TLA CHICAGO Regional Seminar and Bootcamp
January 20–22, 2021
VIRTUAL
Standing at the Intersection of Commercial Auto Tort and Products Liability Litigation

The Point Where Trucking Cases Turn Into Much More
Safety Systems for Commercial Autos

• Driver Warning Systems (e.g. the Eaton VORAD system)

  • Forward Collision Warning (FCW)
    • Available with radar and/or camera technology
    • Normally an audible and/or sensory alert

• Lane Departure Warning
  • Available with radar and/or camera technology
  • Normally an audible and/or sensory alert
Safety Systems for Commercial Autos

• Driver Warning Systems

  • Blind Spot Monitoring
    • Available with Camera technology

  • Driver Distraction and Drowsiness Warnings
    • In Development
Safety Systems for Commercial Autos

• Automatic Emergency Braking (AEB)
Safety Systems for Commercial Autos

• Advanced Driver Assistance Systems (ADAS)
  • Active Steering
  • Adaptive Cruise Control
  • Lane Keep Assistance
  • Automatic Headlights
  • Automatic high/low beam selector
Legal Obligation to Have Safety Features

• One state court has held that product liability claim for failure of manufacturer to have automatic braking in non-commercial vehicle was preempted under NHTSA regulations.

• But where a vehicle manufacturer had AEB installed as an option, it could be sued for failing to make that option standard.
  • Varela v. FCA US LLC, 249 Ariz. 89, 466 P.3d 866 (2020)

• A federal district court in Kansas allowed a plaintiff to sue a commercial tractor-trailer manufacturer for failing to have these technologies in their vehicle under a common law product liability theory, surviving a motion to dismiss.
Legal Obligation to Have Safety Features

• Industry Standards

  • Efforts by former safety directors to say certain technology is an industry standard.
    • E.g. backup cameras on certain commercial vehicles.

System Failures Causing or Contributing to an Accident

• Warning systems fail to alert

• AEB system fails to engage

• AEB system inadvertently engages

• ADAS systems fail to engage

• ADAS systems inadvertently engage
Standard Products Liability Theories

• There are FOUR (4) main types of claims in product liability cases:

  1.) Manufacturing Defect
  2.) Design Defect
  3.) Failure to Warn
  4.) Breach of Warranty
Manufacturing Defect

• Negligence or Strict Liability
  • Distinction between product manufacturers and product sellers
  • Consumer expectation test for strict liability

• Proof that the product possessed a defect at the time it left the manufacturer is necessary to recover under either theory
  • Restatement (Third) of Torts: Products Liability, § 2 cmt. n

• Plaintiff must show that the condition of the product proximately caused the injuries in question in both negligence and strict liability cases
Design Defect

• Design defect standards are typically established by the courts
  • Unlike a manufacturing defect, a defectively designed product cannot be compared to another product off of the line to determine if it is defective
    • Restatement (Third) of Torts: Products Liability, § 2 cmt. d ("Answering that [design defect] question requires reference to a standard outside the [manufacturer's design] specifications.")

• Risk Utility Test
  • "Balancing Test" - The risks inherent in a product design are weighed against the utility or benefit derived from the product
    • No finite set of factors, includes factors such as usefulness, avoidability of danger, feasibility of alternatives, aesthetics, etc.
  • Applies to both strict liability and negligence design defect claims
Responsibility to Warn

- A product supplier has a duty to warn of nonobvious foreseeable dangers from the normal use of its product

- Duty to warn depends on foreseeability: use, type of danger, user's knowledge

- Generally, the manufacturer has a duty to warn unless the product is altered, but a product seller may be liable where a manufacturer has failed to provide a warning or the seller is aware of a different danger
Breach of Warranty

• Express Warranty
  • Contractual obligations that arise from statements or representations made by a seller of goods concerning the quality, character, or title of the goods
  • Mere opinion will not create an express warranty
  • Breached upon delivery of defective goods
    • Two conditions before a breach of a written warranty can exist: (1) notice of the defect and (2) a reasonable opportunity to repair the defect, McDonald v. Mazda Motors, 269 Ga.App. 62, 603 S.E.2d 456 (2004)

• Implied Warranty
  • Implied warranty of merchantability
    • Plaintiff must show that the product was defective and not of its usual or expected quality or not adequately contained, packaged, and labeled, Battersby v. Boyer, 241 Ga. App. 115, 526 S.E.2d 159, (1999)
  • Implied warranty of fitness for a particular purpose
    • It is essential to show that the seller knew of the particular purpose that the plaintiff-buyer had in mind when purchasing the product

• Privity required in Georgia warranty claims, although not in other jurisdictions
Legal Theories Against Leasing Companies

• District court held that an injured motorcyclist and guardian adequately pled a plausible claim of strict liability against tractor-trailer lessor under Pennsylvania products liability law that tractor-trailer involved in vehicle accident was defective at the time it was leased to truck hauling company and caused accident that resulted in motorcyclist's personal injuries. The motorcyclist specifically alleged truck lacked collision avoidance system or autonomous braking system, that the systems could have been installed prior to being leased.

Litigation Strategies For Cases Involving Tort and Products Liability Issues

• Motor Carrier and Product Manufacture Named as Defendants in the Same Suit.
Litigation Strategies For Cases Involving Tort and Products Liability Issues

• Motor Carrier Attributing Fault to Manufacturer as Non-party.