



# **Is Your Car Crash a Product Liability Case?**

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

**DAVID BRIGHT**

**Sico Hoelscher & Harris LLP**

**802 North Carancahua Street, Suite 900**

**Corpus Christi, Texas 78401**

**Phone: (361) 653-3300**

**Toll Free: (877) 653-3334**

**Fax: (361) 653-3333**

**Email: [dbright@shhlaw.com](mailto:dbright@shhlaw.com)**

**Website: <http://www.shhlaw.com>**

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**DAVID BRIGHT** earned his undergraduate degree from the University of Texas in 1983, and graduated from St. Mary's University School of Law in 1986, where he served as Associate Editor of the St. Mary's Law Journal, a member of the National Order of Barristers, and a member of the State Moot Court Team.

Mr. Bright is Of Counsel to the law firm of Sico Hoelscher Harris LLP, which has offices in Corpus Christi, Houston, and San Antonio, Texas and Los Angeles, California. He specializes in catastrophic personal injury, product liability, and automotive defect cases, heavy trucking cases, complex commercial cases, class actions, and mass torts.

Mr. Bright is an "AV" rated lawyer in the Martindale-Hubbell legal directory, the highest peer-based rating available for professional ability and integrity. He has served as Chairman of the State Bar of Texas District 11-A Grievance Committee, a member of the Pro Bono College of the State Bar of Texas, President of the Corpus Christi Bar Association, Chairman of its Continuing Legal Education Committee, and Course Director of its Annual Advanced Civil Trial Law Seminar. He is a member of the American Bar Association, the American Association for Justice, the Million Dollar Advocates Forum, the Attorneys Information Exchange Group, the State Bar of Texas, the Texas Trial Lawyers Association, and the Corpus Christi Bar Association. He has served as Education Chairman of the Attorneys Information Exchange Group and as Chairman of its Helmet Litigation Subgroup. He is an Affiliate in the Society of Automotive Engineers International. Mr. Bright is the recipient of the Judge Paul W. Nye Professionalism Award and has repeatedly been selected as a "Super Lawyer" by Texas Monthly Magazine

Mr. Bright's publications and continuing legal education presentations include *Introducing Evidence*, Texas Trial Lawyers Association Seminar, 1994; *Predicates for Introduction of Evidence*, Texas Trial Lawyers Association Seminar, 1995; *Tort Reform*, NCLSA Seminar, 1995; *Police Uses of Deadly Force*, Corpus Christi Lawyer Magazine, 1997; *Responsibilities of the Attorney Ad Litem*, Corpus Christi Young Lawyers Association Seminar, 1997; *Insurance Bad Faith and Consumer Protection*, Corpus Christi Claims Association, 1998; *Mediation*, Texas Conference of Court Appointed Special Advocates, 1998; *Supreme Court Developments in Deceptive Trade Practices Act Cases*, Corpus Christi Bar Association Deceptive Trade Practices Seminar, 1998; *Demonstrative Evidence*, Corpus Christi Bar Association Advanced Civil Trial Seminar, 1999; *Practice Tips From the Experts - A Survey of Trial Masters*, Corpus Christi Bar Association Advanced Civil Trial Law Seminar, 2000; *Practice Tips From the Experts - A Survey of Trial Masters*, Corpus Christi Bar Association Advanced Civil Trial Law Seminar, 2001; *Ethics and the Grievance Process*, Corpus Christi Bar Association Advanced Civil Trial Law Seminar, 2003; *Practical Aspects of Working With Experts*, Hazard Information Foundation, 2004; *Working With Expert Witnesses*, Corpus Christi Bar Association Advanced Civil Trial Law, 2004; *Medical Device Litigation*, Mass Torts Made Simple, Las Vegas, Nevada, 2004; *Helmet Product Liability Litigation*, Attorney's Information Exchange Group, 2005; *Practical Aspects of Working With Experts*, Corpus Christi Bar Association Advanced Civil Trial Law, 2006; *Dynamic Roof Testing - What Are Manufacturers Doing?*, Attorneys Information Exchange Group, 2007; *Recognizing and Preserving Evidence in Automotive Product Liability Cases*, Corpus Christi Bar Association Advanced Personal Injury Law Seminar, 2007; *Taking the Offense - How To Try or Settle Your Case in One Year*, Corpus Christi Bar Association, 2007; *A Primer on Defective Helmet Cases*, Section Connection - American Association for Justice Product Liability Section Publication, 2007; *Ethics and the Grievance Process*, Corpus Christi Bar Association, 2008; *Recognizing Product Liability Cases*, Corpus Christi Bar Association Advanced Personal Injury Law Seminar,

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Mr. Bright is licensed to practice law in the state of Texas, in the United States District Courts for the Northern, Southern, Eastern, and Western Districts of Texas, the United States Courts of Appeals for the Fifth and Seventh Circuits, the United States Court of International Trade, and the United States Supreme Court. He handles cases across the United States. His law firm biography, practice areas, and list of representative cases can be found at <http://www.shhlaw.com/attorneys/david-bright/>

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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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