HOW TO SPOT A PRODUCT LIABILITY CLAIM

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A product liability claim focuses on whether or not the product is defective. In automobile cases, the defective product could be the entire vehicle, or a component part such as the seat belt assembly or tires. Unfortunately, the average motorist has no idea how unprotected he will be in an accident as a driver or passenger in one of these defective vehicles. Often, causes of action for product liability claims are hidden from the untrained eye. It is important to recognize possible defect claims in the motor vehicle accident cases. Any accident that involves paralysis, death, loss of limb, or brain damage should be analyzed for possible product liability claims.

The purpose of this paper is to help identify different product liability claims. The information is not all-inclusive, but is a good guideline for each type of product defect mentioned.

I. Roof Crush

To protect occupants in a rollover, maintaining survival space is very important. Survival space is the space around an occupant that remains free of intrusion in an accident. It is the area in which an occupant is able to "survive" the crash. A roof is part of the structural support of a vehicle and is therefore a critical component in keeping the occupant safe. If a roof crushes substantially during an accident, from a failure of the side rails, headers or support pillars, catastrophic injuries can occur. Often, this decreased survival space results in the occupant's

head impacting some portion of the vehicle causing death, paralysis or brain damage. Sometimes, the occupant can even be partially ejected through an opening created during roof crush.

On September 30, 2003, a Nebraska jury awarded approximately $19.5 million to Penny Shipler, a 36-year-old mother left paralyzed from the neck down in a 1997 accident. She was a passenger in a 1996 Chevrolet Blazer when the vehicle was involved in an accident and rolled over. The roof crushed on Ms. Shipler causing her to suffer a complete spinal cord injury. GM has known for many years that its roofs are too weak. Instead of making the roofs stronger, it relies on inadequate government standards that fail to require manufacturers to conduct dynamic rollover tests on their roofs. GM has failed to build its vehicles with sturdier roofs, and, as a result, people like Ms. Shipler continue to be severely injured or killed. What happened to her was foreseeable and predictable.

There may be a roof crush case if the roof has deformed or crushed or opened over the occupant's head by deforming sideways.

II. Seat Belt Malfunctions

There are thought to be two collisions in an auto accident. The first collision is the vehicle's impact with another vehicle or object. The second collision is the passenger's impact with the interior of the vehicle, or in cases of ejection, impact outside the vehicle. Seat belt injuries can occur when a defective seat belt fails to adequately protect a vehicle passenger in the "second collision" phase of an automobile accident. The purpose of a seat belt is to minimize the injuries and damage caused in a second collision by reducing or eliminating injurious occupant

contact with the vehicle's interior. Seat belt injuries often occur when there is a seat belt design, production, or installation defect. There are a plethora of injuries that may occur as a result of a defective seat belt or from failure of a seat belt: spinal cord injury, brain or head injury, paralysis, internal injuries, amputations, broken bones, concussions and fatalities.

In a lap belt only design, often found in the rear center seating position, occupants may jack-knife over the seatbelt, receiving injuries in the process. The seat belt itself can cause spine or internal injuries when the occupant's body bends over the seat belt webbing which then cuts into the soft tissue. Also, when the occupant's body juts forward, head injuries can result when the head hits a seat back or a support pillar in the vehicle. With a shoulder belt only design, often seen in Hyundai or Volkswagen vehicles, occupants may submarine under the belt, causing neck injuries and sometimes decapitation.

Passive restraint systems lull the occupant into a false feeling of safety when the shoulder belt slides around them. Passive restraint systems consist of a manual lap belt and a motorized shoulder belt, or are simply a door mounted three point system. For the first type, the manual belt combination, occupants often forget to latch the manual belt, creating a "shoulder belt only" system. Thus, much like the Hyundai and Volkswagen vehicles mentioned above, occupants may submarine under the belt. In the second type, the door mounted three point system, if the door opens during an accident, the occupant can be ejected, often suffering horrific injuries or death.

