



Is Your Car Crash a Product Liability Case?

**Spotting Automotive Defects,
Recognizing Product Liability Cases,
and Preserving Critical Evidence**

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2008; *Foreign Manufacturers and Dynamic Roof Strength Testing*, Attorneys Information Exchange Group, 2007; *Practical Aspects of Working With Experts: Expert Reports, Expert Depositions, Trial Testimony, and Robinson/Daubert Challenges*, State Bar of Texas Advanced Personal Injury Course, 2008; *Avoiding Grievances*, Corpus Christi Bar Association Family Law Seminar, 2009; *The 12(b)(6): Deposing the Person With Knowledge*, Attorneys Information Exchange Group, 2009; *Litigating and Negotiating With Foreign Auto Manufacturers*, Attorneys Information Exchange Group, 2009; *Emerging Theories in Product Liability Litigation*, Attorneys Information Exchange Group, 2009; *Trucking Litigation*, Corpus Christi Bar Association Advanced Personal Injury Law Seminar, 2009; *Daubert-Proofing Your Expert*, Attorneys Information Exchange Group, 2010; *Trucking Litigation*, Attorneys Information Exchange Group, 2010; *Hot Issues in Vehicular Product Liability Cases*, American Association for Justice Annual Convention, 2010; *Bridgestone, Firestone, Steeltex: A Tradition of Tire Failure*, Attorneys Information Exchange Group Tire Seminar, 2010; *Case Screening in Automotive Product Liability Cases*, Attorneys Information Exchange Group, 2010; *Helmet Product Liability Litigation*, Attorneys Information Exchange Group, 2010; *Recognizing Automotive Product Liability Cases*, Corpus Christi Bar Association Advanced Personal Injury Law Seminar, 2010; *Case Screening*, Attorneys Information Exchange Group, 2011; *Hot Issues in Vehicular Product Liability Cases*, American Association for Justice Annual Convention, 2011; *The Ford F-150: A Host of Defects*, Attorneys Information Exchange Group, 2012; *Consumer Products That Will Scare the Heck out of You*, Corpus Christi Bar Association Advanced Personal Injury Law Seminar, 2012; *Helmet Product Liability Litigation*, Attorneys Information Exchange Group, 2013; *Recent Trends in Product Liability Litigation*, American Association for Justice Annual Convention, 2013; *Is Your Personal Injury Case a Product Liability Case?*, Corpus Christi Bar Association Advanced Personal Injury Law Seminar, 2013; *Trucking Litigation*, 2014; *Helmet Product Liability Litigation*, 2014; *Case Screening: Defective Automotive, Household, and Consumer Products*, Corpus Christi Bar Association Advanced Personal Injury Law Seminar, 2014; *Cross-Examining Biomechanic Michael Carhart*, Attorneys Information Exchange Group, 2015; *Cross-Examining Defense Witness Eddie Cooper*, Attorneys Information Exchange Group, 2015; *Case Screening: Is Your Car Crash a Product Liability Case?*, Corpus Christi Bar Association Advanced Personal Injury Law Seminar, 2015; *Avoiding Grievances*, 6 St. Mary's Journal on Legal Malpractice and Ethics 270, 2016; *Product Liability Case Screening and Intake*, Attorneys Information Exchange Group, 2016; *Cross-Examining BRC Witnesses*, Attorneys Information Exchange Group 2016; *Recognizing Product Liability Cases*, State Bar of Oklahoma Seminar, 2016; *Case Screening – Product Liability Cases*, Corpus Christi Bar Association Advanced Civil Trial Seminar, 2016; *Automotive Safety Components – Viability Timelines*, Attorneys Information Exchange Group, 2017; *The Ultimate Guidebook for Responding to a Daubert Challenge*, Corpus Christi Bar Association Advanced Civil Trial Law Seminar, 2017; *Social Media Discovery: Sword and Shield*, Attorneys Information Exchange Group, 2018; *Protective Orders*, State Bar of Texas 31st Annual Advanced Evidence and Discovery Seminar, 2018; and *Anatomy of a Successful Premises Liability Case: Adelaide Price v. Wal-Mart*, Attorneys Information Exchange Group, 2018.

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IS YOUR CAR CRASH A PRODUCT LIABILITY CASE?

Spotting Defects, Recognizing Product Liability Cases, and Preserving Critical Evidence

Is your car wreck case a potential product liability case? Unless you stay abreast of new automotive defect theories and take the crucial steps outlined below, you and your client may never know. Investigating a potential automotive product liability case requires the practitioner to act quickly to secure the available evidence, research the incident facts, determine the nature and extent of injuries, and evaluate each of the potentially defective automotive components.

INTRODUCTION

A potential client calls you. A loved one has just been seriously injured or killed in an automobile collision or rollover. While a liability claim against another driver may be obvious, might this also be a case involving an automotive defect? All attorneys should take a few basic steps to gather and preserve the critical evidence and to evaluate whether an automaker or component part manufacturer has contributed either to the cause of the incident, or the resulting injuries.



I. STEP ONE: SECURE THE VEHICLES AND TIRES

When securing the evidence necessary to pursue an automotive product liability claim, time is of the essence. With very limited exceptions, it is extremely difficult to pursue a defective product claim without the product itself.

Oftentimes, insurance companies may “salvage” or “scrap” an automobile they insure when it has been involved in an incident. Additionally, some vehicle and component part manufacturers have “first response” teams, employing “investigators” to gather evidence of incidents reported on television, on the radio, or in the newspaper. Regardless of the reason, it is not unheard

of for tires, tire treads, airbags, black boxes, seatbelts, or the vehicles themselves to disappear from storage or tow lots before an attorney can gain control of the vehicle.

A. Dealing with Adjusters

The most likely scenario following an automobile incident is that the insurance company will take possession of a vehicle and place it in a storage lot. Just because an insurance company takes possession of the vehicle, however, that does not mean the evidence is protected. In fact, more often than not, such vehicles are transported to large, unsecured lots where vehicles are exposed to the weather and are accessible to any person that can coax his way into the perimeter.

Thus, the first thing any lawyer investigating a potential automobile products liability claim should do is send the insurance company and the responsible adjuster a “preservation” letter. One should be sure to state in any such letter that the subject vehicle (and tire/tread, if applicable) is crucial evidence of a potential products liability claim, and that no part of the vehicle should be altered, removed, or destroyed.

In a preservation letter, it is also important to include a request to move the vehicle and all component parts into an indoor, weatherproof storage facility. While many people will “tarp” or otherwise cover a vehicle to protect it from the elements, these methods do little to prevent the rust and corrosion of a vehicle’s component parts. Specifically, if a potential products case hinges upon issues involving metallurgy, rust or corrosion may prevent a credible expert from being able to reach effective conclusions.

B. Temporary Restraining Orders

Generally speaking, informed adjusters interested in a potential subrogation claim against a third-party automaker are more than willing to cooperate with attorneys in the above-referenced steps. It is, however, the instances in which an adjuster is unwilling to cooperate, or when a subject vehicle falls into the wrong hands, that a temporary restraining order becomes necessary.

The scope of this paper does not include the procedural steps necessary to correctly secure a temporary restraining order. There are, however, two critical aspects that should be addressed when drafting an application and order. First, draft the application and order to preclude any potential person or party that might foreseeably seek possession of or access to the subject vehicle from doing so, and include any parties currently in possession, custody, or

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