

LITIGATION'S SAFETY ROLE: AUTO RECALLS AND BEYOND

New academic research shows the important role that litigation plays in prompting the National Highway Traffic Safety Administration (NHTSA) to issue safety recalls, considered one of the most “critical parts” of NHTSA’s operations.”¹ The implications are vast and significant.

Litigation plays several roles in promoting auto safety.

- The “specter of liability” has a safety impact on corporate decisions, which is particularly important in light of a “recalcitrant industry” and a relatively weak federal agency infected by “regulatory capture and budget restraints.”
- Litigation provides financial incentives for manufacturers to avoid producing unsafe cars. Those incentives include payouts to harmed victims, legal fees, and reputational costs (bad publicity).
- The threat of liability “raises the chances that a manufacturer will produce a safer product in order to avoid a defect, injuries, and a costly recall.”

Strong data and examples demonstrate that, but for litigation, NHTSA would never have learned about or investigated many dangerous defects that led to safety recalls.

- Lawyers for victims can use “pre-trial discovery” (conducting depositions, hiring expert witnesses, examining vehicle components, and procuring documents) “to investigate and uncover new information about a defect.”
- When “combined with the incentive to win recovery for their clients,” plaintiffs lawyers become a “force for the discovery of defective automobiles.”
- History shows that lawsuits that have preceded NHTSA recalls of dangerous vehicles² uncovered defects “whose existence or extent was previously unknown to manufacturers, regulators, and the public.”

¹ Conor Dwyer Reynolds, “The Role of Private Litigation in the Automotive Recall Process,” 29 *Loyola Consumer L. Rev.* 121 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3449773

² Recalls examined were: General Motors/Chrysler Ignition Switch Recalls; Takata Airbag Recalls; Chrysler Dodge Charger Headlamp Recall; Toyota Avalon Airbag Recall; General Motors Chevrolet Malibu Body Control Module

- In addition, “data show that recalls that occur in the wake of litigation are, on average, four times larger than other recalls” and “the vast majority of these recalls involve vehicles with defects that are more dangerous than those in other recalls, and involve components that are more likely to be critical to occupant safety.”

There are several legal barriers that block litigators’ access to data on potential defects and weaken their incentives to bring litigation that could uncover defects.

- Caps on damages weaken “incentives for litigators to invest resources in investigating potential auto safety defects.”
- Other barriers include NHTSA’s safety data reporting regulations, which limit available safety information available to attorneys and the public, and the use of confidential settlements and protective orders, which can allow safety information to remain hidden.

These findings suggest that litigation’s value in uncovering critical safety information extends far beyond the auto recall process.

- The fact that private litigation plays such a substantive role in the automotive recall process shows the “value of the work done by plaintiffs’ lawyers.”
- As a result of these findings, “Future researchers should explore the role of private litigation in the recalls of other products, including those managed by the Consumer Product Safety Commission and the Food and Drug Administration.”