Some of our clients have suffered catastrophic spinal cord injuries as a result of defective seat belt geometry design. Small stature persons are particularly susceptible to these types of injuries. The D-ring or shoulder strap anchor is typically placed in a position that is too high for a small stature person. As a result, the shoulder strap rides too high up on the occupants' neck and causes severe spinal injuries in a collision. Auto manufacturers have been aware of this seat belt geometry defect for some time.

A seat belt must not only be designed and mounted properly, but must latch properly and stay latched to provide maximum protection. Latching problems leave the occupant open for the possibility of being unrestrained in an accident. Inertial unlatching occurs when a seat belt buckle releases by itself during a collision. Inadvertent unlatching happens when the buckle opens as a result of some inadvertent contact by either the occupant or a component of the vehicle. Often a hand or arm contacts the release button causing an inadvertent unlatching. Possibly the scariest of all seat belt buckle defects is false latching. This occurs when the buckle appears to be latched, sounds like it is latched and looks like it is latched, but is not actually properly or fully engaged. In this situation, forces during the accident can cause the buckle to unlatch. We recently dealt with this issue in a case against a trucking manufacturer and a seat belt manufacturer where the decedent was killed after he was ejected from the vehicle.

There are several other possible defects that can occur with seat belts: the seat belt webbing can fail because of a defect within the webbing itself, or from a sharp item on the seat frame contacting the webbing during the collision; the

retractor can fail to lock properly in an accident and cause an injury by allowing excess webbing to extend; and, a seat belt pretensioner, a device that removes excess slack from the seat belt webbing, could be missing from the design of the particular belt.

You should not rely on the accident report alone to determine if there is a seat belt defect. Often Police Officers will say that there was no belt use if the occupant has been ejected or is not wearing the belt when the Officers arrive on the scene. As stated previously, an occupant can submarine under a belt, the belt may unlatch on its own from inertia, or a first arriver may have unlatched the occupant to administer lifesaving medical treatment. In short, don't rely on the accident report alone to determine if there is a seat belt defect case.

You may have a seat belt defect case if:

1. An occupant who was believed to have been belted is found unbelted after the accident;
2. A belted occupant makes contact with the vehicle interior, resulting in injury;
3. The occupant is ejected outside the vehicle or outside the restraint of the seat belt, but the seat belt buckle is latched;
4. The webbing of the seat belt is loose after the accident;
5. The webbing of the seat belt is torn;
6. The door mounted seat belts in the vehicle were ineffective when the door of the vehicle opened;
7. The seat belt is "only" a lap belt or shoulder belt;

8. The vehicle occupant compartment is intact and a belted occupant is injured;

9. The seat belt mounts came loose from the floor or vehicle pillars during the accident.

III. Seat Defects

There are several possible defects related to the seat in a vehicle, including, but not limited to: (1) seat track failure; (2) seat back failure; and (3) inadequate head rests or the lack of head rests.

In a seat track failure, the locking mechanism that allows the seat to slide back and forth to accommodate drivers of different heights fails and moves forward, moving the seat toward the steering wheel.

Seat back failures can cause several different problems in a collision. A seat back failure can interfere with the restraint system, allowing vehicle occupants to impact rear seat objects in a rear-impact collision because they are not properly restrained. In some circumstances, the vehicle occupants can be completely ejected from the vehicle when they have slid out from under the safety restraints. A front seat collapse can injure the rear seat passengers in a rear-impact collision, and the rear seat occupants can become trapped underneath the collapsed seat back.

Inadequate head rests or the lack of rests can cause head injuries in both front and rear impact accidents because there is nothing to restrict the motion of the occupant's head. In many pickup trucks, or the center rear position in numerous passenger cars, for example, there are no head rests.

