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The Spoils of War: Arguments in Favor of Independent Claims for Spoliation Against Third Parties

11 WAKE FOREST L. REV. ONLINE 1

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Kenneth was a coal miner. One day, while cooling a welding area, a hose burst and severely injured his neck and face. Despite sustaining major injuries that would prevent him from working in the future, Kenneth had limited legal options to pursue compensation. For example, workers' compensation law protected his employer, the coal company, from lawsuits by employees. Kenneth's best option was to bring a products liability claim against the manufacturer and distributor of the welding hose. When Kenneth asked his employer for the hose so that he could investigate the cause of his injuries, his employer refused. The employer also refused to reveal the identity of either the manufacturer or distributor of the hose. After further investigation, Kenneth learned that his employer intentionally destroyed the hose after it had allowed the manufacturer and distributor to inspect it for their own legal defense. Perhaps even more troubling, Kenneth learned that the distributor was a subsidiary of the employer coal company. Frustrated with the unfair actions of the coal company and unable to pursue his products liability claim, Kenneth filed suit against his employer for intentional spoliation of evidence.