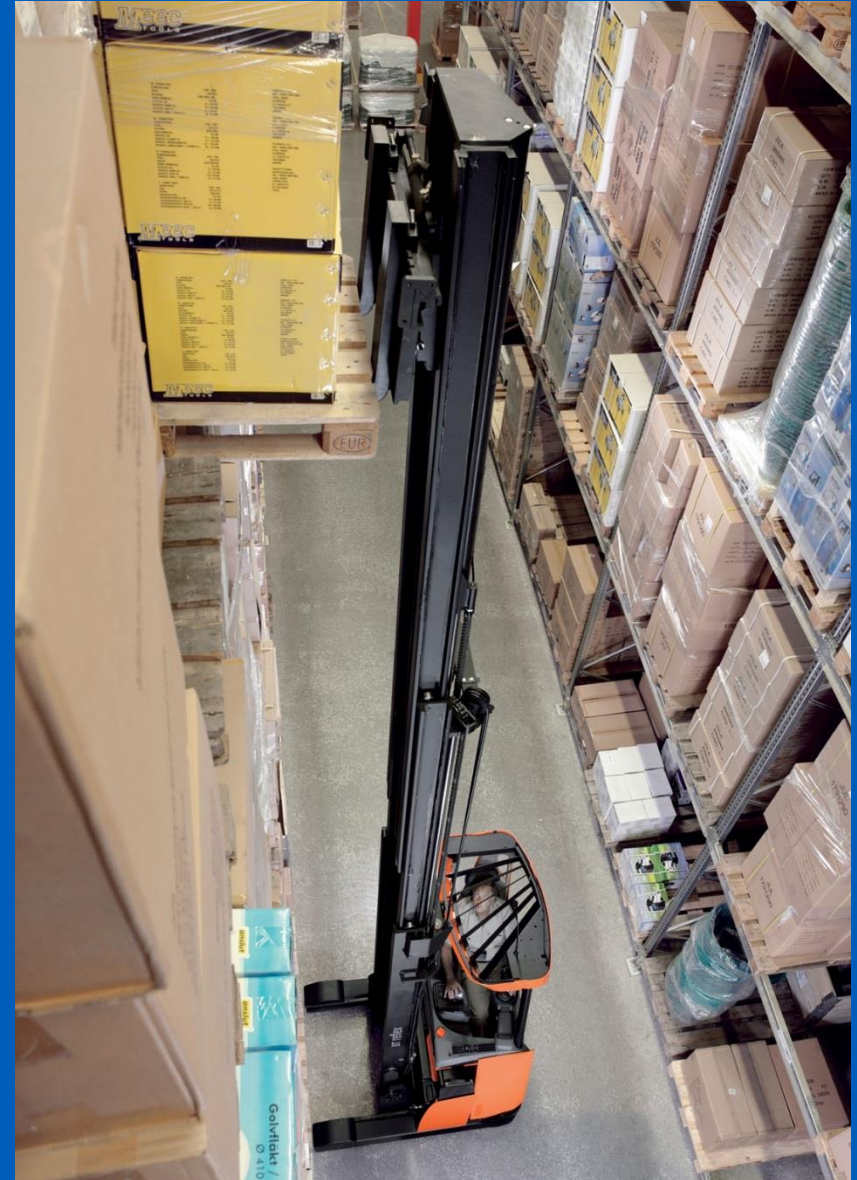


BFFF 07.02.2019

# Accident Investigation



# Introductions



**Ivor Long**

Partner

*Corporate and Sector Risks*

- › Head of Technical for our Food and Drink sector strategy
- › Has handled claims and litigation for retailers, food & drink manufacturers and food logistics companies for many years
- › Food contamination, allergens and illness claims specialist

## Investigation – Set a strategy

- Civil issues
- Criminal issues

- Notifications –
  - HSE
  - LA
  - EA
  - Coroner
  - Broker
  - Insurer

- Check policy cover with Broker and Insurer
- Manage internal and external investigations

# Investigation strategy – Internal investigation

- Preserve evidence
- Photographs and plans
- Machinery
- Witnesses
- Risk Assessments
- Training records