IV. Ejection Protection

One of the most fundamental principles of occupant protection is to keep the occupant inside the car during an accident. If you have an injured party who has been ejected, look for lift gate failures, door latch failures, or window glazing issues. One of the more memorable vehicles with liftgate problems is the Chrysler minivan, manufactured between 1984 and 1995. Under very low forces, these liftgates open, often allowing occupants to be ejected. Still, another problem with liftgates occurs when the liftgate itself is made of fiberglass. During a collision, a large portal for ejection is created when the fiberglass liftgate breaks away. The locks remain locked, but the weak liftgate simply cannot withstand the forces and tears away.

Similarly, door latches are known to fail during collisions. Door latches can fail for various reasons including mechanical problems. Poorly designed doors and latches result in a failure of the door to remain closed during an accident sequence. In fact, certain door latch designs will open simply by forces put on the outer body of the vehicle. These designs fail during an accident scenario not because of unreasonably high forces on the latch system, but rather due to poor designs which allow the door latch to actuate during the accident sequence.

The windows are another part of the occupant protection system. Although windshields are made of laminated glass, most side and rear windows are made of tempered glass which shatters and breaks during collisions. Tempered glass breakage allows for ejection, either partial or full, out of the window opening. This may occur in situations where the doors or liftgates remained closed.

V. Rollover and Stability Issues

Sport Utility vehicles (SUV's), and other tall, narrow vehicles are prone to rollover. After a driver makes an avoidance maneuver they should be able to regain control of their vehicle, or, the vehicle should "slide out" on the road without rolling over. A vehicle should not roll over because of friction forces alone. A vehicle should not rollover on dry flat pavement. Rollovers will occur off the road when the vehicle furrows in soft ground, after contact with other vehicles, or when the vehicle is tripped by obstructions like potholes or curbs.

Rollovers with 15 passenger vans are prevalent. These vehicles are extremely unstable and have a high propensity to roll over which increases as more passengers are added. The more passengers you add, the higher likelihood there is of a tire failure on the rear of the van, which could then result in a rollover. These vans are often used to transport school children, church groups, and sports teams. Unfortunately, the tires on these vans "float" and lose traction with the road when weight distribution is uneven over the axles. Therefore, the vehicle does not respond properly to steering input from the driver, causing control and handling problems that often result in rollover accidents.

There may be a stability case if: the vehicle rolls over on the roadway; the paved road is smooth and dry; tire marks on the roadway end abruptly; and there is no "tripping mechanism" such as a pothole or curb.

VI. Tire Blow Outs

Tire failures, blowouts and detreads are foreseeable events. Manufacturers know that tire treads will wear with proper use and at some point fail if not serviced properly and replaced after their intended period of use has expired. Tire tread separation can be caused by bonding problems in the tire manufacturing process, contaminants introduced into the tire during the tire making process, under-vulcanization, old ingredients, improper sized components, or something as simple as air being trapped in between the layers of the tire during manufacturing. Detreading of these defective tires can result in single or multi vehicle accidents, or even rollovers. Even the auto manufacturers agree that drivers should be able to pullover, not rollover when a tire detreads. That is unfortunately not always the case.

There may be a tire defect case if an accident was caused by the failure of a tire, leading to loss of control of the vehicle.

VII. Fuel Fed Fires

Almost everyone remembers the infamous Ford Pinto. The Pinto had a fuel tank mounted behind the rear axle. This position allowed for dangerous, and often explosive consequences in rear impact accidents. Similarly, there are vehicles with gas tanks mounted on the sides of the vehicle outside the structure of the frame. These “sidesaddle” tanks also leave the vehicle vulnerable to impact in a collision. The overall safest positioning of a gas tank is between the front and rear axles of the vehicle. However, manufacturers didn’t always follow this guideline and many

vehicles do not provide the proper structural protection for the tank. Collisions with these vehicles can lead to fuel-fed fires.

Also, it is not always the location of the fuel tanks that can lead to fuel fed fires. Design defects related to fuel fed fires can involve several different vehicle systems. The design issues can relate to issues of fuel filler cap design, fuel line design, fuel tank design, and also include fuel pump design. Fuel systems should be designed to maintain their integrity during reasonably foreseeable accidents so that occupants do not lose their lives in otherwise survivable accidents. If the occupants can survive crash forces without serious injury, so should the fuel system. Simple shielding of the gas tank, known to the automobile manufacturing industry for years, can prevent fuel fed fires.

