A fitting remedy for upfitted trucks: companies that 'upfit' truck bodies for specific functions such as utility work should make engineering and design modifications rooted in safety. When they haven't, here's how to prove their negligence.

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citation details

One January day in 2004, two women were in a car traveling down a country road following a large truck that had a lift bucket attached to it. The words "Acme Utility Co." appeared in large black letters on its side.

The three men inside the truck had no way to anticipate the tragedy that was about to happen. The women later would testify they saw a pickup truck approaching from the opposite direction. The pickup hit the Acme Utility truck nearly head-on; the Acme truck then flipped on its side, came to rest in a ditch, and caught fire. Two of the men died. The other survived with extensive burns. (1)

Most trucks rolling off the assembly lines at vehicle manufacturing plants are products ready for sale. They go from factory to consumers or businesses with few, if any, modifications beyond the addition of gasoline and license plates.

In other cases, however, the end of the assembly line is an intermediate step in the process. These "incomplete vehicles" may leave the factory with what to the casual observer appears to be little more than an engine, a chassis, and a passenger cab. They later become service-oriented vehicles like ambulances and utility, cable TV, or tree-trimming trucks.

Finishing them is the job of what the automotive industry calls an "upfitter." These businesses may add to the chassis a box structure that becomes the core of the finished vehicle, and perhaps some specialty equipment.

In the case of the Acme Utility truck, the upfitter had added an aerial lift with a bucket, designed to allow workers access to utility lines many feet above the ground; an outrigger assembly with footpads on each side of the truck, designed to provide additional stability when the lift was extended, changing the truck's center of gravity; and storage box assemblies, designed to hold equipment for utility line maintenance and service.

When they were done, workers for the upfitter placed a placard on the completed truck that said:

> Conformity of the chassis-cab to U.S.A. federal motor vehicle safety standards, which have been previously fully certified by the incomplete vehicle manufacturer or by the intermediate vehicle manufacturer, has not been affected by the final-stage manufacturer. The vehicle has been completed in accordance with prior manufacturer's instructions, where applicable. This vehicle conforms to all other applicable U.S.A. federal motor vehicle safety standards in effect in the third month of 2000. [Emphasis added.]

In other words, the upfitter deemed it a safe truck. The upfitting company knew--and, according to its own statement, followed--the safety standards that applied.

The placard looked and sounded authoritative, but it wasn't true. A post-crash investigation would show that the outrigger mounted on the driver's side of the truck--placed there, ironically, as a safety feature--and part of the mounting hardware for the aerial lift pierced the truck's gas tank mounted below the driver's door. This fueled the fire that killed two men and maimed another.

No statistics show how many upfitted trucks are on the road today or how many upfitting companies are in business. And no U.S. government oversight is directed specifically at the upfitter industry, beyond requirements that upfitters follow the federal motorvehicle safety standards. In contrast, Canadian law requires upfitters to register with the government agency that oversees transportation, and mandates that upfitters keep records and perform analysis and testing to show they comply with Canadian safety standards. (2)

In the Acme Utility case--which we handled on behalf of the family of one of the men who died in the crash--all we knew at the outset was that the upfitter charged Acme Utility about $38,000 when it delivered the completed truck. Eventually, we learned much more about the unsafe practices of the upfitter industry--enough to convince the defendants in our case to settle before trial.

Nevertheless, in early 2007, the Web site maintained by the Acme Utility truck's upfitter indicated it was still selling the same model of truck with the same outrigger and aerial lift configuration that led to the postcollision, fuel-fed fire in our case. Given this and the lack of adequate safety regulation of the industry, plaintiff lawyers can expect to be called on to represent clients who have suffered significant loss as a result of a crash involving an upfitted truck. Strategies we followed in bringing the Acme Utility case to a successful conclusion show there is a way to extract justice for these clients.

What and who?

In any case like this, much of the important evidence will come from the accident scene. Inspection of the wreckage is the first step.

In our case, it was clear from the wreckage that the force of impact drove the Acme Utility truck's gas tank into the outrigger footpad. The footpad--a thick piece of steel with square, rather than rounded, edges--was located just inches behind the tank and was oriented in a horizontal, rather than vertical, position. On impact, it sliced into the tank, creating an opening about nine inches long and three-quarters of an inch wide. This allowed gasoline to escape and feed the fire. That fact came to light as our expert in fire investigation examined the scene.

[ILLUSTRATION OMITTED]

Further investigation determined that the mounting device used to attach the truck's aerial lift to the chassis had contributed to the postcrash fire. The impact that pushed the gas tank backward also drove it into the sharp edges of the mounting device, further compromising the tank's integrity.

Many attorneys looking at the accident scene in our case might have been inclined to name as defendants only the original vehicle manufacturer and the utility company that employed the men in the truck. But in a case involving an up fitted truck, you should also consider naming the company that added components to the vehicle.

Questions to ask include these: Did the upfitter follow the applicable federal motor vehicle safety standards? Did it add anything that created a potential hazard for those using and driving the truck, or change the weight or stability of the vehicle significantly? Did its alterations shift the truck from one vehicle class (as defined by the U.S. Department of Transportation) to another, making it and the manufacturer subject to a different portion of the regulatory code?

Consider naming the companies that made the component parts the upfitter used. Does that equipment conform to safety standards, or does its design--and how the design interacts with the

vehicle--create a safety hazard? In our case, we named the company that made the aerial lift and bucket device (and designed the mounting system) and those that made other specialty equipment installed on the vehicle.

When and how?