- Privilege –
  - Legal advice
  - Litigation

- Accident investigation report –
  - Civil issues
  - Corrective actions
  - RIDDOR
  - Criminal issues
  - Privilege

## Investigation strategy – External Investigation

- External investigation by Police, HSE, EHO, etc. –
  - Appoint lead person
  - Provision of documents

- Manage interview process
- Representation and conflicts

- Press and reputational damage
- Injured party and/or family –
  - Rehab

# Case Study

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## Keith Jonek – Warehouse Operative

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- › Agency worker
- › Undergone induction training with Agency
- › Shown a DVD of Company operations by Agency
- › Had basic tests in English and maths with Agency
- › Duties – stock picking
- › Bump cap provided and worn but no training from site
- › Needed to fetch an item from an adjacent aisle
- › Very busy operation and felt under pressure
- › Took a short cut by ducking under the metal pallet supports between the aisles
- › Said this was common practice with employees
- › Struck his head on cross beam and heard a “crack” in his neck
- › Ongoing disability and pain from whiplash type injury

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## Keith Jonek – Defensibility issues

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- › Accident not reported and line manager unaware so no investigation
- › Specific training provided at site induction before work started
- › Safe routes and access covered as well as accident reporting
- › No reason to duck under racking
- › Safe and unobstructed alternative routes available
- › Good photographs of aisles and access points provided
- › Denied that this was an accepted or condoned unsafe practice
- › No first aid report as no treatment on site. No evidence of an accident?
- › No investigation could be undertaken to determine what occurred
- › Good Risk Assessment and evidence of training and induction provided
- › Witness statement from the logistics supervisor obtained supporting Defence
- › Claim denied but litigated. Claim finally discontinued 2 weeks before Trial



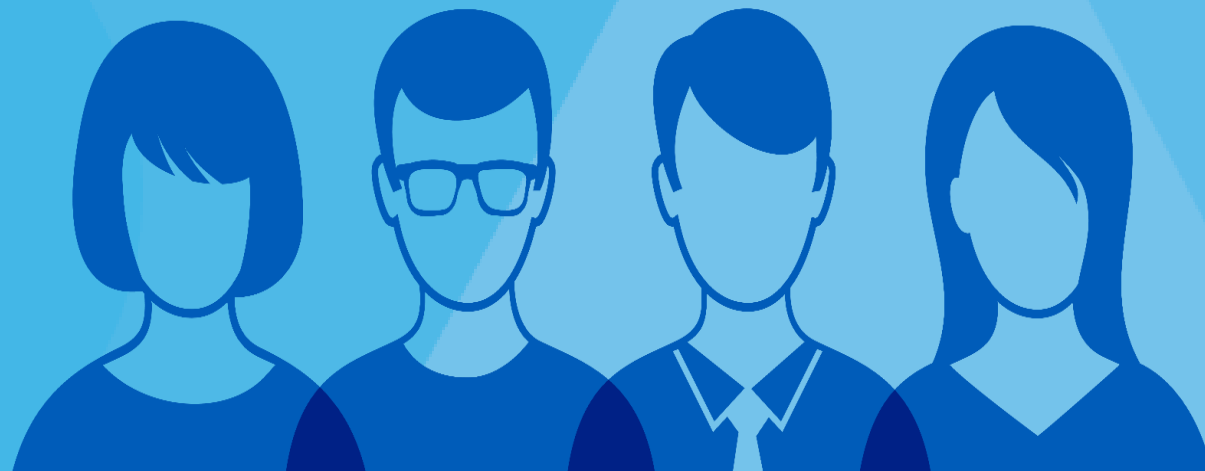
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## Lessons

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- › All accidents need to be investigated at the earliest opportunity
- › Even where there is a late or delayed report (noting the failure to report)
- › Claimants will often make spurious allegations
- › We need to be able to deal with **ALL** allegations raised with documentary or witness evidence
- › We need to be able to support **YOUR** documented procedures and training
- › Photographs of a process or area are still key (if late report)
- › The failure to report an accident is not necessarily fatal to a claim's success
- › Claimant could support a claim through medical records
- › There are specific issues with foreign nationals / culture
- › Language issues?
- › Comprehension is key

# Any Questions?



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