There may be a fuel fed fire case if the occupant was killed or seriously injured by the fire and suffered no skeletal or other life threatening injuries.

VIII. Airbags

Obviously, if an airbag fails to deploy, there may be an airbag case. However, don't overlook other airbag claims. Aggressive airbags which deploy at excessive speeds can cause head or neck injuries or other broken bones. Children are especially susceptible to injuries and or death caused by an airbag. They should always been seated upright and as far away from an airbag as possible. Late deploying airbags can fail to protect an occupant from contact with the interior of the vehicle, thus causing injuries that could have been avoided. Airbags with a low deployment threshold can deploy at inopportune times in low speed impacts. These

are often collisions that would have been injury free, if not for the airbag impacting the occupant.

There may be an airbag case if any of these factors apply:

1. The airbag deployed in a collision which was slower than 10 miles an hour;
2. The airbag failed to deploy and there is obvious damage to the front bumper;
3. The airbag deployed late;
4. The occupant is severely injured in spite of, or because of the airbag deployment.

IX. Cab Guards and Under Ride Protection

Cab guards or headache racks are required as front-end structures on 18-wheelers that pull flat beds, trailers and log trailers and should function to prevent shifting cargo from contacting the cab of heavy trucks. Many cab guards are designed of welded heat treated aluminum which results in a weakening of the cab guard over time. The weakening of the cab guard due to fatigue stress is relatively unknown to drivers. Many welding requirements established by national organizations are not followed by cab guard manufacturers. The failure to follow such guidelines result in poor welds, poor quality control, and poorly designed cab guards for their intended purpose of protecting truck occupants.

An under ride protection device extends below the trailer in order to prevent an automobile from riding under the trailer in the event of a rear impact. Many heavy

trucks and/or trailers are defectively designed in that the vehicles do not have proper under ride protection devices. When a vehicle is allowed to under ride a heavy truck trailer, it results in severe injuries to vehicle occupants since passenger cars are substantially lower than the bed of heavy truck trailers. When appropriate under ride guards are in place, vehicles are prevented from under riding these trailers and severe injuries that occur in foreseeable rear end collisions are substantially reduced.

X. Some Examples of a "Hidden" Product Claim.

a. Awnings

Our firm recently settled a very important case that underscores the importance of fully exploring all facts of a serious injury or death case because there may be a defective product involved. Information learned in this case is also important to share because owners of recreational vehicles (RV's) and horse trailers may be unaware of the potential risks associated with awnings attached to their vehicle or trailer. On March 11, 2005, a young man attached an extended horse trailer to the rear of his 2001 Ford F350 truck and drove from Mississippi into Alabama. The trailer was equipped with a 21-foot roll-out awning attached to the driver side of the trailer. These are the same type awnings used on large motor homes. While driving north along a rural Alabama highway, the young man glanced into his rear-view mirror and saw that the front end of the metal and fabric awning assembly had broken loose from the trailer and was hanging out toward the oncoming lane of traffic. Because he couldn't immediately pull off the road, he

continued to drive with the awning assembly dangerously hanging on the side of the trailer.

On the same day, our client's husband, attended a meeting in Marion, Alabama and was driving back south to his home along the same rural highway. When the two vehicles met, the awning assembly from the trailer struck the windshield of our client's husband's oncoming minivan. The metal frame and roller tube punctured his windshield and killed him instantly. At first blush, this case appeared to be an unprotectable tragic accident. As defense lawyers like to say during trials "sometimes bad things happen to good people and no one is to blame." However, our investigation and pretrial discovery revealed that our client's husband's tragic death was entirely preventable and that there was fault because of the defective product.

