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Education for the Less Common Trucking Cases

Protecting Vulnerable Road Users

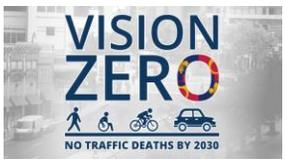
Valerie Yarashus, Esq.

Preventing tragedies with safety equipment: side underride guards and additional blind-spot mirrors

Valerie A. Yarashus, Esq. Meehan, Boyle, Black & Bogdanow, P.C.
Boston, MA 02118
vyarashus@meehanboyle.com

I. What's going on with traffic safety, especially for commercial motor vehicles?

II. How can we use this now in our cases?



International safety movement: Vision Zero

This is an image used in Montgomery County, MD

Truck Side Guards Save Lives
 Truck side guards are required on all trucks with a GVW of 10,000 lbs or more. They are designed to protect vulnerable road users (VRUs) from being struck by a truck's side.

Why do side guards matter?
 In 2015, 374 people were killed and 1,372 injured in crashes involving trucks with side guards. 32% of those killed were bicyclists, and 29% were pedestrians.

Truck vs. Vulnerable Road User (VRU) fatalities are preventable

VRU's are bicyclists, pedestrians, motorcyclists – anyone on the roads without a vehicle protecting them

One of the key recommendations: impact-resistant side underride guards and additional blind spot mirrors

WHAT ARE THEY?
 The National Transportation Safety Board (NTSB) recommends side guards on heavy trucks and blind spot mirrors on medium and heavy trucks.

NTSB recommends side guards on trucks

How Effective Is it?
Side Guard Observed Effects for Bicyclists

Category	Percentage
Prevented Fatalities	61%
Fatalities	39%

* Side Guards implemented in the United Kingdom resulted in a 61% reduction in fatalities of bicyclists and 20% in pedestrian fatalities

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Feb. 8, 2018

New York Mayor Bill de Blasio [credited Vision Zero for a 32 percent drop](#) in pedestrian fatalities to just 101 people in 2017, the lowest number since the city started keeping records.

www.nyc.gov/traffic/index.nsf/2018/02/safety_experts_ni_needs_eyes_vision_zero_in_ni_to.html

On NYC's official website

New York's families deserve and expect safe streets. But today in New York, approximately 4,000 New Yorkers are seriously injured and more than 250 are killed each year in traffic crashes. Being struck by a vehicle is the leading cause of injury-related death for children under 14, and the second leading cause for seniors. On average, vehicles seriously injure or kill a New Yorker every two hours.

www1.nyc.gov/site/visionzero/index.page

On NYC's official website

This status quo is unacceptable. The City of New York must no longer regard traffic crashes as mere "accidents," but rather as preventable incidents that can be systematically addressed. No level of fatality on city streets is inevitable or acceptable. This Vision Zero Action Plan is the City's foundation for ending traffic deaths and injuries on our streets.

www2.nyc.gov/site/visionzero/index.page



Feb. 8, 2018: "As pedestrian deaths spike in N.J., safety experts urge Murphy to try NYC program"

- After a spike in pedestrian deaths in 2017, safety advocates want Gov. Phil Murphy to begin a statewide "Vision Zero" campaign, similar to one credited with reducing fatalities in New York City.
- As overall traffic fatalities increased in 2017, advocates questioned how effective current safety programs are. New Jersey uses a different national program, Toward Zero Deaths, which advocates contend isn't doing enough as Vision Zero could.
- "We need an aggressive plan to tackle pedestrian fatalities. A 13 percent increase (in one year) is not acceptable," said Jenna Chernetz, Tri-State Transportation Campaign New Jersey policy director. "This can be done sooner and put the state on a path to reducing fatalities."
- Too many traffic deaths means NJ Needs Vision Zero
- Murphy could sign an executive order to establish a New Jersey "Vision Zero" campaign, similar to the program New York City implemented to reduce pedestrian and cyclist deaths, Chernetz said.

http://www.nj.com/traffic/index.html/2018/02/safety_experts_nj_needs_vision_zero_similar_ny.html

Headline: N.J. city joins 'Vision Zero' to eliminate traffic fatalities by 2026

- Can New Jersey's second-largest city make traffic fatalities a thing of the past?
- That's the goal laid out by an executive order Jersey City Mayor Steve Fulop signed today adopting the Vision Zero initiative, adding Jersey City to a list of more than 30 U.S. municipalities that have employed traffic safety strategy.
- The order establishes a 13-member task force charged with creating a comprehensive plan to eliminate car crashes that result in fatalities and severe injuries by 2026.
- Jersey City becomes the first municipality in New Jersey to adopt the Vision Zero strategy, which began in Sweden in the 1990s and has since spread to cities like New York, Chicago, Los Angeles and Philadelphia

Another level of impact-resistance would
withstand vehicles up to 40 mph:
Stop Underrides Act of 2017 (filed)



Notice that there is
no passenger
compartment
intrusion – the front
end functions as it
should







Aerodynamic panel or fuel efficiency skirt – this is not impact resistant!

