

# Evaluating the Potential Airbag Case

by R. Ben Hogan, III

*How does an attorney assess the practical factors in deciding to take an airbag defect case? Here are some examples from recent cases as practice pointers:*

**Bridges v. Ford** – The seatbelted driver of a Ford Taurus loses control in a rain storm, slides off the road and hits a tree at about 20 mph. The airbags fail to deploy, and he suffers a brain injury. Is it a case? What is the defect?

**Discussion:** The history of the Ford Taurus is that it started out with 5 crash sensors and later models had crated up with one. As Ford removed those sensors (which saved money), it never went back and re-tested the Taurus for pole impacts. The single forward crash sensor has a vulnerable mounting that is subject to twisting during impacts. In the Bridges accident, the sensor twisted enough so that it did not detect the forward acceleration (more accurately, it detected only 60% of them), and therefore the ECU did not deploy the airbag. The vulnerability of the sensor mounting violated a Ford specification. Ford, maker of the sensors, had warned Ford about the dangers of sensor twisting. Moreover, a Ford S&P paper warns about the dan-

gers of removing crash sensors in general. So the defect is there, but whether the case is viable may depend on other issues.

**Eagle v. General Motors and BroadKey Safety** – Around midnight, driver of a late Metro runs off the road and hits a telephone pole. The driver airbag deploys breaking his neck and rendering him a quadriplegic. He is found not seatbelted. About the same time that the airbag struck the plaintiff, an object from the trunk came through the rear seatback into the passenger compartment and struck the back of the plaintiff's seat. Did the airbag or the object from the rear cause the injury? Is it a case?

**Discussion:** The "rest of the story" is that the tether inside the airbag to limit its deployment distance and prevent "bag slap" had torn from the bag. This released the full force of the deployment into the driver's neck and was the direct cause of the injury. The object coming from the trunk, itself a



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possible defect theory, was a non-factor in causing the injury. The lack of seatbelt use made no difference since the impact was a relatively low impact velocity. Manufacturers are required to pass the FMVSS 208 seatbelt performance standard without a seatbelt being worn. There would have been no injury to Mr. Ingle but for the defect tether attachment to the airbag (caused by locating it next to the inflator due to removal of a heat shield to save weight and reduce size). The failure of the tether violated both GM and Ford manufacturing standards.

**Blanchard v. Toyota** – A Toyota Camry is driven into a low wall by an intoxicated driver in a shopping center parking lot. The seatbelted passenger is struck in the face with an airbag and rendered blind in one eye. Is it a case against Toyota?

**Discussion:** The uninflated passenger airbag is a defective product if it can be shown to deploy into the occupant space of seatbelted passengers with enough power to cause blindness (which in the literature is 44 meters/second or about 97 miles per hour). A seatbelted passenger is sitting where the manufacturer put him. To strike a seatbelted passenger and cause blindness is akin to corporate assault and battery and should give rise to punitive damages (and was so held in one Florida case).

The airbag and/or seatbelt manufacturer should not be allowed to say: "If you didn't wear my defective belt and airbag to injure you, then you should have an acci-

dent." In a crashworthiness case where the entire injury is enhanced injury, the cause of the accident should not be a defense. Both Alabama and Florida cases support this position.

**Tyson v. Ford** – A Windstar is struck in the right rear, and the airbags deploy. The passenger airbag strikes the seatbelted passenger in the face, blinding her in one eye. The Windstar passenger airbag is the largest airbag in the world, and is not tethered. The driver's side airbag is the Windstar is tethered. The Windstar has a history of deploying its airbags in otherwise non-deployable events such as striking animals in the road. A collision in the right rear arguably falls into that category. Is it a case? What is the best theory?

**Discussion:** The Windstar, like other Ford products, has had fewer crash sensors over the life of its vehicle program. In Ford never went back and revised the vehicle airbag performance (other than have minimum for federal compliance). The owner's manual says airbags only deploy in serious frontal impacts. One claim would be that Ford was negligent in choosing fewer sensors at risk of injuring occupants.