We discovered that the retractable arms of the awning were equipped with metal folding locks that were defectively designed and manufactured. As a result, the locks were insufficient to withstand the effects of wind experienced while traveling down the highway. During pretrial discovery, we found a variety of alternative designs which are marketed to prevent such awning failures – some alternative locks are available online through various companies - and other locks were purchased on EBay. Apparently awning failures are such a problem in the RV industry that one company stated on its website "There are two types of RVers – those that have had their awning blow off and those that will!" Our experts tested several of the designs and found them to be superior to the faulty locks implemented by the awning manufacturer. Our experts also conducted metallurgical testing and

took radiograph x-rays of the internal composition of the cast zinc locks. Their testing revealed that the cast zinc locks were cheaply made and defective because they contained unacceptable amounts of impurities which rendered them weak and ineffective.

Had we failed to look further, and never found the product claims within the personal injury case, we may or may not have been able to get a settlement to provide for the client and her family. The amount of the settlement is confidential, but we can warn the public about the dangerous condition that exists and the risk to which the public is subjected.

b. Reclining Seat Backs

Take a minute and think how many times you have been a passenger in a car, wearing your seatbelt, and decided to lay your seat back to take a nap. This is a very common practice. By simply reclining your seat, you are putting your life at risk. If a seatback is reclined, the standard seatbelt becomes much less effective, if not completely useless, because the shoulder harness of the belt moves away from the body. People do not realize or understand that the more space between the seatbelt and a person's body, the greater risk of death or serious injury in an accident. The seatbelt is designed to be worn snugly against the body in order to couple the body to the seat to ride down the forces of an accident safely.

Automobile manufacturers have been well aware of the dangers of reclining seats for nearly four decades. They know that three-point restraints offer good protection only if worn properly. An occupant who wears a seatbelt while his seat is reclined is not centered in the belt, rendering the belt ineffective for spreading crash

forces over the body. Protection offered by any type of seatbelt is therefore compromised when the seat is reclined, presenting a potentially dangerous combination in a moving vehicle. Although some vehicle owner's manuals warn of the dangers of reclined seatbacks in moving vehicles, the warnings do not state specifically what degree of recline is dangerous.

A Jacksonville, Florida jury recognized this hidden danger and held Ford accountable by awarding $16.9 million to a young college student who was rendered a paraplegic in an accident. The student was a belted passenger who had reclined her seatback in a Ford Windstar. During the trip, the Windstar was involved in a low impact collision. Because the seat was reclined, her seatbelt did not hold her in place. As a result, this young college student was rendered a paraplegic in what was a very minor accident.

Another jury in Maryland awarded $59 million to a belted passenger in a Toyota vehicle who was also riding with his seat reclined. The car was involved in a frontal collision. During the collision, the belted passenger flew forward at the time of the impact. It resulted in the amputation of both of the passenger's legs. Both of these cases spotlight this dangerous practice that automobile manufacturers have known about for decades. People are being needlessly injured and killed as a result of the automobile industry's inaction on this subject. The industry knows that the motoring public does not understand or recognize the danger of reclining the seat while the vehicle is in motion. The industry knows that millions of families drive many millions of miles on the road every year. The industry knows that some occupants in its vehicles will recline their seats to take naps, and by doing so, those

occupants are all at great risk of serious injury or death in an accident. Yet, the automobile manufacturers turn a blind eye to this danger even though there are simple approaches they could take to educate the public and prevent such needless injuries and deaths each year.

XI. Conclusion

If you think there is a possibility of a product liability claim, preserve the vehicle, tire, tire treads and other potential evidence immediately. Your case will often rest on expert testimony and evaluation of the physical evidence. If the chain of custody is not properly documented, or the vehicle or tire is inadvertently destroyed before trial, you may lose possible claims for product defects because of a failure to provide the evidence required to prove your case.

As you can see, product liability cases are often hidden in automobile accident cases. Be aware of the possibilities so that no claim gets overlooked. Consider a product liability claim any time there are injuries disproportionate to the severity of the accident. Clients deserve to be made whole. By overlooking a product liability claim, they may not get that chance.