How much did they spend on those other panels that don't do anything for safety?



Side Guard kits starting at \$654 / side



Check for this theme:
 Trucking company failed to provide adequate safety equipment

Was there some technology or safety equipment that could have prevented this fatality/injury?

- Side underride guards
- Additional blind spot mirrors
- Disable/block texting while driving
- Inward facing cameras to monitor drivers' behavior
- Pedestrian detection sensors
- Forward collision avoidance systems

How do we use this in our cases?

1. On every case, was there safety equipment that could have prevented this?
2. If it's a side underride case, can you get expert testimony that a side guard would have prevented the injury/fatality and was reasonably required given the foreseeable environment of use?
 - a. Vision Zero – impact resistant for VRUs – up to 440 psi
 - b. Angel Wing – manufactured by Air Flow Deflector – up to 40 mph – look at website of Insurance Institute for Highway Safety

What would have prevented this fatality/injury

Collision prevention - Examples of what the trucking company can do:

1. Routing
2. Additional "blind spot mirrors" – required in all Vision Zero model legislation
3. Proximity sensors for pedestrians and vehicles, forward collision avoidance systems
4. Adequate training of drivers, including awareness of space cushions – some jurisdictions require 4' space cushions between motor vehicles and bicycles

Collision mitigation – even if you don't prevent the collision, you prevent the fatality:

Side underride guards
(this one is a panel-style)



“We are here because a trucking company ...”

Focus has to be on the defendant's bad conduct - and not on the plaintiff



Outline for opening, mediation or pleadings

- I. Theme of defendant's bad conduct
- II. Timeline of defendant's bad conduct (start months or years before the crash) – what should have been done vs. what was done – set up the contrast/choice - **rules**
- III. Set up the scene just before the crash
- IV. NOW – plaintiff comes on the scene
- V. Details of collision
- VI. Injuries/damages
- VI. Life before vs. life after
- VII. All easily preventable with safety equipment



Themes of safety culture are everywhere now

- Construction sites
- Restaurants
- Roadways
- Laboratories
- Schools
- Health care facilities
- Hotels

Theme of “failed safety culture” can be very powerful with expert testimony



What is their approach?

TRADITIONAL APPROACH	VISION ZERO
Traffic deaths are INEVITABLE	Traffic deaths are PREVENTABLE
PERFECT human behavior	Integrate HUMAN FAILING in approach
Prevent COLLISIONS	Prevent FATAL AND SEVERE CRASHES
INDIVIDUAL responsibility	SYSTEMS approach
Saving lives is EXPENSIVE	Saving lives is NOT EXPENSIVE

36 cities in U.S. have adopted Vision Zero including statement that traffic fatalities in cities are preventable.

Does your defendant operate in any of them?



36 cities including these 10 “Focus Cities”

- [Austin, TX](#)
- [Boston, MA](#)
- [Chicago, IL](#)
- [Fort Lauderdale, FL](#)
- [Los Angeles, CA](#)
- [New York, NY](#)
- [Portland, OR](#)
- [San Francisco, CA](#)
- [Seattle, WA](#)
- [Washington, DC](#)



Universities are also putting side guards on their trucks

West Coast – University of Washington



• East Coast – Harvard and Boston University



Private trucking companies are putting side guards on trucks



U.S. Department of Transportation
Volpe

Volpe Report – Side Guards

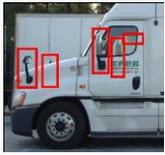
- North American “440” standards



IIHS
Insurance Institute for Highway Safety
Crash Test Report

IIHS Large Underride Crash Test Report

Theme – inadequate blind-spot mirrors



- This is a case about a trucking company that failed to give its drivers proper safety equipment, including additional mirrors, even though it knew the TT would be driven in urban areas with many pedestrians and bicyclists right next to it.

\$67 per mirror



Summary for your cases now

In your cases, consider adding a count for negligent failure to equip commercial motor vehicles with side underride guards and additional blind spot mirrors.

Remember that although the FMCSR's don't require them, those are minimum requirements.

Work with experts and base their testimony on Vision Zero findings, statistics on the scope of the danger, the IIHS crash tests, NTSB recommendations and the Volpe report, among others.

Join the Vision Zero committee of AAJ's
Trucking Litigation Group