

TRIAL TOUGH. SOLUTION SAVVY.®



SETTING A  
PRECEDENT  
WITH DILIGENCE  
& INGENUITY

2 CORE DEFENSE POINTS

1 COMPLETE VICTORY

## CASE STUDY

# STOPPING a consumer expectation lawsuit over automated vehicle safety features IN ITS TRACKS

## Our Client's Challenge

Plaintiffs' lawyers around the country are currently testing a novel "failure to equip" argument in product liability lawsuits against automotive original equipment manufacturers (OEMs). They contend vehicles are defective if they are not equipped with certain safety features such as forward collision warning and/or automatic emergency braking. Plaintiffs' lawyers are pursuing these claims even in cases where the involved vehicles were manufactured well before these features were commonplace in the market.

That's the challenge our client, a major automotive OEM, confronted in defending a product liability lawsuit involving a passenger van

manufactured in 2013. The van – carrying five on-duty federal agents who were all professional drivers trained to transport nuclear materials across the country – rear-ended a slow-moving dump truck at approximately 60mph in Oklahoma. The van was traveling through a construction zone on the highway when the dump truck, traveling the same direction, changed lanes in front of the van and the van driver was unable to avoid a collision. The accident killed one passenger and left another with life-altering brain injuries.

The victims' families sued our client in Oklahoma alleging that the van was defective because it was not equipped with certain advanced driver assistance systems: specifically, forward collision warning and/or automatic emergency braking. They argued that if these features were equipped on the van, the accident either would not have happened or would not have been as severe – even though the driver was professionally trained to avoid collisions in similar situations and could not do so.



2013 PASSENGER VAN  
WITH A PROFESSIONAL  
DRIVER AT THE WHEEL



STOPPING a consumer expectation lawsuit over automated vehicle safety features **IN ITS TRACKS**


# SETTING A PRECEDENT

## Our Approach

This was one of the first of these cases to get so close to a trial and our firm was in uncharted territory. We had an opportunity to find the best solution for our client and set a precedent for other OEMs. To do so would require a solid understanding of the law and Lightfoot's creativity.

### We built our defense around two core points.



The first was that the collision involved a highly-skilled professional driver who routinely transported nuclear materials. In a sworn deposition, the driver admitted taking immediate evasive action after seeing the dump truck begin to move towards his lane of travel. He reacted as quickly as, if not sooner than, any advanced driver assistance system would have. He still crashed. In addition, under these conditions, the systems would not have marked the dump truck as a threat until it was too late – perhaps even after the human driver saw it.



The second prong of our defense focused on the somewhat unique product liability law governing our case: Oklahoma's consumer expectations test. Under that test, a product is defective

only if it is more dangerous than contemplated by an ordinary consumer. Satisfying that test hinges on what a consumer would reasonably expect. In this case, the question for the court to consider was whether the ordinary consumer would expect these systems to be equipped on a 2013 passenger van.

The Lightfoot team's hard work and ingenuity paid off. Through a detailed survey of all vehicles sold in 2013, we found that a very small percent were equipped with forward collision warning and/or automatic emergency braking. Further, none of the similar passenger vans on the market in 2013 were equipped with these systems. We also obtained the plaintiffs' own statements, during their depositions, that they did not expect these features on the 2013 passenger van at issue.

The compelling data and deposition testimony we compiled clearly demonstrated that a reasonable consumer could not have expected those safety features in a van and that the driver knew they were not in place and acted according to his extensive training.

## The Result

After reviewing the briefing on this issue, the court granted summary judgment as to all of the plaintiffs' claims. In its ruling, the court concluded that it would be **unreasonable for an ordinary consumer to expect a 2013 passenger van to be equipped with systems that were only available in a handful of vehicles at the time.**

This was a complete victory for our client. The plaintiffs' and defense bars also took notice, along with OEM in-house counsel actively monitoring this evolving area of liability. After our motion for summary judgment succeeded, we received calls from defense counsel noting this would be a case they could rely on for their matters, to the benefit of all OEMs.

The plaintiffs' bar will likely continue pushing this theory, but our case, in jurisdictions that apply the consumer expectation test, established a bright-line rule that should protect OEMs in similar cases. Our team's diligence and ingenuity, along with a refusal to ever accept the status quo, secured this result.

### About Lightfoot, Franklin & White LLC

Trusted by clients and respected by opponents, Lightfoot is a leading national litigation firm. True to its **"Trial Tough, Solution Savvy"** philosophy, Lightfoot was named a **"Top 20 Trial Law Firm"** in the U.S. by Benchmark Litigation in 2019, 2020 and 2021. Working from offices in Birmingham and Houston, the firm's 60+ lawyers are known for their work involving complex, bet-the-company litigation; internal and government investigations; risk management; and compliance counsel, including NCAA matters, for clients across the country and around the world. For more information, visit [lightfootlaw.com](http://lightfootlaw.com) and connect with us on [Facebook](#), [LinkedIn](#) and [Twitter](#).



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