to issue a statement, counsel should be consulted before any statements are issued.
- Dispatch a qualified expert to the scene of the incident to take photographs and otherwise insure that evidence is preserved to the extent possible.
- Establish a point of contact with emergency personnel and request copies of any photographs, reports, or other records generated with respect to the incident.
- Issue a company wide litigation hold notice that also clearly informs employees that they should not speak with anyone about the incident unless counsel is present. The notice should also explain that under no circumstances should anyone post any information related to the incident on any social media sites.
- Determine to which government agencies (OSHA, EPA, etc.), if any, the incident should be reported. Determine whether a product recall is necessary.
- Determine whether any third parties could be responsible for the incident (manufacturers of components, etc.).
- Notify any known potential plaintiffs and/or potentially responsible third-parties before conducting any destructive testing or investigation of evidence.
- Even if suit has not been filed, counsel should help employees prepare for any site visits, depositions, interviews, etc. and should be the point of contact with any third parties related to the incident. Any events involving third-parties related to the incident should be scheduled through counsel.
- To the extent possible, counsel should be copied on any correspondence (including email) about the incident.

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## EXPERIENCE

- Ranked as the #1 law firm in Greenville for Products Liability Litigation by Best Lawyers in America.
- Nine products liability team attorneys are listed in Best Lawyers in America.
- Six products liability team attorneys are recognized as South Carolina Super Lawyers.
- The team provides its clients with an Emergency Response Contact Sheet which contains the work, home and cellular telephone numbers of each team member.
- The GWB product liability Abnormal Use blog has been listed as one of the ABA Journal's Blawg 100 three years in a row.

## EMERGENCY RESPONSE

Members of the Products Liability Team are called upon at all hours and stand ready to assist the firm's product liability clients in the event of a product-related emergency or catastrophic event. For example, members of GWB's Products Liability Team served as lead counsel in the emergency response, post-accident investigation, and claims handling of a massive boiler explosion that resulted in catastrophic personal injury and property damage. Team members were on-site within hours of the explosion and were involved in advising the client and directing aspects of the emergency response.

GWB understands the importance of collecting information and evidence as soon as possible following an incident. The team provides its clients with an Emergency Response Contact Sheet which contains the work, home and cellular telephone numbers of each team member in order to better serve the GWB's products liability clients.

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