

Super Sleuths:

Tips and Tricks for
Claim Handling and Investigation

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- Commercial Litigation
- First-Party Property Coverage
- Premises Liability



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Overview

- I. Tools for a Thorough and Ethical Claims Investigation in First-Party Claims
- II. Ethical Investigations in Personal Injury Liability Claims and Litigation

Tools for a Thorough and Ethical Claims Investigation in First-Party Claims

First-Party Claims: General

Speaking to counsel

First-Party Claims: Anticipation of Litigation

- Anticipation of litigation
- *Pleasant Grove Missionary Baptist Church v. State Farm Fire & Casualty Company*
 - “The general rule for determining whether a document can be said to have been ‘prepared in anticipation of litigation’ is whether the document can fairly be said to have been prepared or obtained because of the prospect of litigation[] . . . (and not) in the regular course of business.
 - “. . . the probability of litigating the claim is substantial and imminent . . .”

First-Party Claims: Anticipation of Litigation

- Anticipation of litigation
- Work product



First-Party Claims: Claims Notes

DOs

- **Do** document the basis of the conclusion
- **Do** diary the claim
- **Do** maintain objectivity in notes
- **Do** involve an attorney early if you believe there is a need to protect the file



First-Party Claims: Claims Notes

DON'T

- ***Don't*** make conclusory statements prematurely
- ***Don't*** ignore claim handling procedures
- ***Don't*** express claim notes as "us v. them"



First-Party Claims: Specific Examples

Consider:

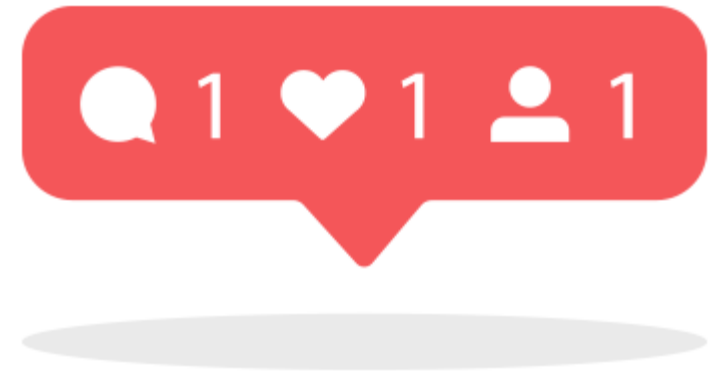
- Recorded statements of insured/ additional insureds
- Witness interviews
- Photographs
- Security camera footage



First-Party Claims: Specific Examples

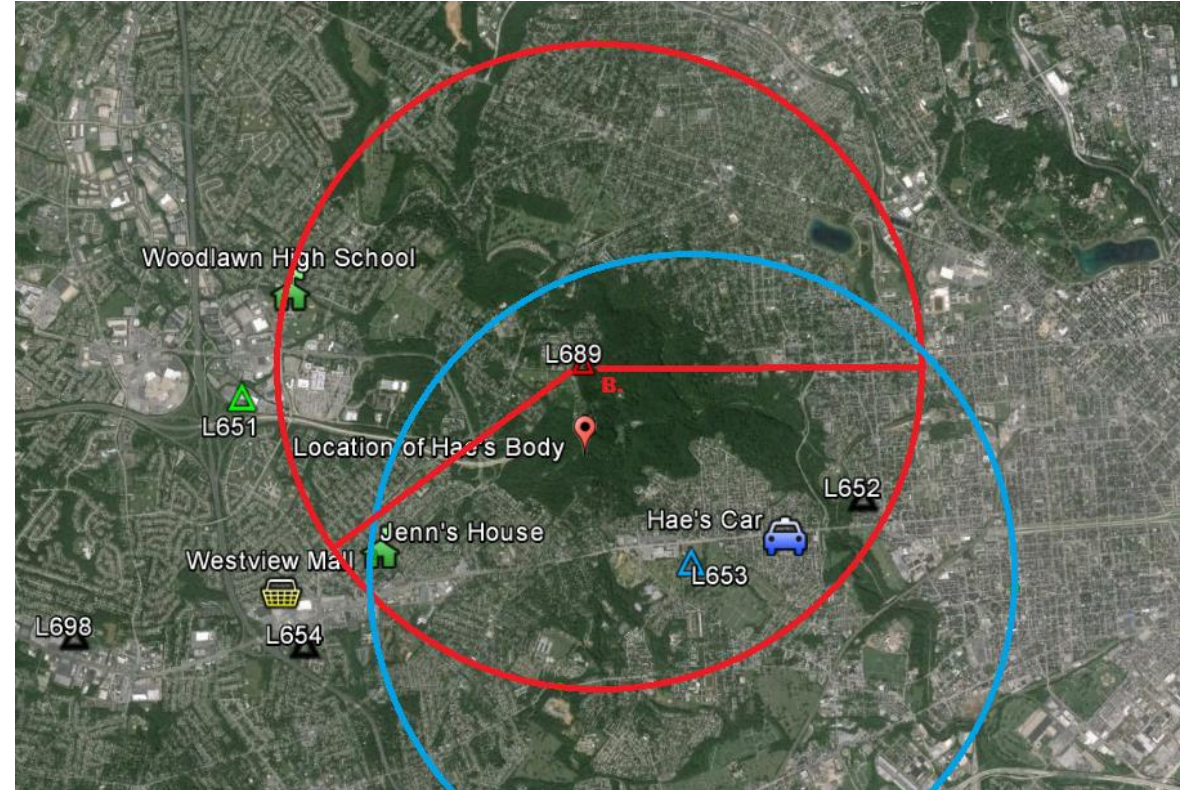
Consider:

