

# **Door Injury Cases**

## **Pertaining to the Insurance Carrier**

**By Michael Panish, Door Expert Witness**

One of the most common types of expert related calls that I receive pertains to some sort of door injury. Door injuries caused by automatic pedestrian doors, manual doors, or garage doors often lead to serious and potentially life threatening high dollar liability cases. My case load as an expert witness is evenly split between plaintiff and defense. I have written articles, testified, and been consultant on many door injury cases throughout the country and abroad. In addition, my services have been utilized by defense teams representing cross defendants such as door maintenance companies also named in the chain of commerce.

It has been my experience that the majority of door related injuries occur at a commercial or retail location. The analysis of this type of case is often convoluted and circuitous. Negligence on the part of the management or owner of a commercial business location is commonly the cause of this type of claim. Due to the fact that there may be numerous involved parties who have worked on the doors in the past, defense attorneys usually name every company that ever furnished services to the subject doors as cross defendants. Conversely, when an injury occurs at a residential property it is often much easier to establish any direct cause and liability as there are normally fewer involved parties. There are always exceptions to the above scenario, and I have been involved with defense of claims that have proven positive for the defense side regardless of how the responsibility is attributed or allocated. Commercial and retail claims require far more investigation than a simple residential liability claim.

As insurance companies work regionally, they often use the services of a local attorney or law firm that may not have had previous experience or understanding regarding door injury claims. It is important that the insurance company participates in the management of the case on an ongoing basis. One of the most important elements of any new door case is to thoroughly understand all aspects of that case. This is where the services of an exceptional specialty door expert should be enlisted.

Once an attorney or law firm is put in place by the insurance provider to tender defense, it has been my observation that the insurance company is not always having its best interests represented by the selected firm. Some law firms see these claims as an opportunity to create and maintain an ongoing monthly billable statement. I am currently involved in one door injury claim, representing the plaintiff, where it appears that the nonsensical and inconsistent defense attorney is milking every last dollar out of the insurance company that he can possibly get, while knowing that his client is absolutely responsible for the injury. As settlement talks have begun, this defense attorney has created endless and meaningless deposition demands. These demands have created high costs associated with travel and time expenditures forced upon the plaintiff's attorney. All the while, the defense attorney is generating large bills that his firm will profit from, ultimately costing the insurance company for ludicrous and unnecessary work. These last minute depositions and actions are not leading to the discovery of some hidden aspect of the case, and are creating an even more hostile plaintiff. As most plaintiffs' attorneys are working on these cases on a contingency basis, the end result is the need for a higher settlement. In addition to more animosity toward the defense attorney, and a higher payout on the part of the insurance company if and when a final settlement is reached, this defense attorney seems to be all about creating billable hours for himself, just before settling.

As a result of tactics as described above, the plaintiff's attorneys tend to create more petitions to the court to attempt to limit this needless discovery, creating more court time which then translates into higher billing potential for the defense attorney. In some situations the defense attorney hired by the insurance company can be the genesis of significant additional costs that become self perpetuating during the process of defense and/ or settlement.

In direct contrast to the scenario described above, when an attorney has a contractual limit with an insurance company, or is part of the in-house counsel for the insurance provider, I have experienced a much more deliberate willingness to reach some suitable resolution to a defense case.

### **How an insurance company can assist in the defense of their insured**

Insurance companies should take advantage of the resources that an exceptional door expert witness possesses.

To quote an attorney in a recent case:

**"If you are concerned about the cost (of an expert), you may have already lost!"**

- Get the best expert involved at the beginning stages of the claim to thoroughly analyze your obligation and potential exposure.
- Don't hire an expert based on the lowest hourly rate or smallest retention deposit.
- Thoroughly evaluate your experts' credentials and past experience with that particular type of case.

There are now many so called "experts" that have popped up in the last couple of years due to lack of work in their former fields. In the case of construction and door related services, there are only a couple of experts that have the track record, court experience and knowledge necessary to properly evaluate, educate you, and work your case. Use the professional experience of the expert to help mitigate the claim and/or work as part of your defense team if it is found that you have a defensible position to the claim.

I recently heard from an attorney defending a serious new door injury case, who wanted to retain my services quickly. When he submitted my retention agreement to the insurance provider the response was that the case was too new and the direction hadn't been decided yet. This lack of early involvement with a good expert can be a big mistake when it comes to these types of door injury claims. Have a direct relationship with your expert of choice, and keep in communication with that expert during the various phases of the claim. Sometimes tendering a settlement early is good business. Other times a claim needs to be defended. Depending on the situation surrounding the claim, it is critical that your expert be a direct part of your defense from the beginning.

Knowledge is the key to prudence!

Mike Panish is a forensic expert witness and consultant in the construction industry. One of his primary areas of expertise pertains to doors, locks, door closers, and automatic door cases. He has over 30 years of hands on experience dealing with commercial, multi residential, hotel, hospital, lab and other locations where specialty door systems are needed. He has written several articles on the subject of door related claims and maintenance issues related to door and automatic door systems. He is licensed as a door and hardware contractor in the State of California. He has been involved in many door cases across the United States and Internationally. He has been used as a consultant and has been retained and designated as expert in many types of door injury related claims for both the plaintiff and defense. Mike is able to quickly ascertain the facts, explain the critical information pertaining to your case and can assist you in developing your case from discovery through trial. He has offices in California, New Hampshire and Massachusetts. He is available for nationwide, inspection, consulting, expert analysis, and testimony. Michael Panish can be reached at (818) 429-1963 (Sharon). Email: [Expert@ConstructionWitness.com](mailto:Expert@ConstructionWitness.com) Visit [www.ConstructionWitness.com](http://www.ConstructionWitness.com)