In pursuing the paper trail, first seek any design drawings for the completed vehicle. The truck upfitter is likely to have these, and they will provide a detailed layout of what work the upfitter performed and what components it added.

The drawings will also give specific measurements for the locations of the added components. These documents are critical to understanding and reconstructing the accident, as some evidence may have been destroyed by fire, collision damage, or rescue personnel and police and fire investigators.

Each of the components designed by another company--in our case, this was chiefly the manufacturer of the aerial lift device--also will have its own set of designs and drawings. It's important to obtain these, as they are likely to include information on how and where to affix a component part to a vehicle.

Vehicle manufacturers provide upfitters with manuals that explain what they can and cannot do to a vehicle within the guidelines of the federal motor vehicle safety standards. Sometimes referred to as "body builders' books" or "best-practices manuals," the manuals articulate how a vehicle is to be modified and include a rundown of the vehicle's component parts, such as fuel and exhaust systems. To some in the industry, a best-practices manual is considered "the single most important document" an upfitter can use in determining compliance with federal safety rules. (3)

Some vehicle manufacturers maintain a fair amount of upfitter information--including best-practices manuals--in electronic form on their company Web sites. (4) Some provide toll-free numbers so upfitters can call to ask an engineer specific questions about design modifications and their safety implications.

Why or why not?

In our case, the upfitter displayed not just a lack of attention to detail with regard to safety but almost open disdain for anything safety-related. In deposition testimony, one company official said he had given no thought to the people who eventually would ride in the trucks, did not care about their safety, and didn't care why the truck in our case had caught fire.

While such an admission under oath is astounding, this may be less an example of one official's arrogance and more an indication of an industry mind-set, one that believes, "Someone else made it; we're just adding on to it." Plaintiff lawyers should look for such an attitude in defense witnesses and be ready to take advantage of it.

In more concrete terms, ask the upfitter's representatives the following questions about safety:

* Are there any upfitter employees assigned to safety? How many? What are their specific tasks or job descriptions? Are they engineers, or do they have training in safety analysis?

* Can the company show expenses indicating it consulted with or hired an engineer, consultant, or safety specialist to assist in hazard identification?

* Has the company performed any type of hazard analysis, including a failure-modes-and-effects analysis?

* Has the company performed any crash tests on its completed vehicles? Are there reports from such tests, with accompanying videotape recordings or photographs?

* Has the company ever used one of the toll-free hotlines maintained by a vehicle manufacturer to speak to a representative about safety issues? Did the company take any action based on such a call?

* Has the company had any interaction with component-part manufacturers regarding how and where to place their products on vehicles?

* Are there any alternative designs available that might have made the vehicle safer?

Companies that modify vans and trucks while maintaining or even improving safety features can provide examples of how to do such work properly. For example, Roadtrek modifies vans for use as motor homes. According to its Web site, on a voluntary basis, Roadtrek performs dynamic rollover, roof-crush-resistance, and side-crush-resistance testing.

In this last category, Roadtrek analyzed a van's wall from which it had removed several of the manufacturer's steel wall studs and instead supported the wall with its own wooden cabinetry. It found the resulting vehicle was stronger than the original. (5) You could compare such practices to those of the upfitter in your case, or use the information to guide your questioning of workers to see if they did similar things.

Of course, as in many other types of products cases involving multiple defendants, each defendant will point to one or all of the others as the culprit. But the "we're-not-a-manufacturer" defense is unique to upfitter cases. None of the defendants wants to be viewed as the party that placed the vehicle into the stream of commerce, subjecting itself to products liability exposure.

In our case, each party could claim it was devoid of liability because it had not--in its view--completed the work. The vehicle manufacturer's defense was based on the fact that it hadn't outfitted the truck with the outriggers or aerial lift and did not know where those components would be located on the vehicle in our case. Similarly, the aerial lift manufacturer said it had made only a component part and alleged it was the upfitter's role to appropriately place and orient the lift and other added components on the chassis.

Most interesting was the strategy of the upfitter, which tried to deny it was a manufacturer at all and claimed it only had "assembled" the parts into the final vehicle. Countering this was simple: We needed only to point to the placard that the upfitter had placed on the finished truck, on which it called itself the "final-stage manufacturer." That--plus the company Web site, which contained language saying it was a manufacturer--defeated the argument. Today, the word "manufacturer" appears nowhere on the company's Web site.

Most upfitters seem to place placards on their work, so it pays to observe the wording. Many may take the typical defense reaction of trying to blame someone else by recasting their role in the truck's outfitting. Like so many products liability cases, this one arose out of an incident that didn't have to happen. Even a small amount of concern about safety, and engineering or design modifications rooted in safety, might have saved the lives of two men and kept a third from life-changing burns.

For lawyers who represent injured people, the lessons learned here may indeed have value, although with luck--not to mention an industry-wide focus on safety--we will not need to draw on them.

Notes

(1.) These facts are based on an actual case. Due to settlement confidentiality restrictions, all party names have been changed.

(2.) Trailer/Body Builders, CTEA Tackles Industry Issues, http://trailer-bodybuilders.com/mag/trucks_ctea_tackles_industry (Jan. 1, 2007).

(3.) Louie Kleinstiver, Natl. Truck Equip. Assn., The incomplete Vehicle Document, www.ntea.com/tr/techtalk_detail.asp?DOC ID=101180 (Sept. 9, 2003).

(4.) See e.g. GM Upfitter Integration, www.gmupfitter.com/index.htm.

(5.) Roadtrek Co., Our Commitment to Safety, www.roadtrek.com/safetyfeatures.aspx.

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