

What is a Crashworthiness Case?

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Crashworthiness is defined as the ability of a car to protect its occupants in the event of a crash. Since approximately 1965, automotive manufacturers have been required to design crashworthy cars. The crashworthiness doctrine recognizes that accidents are statistically inevitable and that automotive manufacturers have a duty to eliminate unreasonable risks and to provide reasonable protection to occupants in accidents.

All crashworthy vehicle designs take into account the same five general crashworthiness principles. Specifically, a crashworthy vehicle will be designed to: (1) control energy from the collision; (2) maintain occupant survival space and minimize intrusion into the passenger compartment; (3) package or compartmentalize each seating position; (4) ad-

equately restrain occupants and prevent ejection; and (5) prevent vehicle fires. Basic features utilized to improve a vehicle's crashworthiness are seat belts, air bags, interior padding, crumple zones, and solid roofs. These and other lesser-known safety features are considered "on-the-shelf" technology and, in some instances, have been available for decades. As a result of the manufacturers' failure to incorporate readily available safety features into their vehicles, thousands have been needlessly injured or killed in what should have been uneventful, survivable collisions.

Although the term "crashworthiness" is often used to refer to a wide range of car-related defects, many automotive-defect cases are not truly crashworthiness cases, but are cases which involve

a crash-causing defect. For example, a case involving a tire tread separation which causes a vehicle to rollover would not technically be a crashworthiness case, but, rather, a case involving a crash-causing tire defect. However, the same case could also involve a crashworthiness defect such as a roof crush or restraint-system failure.

This crash-causing defect/crashworthiness-defect distinction is more easily understood by breaking a single car accident down into two separate collisions. In the first collision, the car collides with another car or fixed object. Defects which cause this first or initial collision are crash-causing defects. In the second collision, the car occupant moves as a re-

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nity for NLD to make a permanent mark on the future of AAJ. Also, during this phonathon we will have NLD members calling NLD firms who are eligible for the new NLD Leaders' Forum initiative. Phonathons are always a great way to meet new people while helping NLD reach their goals. I encourage each of you to participate in a phonathon.

The AAJ annual convention is almost here and you don't want to miss it. This year it will be held in Philadelphia, PA. Friday, July 11th, NLD will be doing a Habitat Build in Philadelphia and that evening will be our NLD Meet and Greet Party which is always a blast. Sunday, July 13 will be our CLE entitled "Essential Skills for New Lawyers." The program is intended to educate members on important elements vital for a more successful trial. We have worked

hard to secure great masters of our trade to educate us. The speakers include:

- David Ball – Approaching the Jury
- Mary Alice McLarty – Mistakes to Avoid in Opening Statements
- Mark A. Tate – Presenting and Preparing Your Expert Witness: Depositions and Trial
- Richard D. Hailey – Preparing for Your Cross-Examination
- Russ M. Herman – How to Win in Defective Products Cases
- Honorable James Graves – Writing Your Appellate Brief and Presenting Your Oral Argument
- Christopher D. Grover – Persuasive Strategies for Presentation of Evidence

That night will be our big party Big Party from 9:00 – 1:00. Preparations are underway that will make this party one you won't want to miss. Monday, July

14 of course, will be our annual business meeting.

It has been such an honor and a privilege to serve as your Chair of the New Lawyers' Division this past year. Although it is difficult to leave this position, I know the Division will be in good hands with Chris Glover. His commitment to this organization is profound. I am excited to join the AAJ Executive Committee and the AAJ Board of Governors and will continue in those roles to grow our membership and perpetuate the goals of this Division. As you can see, NLD is a great platform for networking, making connections with other lawyers and overall making a difference in our careers and the lives of our clients. I encourage each of you to become involved in NLD.

Rebecca McRae Langston,
Chair of NLD

Federal Court: You Better Dot the I's and Cross the T's

By W. Corban Gunn, Corban, Gunn & Van Cleave, PLLC, Biloxi, MS

As any new lawyer that has filed a lawsuit knows, the first motion to count on is the Motion for Removal by defense counsel whether justified or not. Many seasoned lawyers, from whom new lawyers should always listen, will give many explanations for this almost automatic move, including but not limited to, the fact corporate defendants feel federal court is "fairer," and federal court sets forth too many "obstacles" to recovery on behalf of injured or wronged claimants. The seasoned lawyer, my father, is skeptical of federal court because the federal court we routinely practice under has gone to an electronic filing system which requires the use a computer and that is "scary" in his mind.

However, even through federal court can seem like the last place one would want to be representing the interest of a claimant, practicing in this arena is a foregone conclusion in many cases. Thus, you might as well learn as much as possible about the "ins and outs" of federal court to enable yourself to fully represent the interests of your client.

I was fortunate enough to learn the "ins and outs" of federal court as a federal law clerk for a great person and jurist, Honorable L.T. Senter, Jr., Senior of the United States District Court Judge for the Southern District of Mississippi. In addition, I have spent the last few years in federal court representing policyholders in the wrongful denial of their insurance claims arising from the aftermath of Hurricane Katrina.

I believe there are some benefits to federal court. For one, the case is going to proceed in a due diligence manner whether you like or not and so one must be diligent in complying with the Court's mandated schedule. During the initial case management conference with the assigned Magistrate Judge, the Court is going to administer a Scheduling Order setting forth deadlines for initial disclosures, expert designations, discovery, dispositive motions, settlement conference, pre-trial motions, and trial date. It is imperative to comply with the Scheduling Order and completely fulfill the requirements on or before the set deadline. I can attest to various occasions where

the Plaintiff and/or the Defendant were adversely affected for their failure to completely comply.

One of the great quotes for any new lawyer to remember is the following: "You learn more from your mistakes than you ever do in winning." A recent federal court "lesson" I personally learned involved expert designations. If a witness, even if it is your client / plaintiff, is going to give an opinion regarding any aspect of the case, one must designate said witness as an expert on or before the mandated expert designation deadline. This is just a small lesson learned in a multitude of preventative measures one must conduct on a daily basis in proceeding through the "obstacles" of the federal court system. It is imperative to stay diligent throughout the progression of the case so as to not allow the opposing party to gain an undeserving advantage. Thus, it is my opinion for a new lawyer, or any lawyer, to secure winning results in the federal court system to always "dot the I's and cross the T's" in every aspect of federal court practice.

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sult of the first collision and collides with some part of the car interior. Crashworthiness defects are revealed when the occupant sustains injury as a result of this second collision. While this distinction may mean little to the injured party, manufacturers are typically more willing to accept responsibility for crash-causing defects than they are for crashworthiness defects. In addition, the distinction may make a legal difference

which, depending on the law of the jurisdiction, could be extremely important when it comes time for jury instructions and verdict forms.

The important point to remember is that cars and their components must be designed and manufactured to be reasonably safe, taking into account foreseeable crash modes, dangers, and available alternative designs. Despite steady advances in automotive safety, crashworthiness and crash-causing defects are still widespread. Millions of defective

cars capable of causing severe injuries and death in otherwise unremarkable accidents remain on the road today, but few realize the nature and scope of the problem. Given the devastating nature of the injuries often caused by crashworthiness and crash-causing defects, available insurance coverage is often insufficient to provide for the injured party's losses and future needs, leaving a product liability case against the automotive manufacturer as the victim's only hope for adequate compensation.