- ISO report/background search
- Credit report
- Social media search
- Coverage analysis



First-Party Claims: Specific Examples

Cell phone records and location tracking



First-Party Claims: Specific Issues

Experts



First-Party Claims: Specific Issues

Inventories



Ethical Investigations in Third-Party Liability Claims and Litigation

Liability: General

Anticipation of litigation

Liability: General

Compare:

- Recorded statements
- ISO Report/background search
- Security camera footage/photographs
- Social media search
- Witness interviews



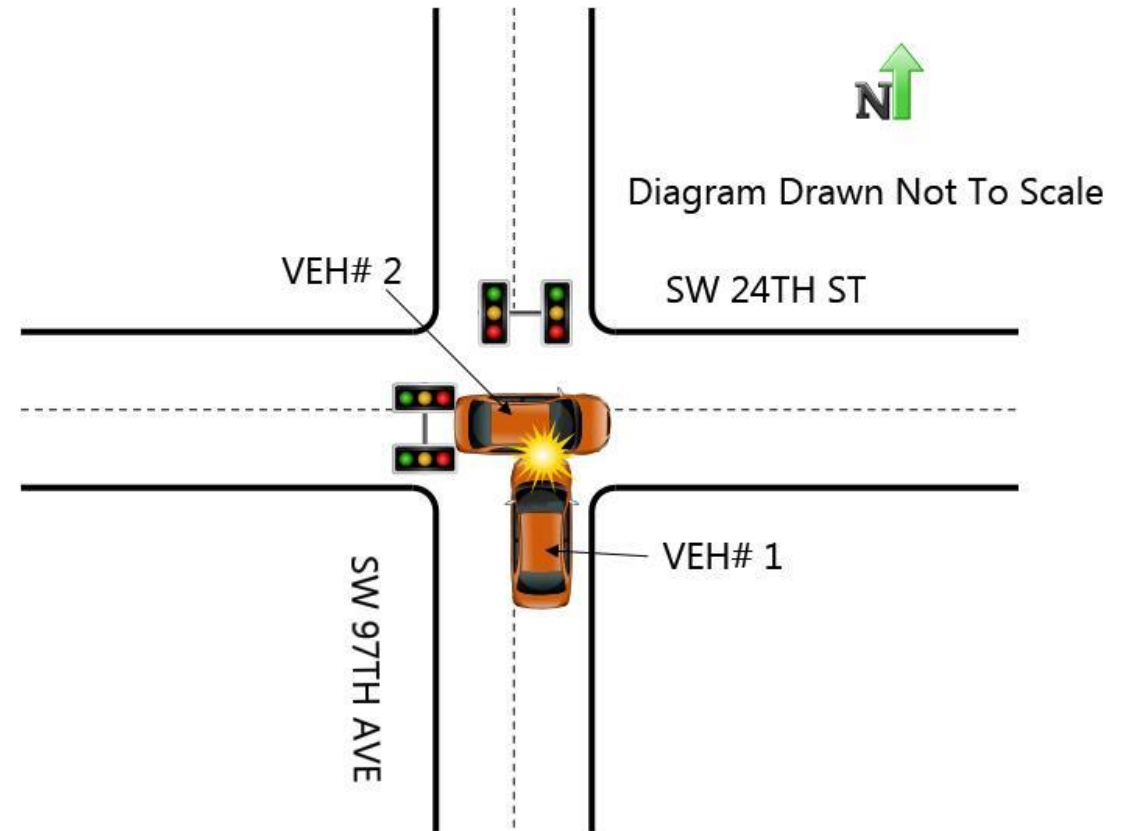
Liability: Premises Liability

- Incident report
- Inspection of the property
- Interviews of employees
- Security video footage



Liability: Auto Accidents

- Open records request
- Compare photographs



Liability: Property Damage and Business Litigation

- Open records
- Photographs
- Experts

Liability: Once Litigation Ensues . . .

- Non-party discovery
- More than just medical



"Nice work—let's take a quick social-media break."

Liability: Once Litigation Ensues . . .

- Expert Discovery
 - Accident reconstruction/biomechanical review – inspection of vehicles and download of ECM data
 - Engineer or other structural expert
 - Private investigator
 - Medical experts



Liability: Once Litigation Ensues . . .

- Depositions
 - Testimony regarding specific treatment
 - Date of retention of counsel
 - How medical providers were located
 - Activity restriction
 - Vacations/road trips



“I ask the witness to quit taking advantage of the fact that his deposition is not being videotaped.”

Questions?

s/c

THANK YOU!



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