The early Windstars also had powerful inflators. (They had to deploy the largest airbag in the world.) They could cause blindness if deployment was into a passenger's eye. The package layout drawing showed that unless the seat was pushed full back on the seat track, airbag deployments were going to be into the passenger's face, particularly to smaller

people. Windstar crash tests showed deployment of the passenger bag into the 50th percentile crash dummy face 12 out of 12 times. The non-tethered airbag wins a best trial theory.

**Griner v. DaimlerChrysler and Methode** – Intersection collision. Passenger airbag deploys but driver bag does not. Driver strikes head on A-pillar and suffers brain injury. Driver says she is seatbelted, but belt is not being worn when police arrive. Is it a case? What theories?

**Discussion:** When a passenger airbag deploys and the driver bag does not, it is either a smart system (deploying an airbag at lower impact velocity if the seatbelt is not being worn – not a factor here) or a defect may be involved. For a driver airbag, one place to look would be the clockspring, an electrical coil located in the steering wheel, which only the driver bag has. In this case, an industrial X-ray of the accident vehicle clockspring and a comparison clockspring detected the defect. Experts and counsel for both sides were present when the clockspring was removed from the vehicle, X-rayed and tested electrically. Defect ended up being admitted in the case, although a trial on damages was necessary.

**Nelson Atlanta Cases** – The early Atlanta had a powerful airbag that deployed upward, toward the face, and

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was not tethered on the passenger side. There are many other blindness cases, a tragedy that was the subject of a NHTSA investigation. For those cases one key document is the known deployment distance given by Nissan to NHTSA in response to their 1997 questions about airbag deployments. (All manufacturers had to answer those questions about all of their airbags, so the data is available, although usually produced under a protective order and confidential. As with all eye cases, the usual battle is over whether the client was "out-of-position." The defense experts often take the position that Plaintiff was leaning forward toward the airbag. For it to be a winnable case, the client should be searched within the expected range of the eyeline on the package layout drawing.

**Turn Down Cases** – Factors that influence whether you take an airbag case include the following:

**Was the client seatbelted?** FMVSS 208 requires passage of every vehicle with the airbag only and without seatbelt use. Therefore, it is not an automatic turn down that the client was not seatbelted. On the other hand, it makes it more likely that the client was out of position when struck by the airbag. The trial of the case is going to come down to that issue, and a seatbelted plaintiff is more likely to be found in position.

**Sensors.** Some airbags fail to deploy because of defective sensors or defective mounting of sensors. On failure to deploy cases, it may be a turn down if the Delta-V range is not clearly in the "must fire" zone. The same is true on the opposite

side. Where the airbag deployed when it should not have, the manufacturer's removal of crash sensors can make it harder for the ECU to do its job. Nevertheless, the crash impulse needs to be clearly in the "no fire" zone for this to be a good case. Hitting a small animal like a dog would clearly fall into that category.

**New technology.** The failure of a vehicle to have a side-curtain airbag or a rollover sensor are great potential targets. But you can spill a lot of blood and money trying to create law. Justices sometimes like it, and appellate courts don't. For them, it becomes a "failure to invent" argument. The Court of Appeals gets to read the appellant's brief first before they hear anything about your case. For me, I now believe the product ought to be in use another vehicle, ideally one made by the defendant, before it is safe to contend that there should have been one in the product at issue.

**Smart systems.** The idea of deploying the airbag at a higher Delta-V if the seat senses use of the seatbelt is a good idea. It does lead to the false impression of wondering if there is a defect present when one airbag is deployed and the other is not. Beware of that.

**Causation.** Beware of taking a case that has great defect but no causation. A lot of money has been wasted by me and others working up cases that sound wonderful on paper but can't be proved from a biomechanics standpoint.

I recommend that you get your experts' heads together before suit is filed. If there is a dissent about going forward in the case, pay attention to it. ☐

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