

## LANGDON & EMISON

## Newsletter

Winter 2021

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## Passenger and Cargo Vans Prone to Deadly Rollover Crashes

Multiple design failures at the center of two cases recently resolved

Auto manufacturers have known for decades that 12- and 15-passenger vans (and their cargo van equivalents) are dangerous because of their inherent instability, leading to loss of control and a propensity to roll over. Yet, automakers have continued to market these dangerous vans to church groups, athletic organizations and work groups that have been tragically impacted by fatal and injurious accidents nationwide.

Between 2001 and 2012, the National Highway Traffic and Safety Administration issued eight consumer advisories warning about the dangers of 15-passenger vans and their propensity to roll over.

Langdon & Emison recently resolved passenger and cargo van cases involving multiple design defects. In one case, two church volunteers were killed and four others injured in a crash as they were traveling to a correctional facility to participate in a Christmas gift exchange and dinner they had organized for inmates. The second case involved two men traveling for work on the interstate in a cargo van that went out of control, killing the passenger and causing the driver to sustain a traumatic brain injury and extensive injuries to his spine.

In both cases, the crashes occurred due to defects in the vans' design, which created inherent instability that led to loss of control in foreseeable driving circumstances. If you are evaluating an accident involving a passenger or cargo van crash with serious injuries or fatalities, consider the following design defects in your case evaluation. (*Continued p. 14*)

# **L&E CASES RECENTLY FILED**

#### DANIEL V. GENERAL MOTORS, LLC, ET AL. CIRCUIT COURT IN AND FOR POLK COUNTY, FLORIDA



Decedent Gloria Daniel was killed in a rollover crash after being partially ejected from the driver's seat of her Chevrolet Suburban. This case includes product liability claims against General Motors related to the crashworthiness of the Suburban, including defects in its restraint system as well as a negligence claim against the other driver involved in the crash and a negligent entrustment claim against the owner of that vehicle.

#### **GRAHAM V. BUCHHEIT TRUCKING AND PURCELL TIRE AND RUBBER COMPANY** CALDWELL COUNTY, MISSOURI

As Jerry Graham drove on a rural highway, two wheels from an oncoming tractor-trailer detached and struck Mr. Graham's vehicle, came through the windshield and inflected fatal injuries on Mr. Graham. This case involves negligent tire installation and servicing by Purcell Tire, the company that serviced the tractor-trailer, as well as negligent maintenance and inspection by the trucking company.



#### GUNNELS V. GENERAL MOTORS DALLAS COUNTY, TEXAS

Jodi Gunnels drove her 2006 Buick Lucerne on the interstate in Dallas County, Texas, when she was rear-ended by another driver. During the collision, her seat collapsed, and her body was catapulted rearward out of the front seating space. Jodi suffered catastrophic spinal injuries, became paraplegic and sadly died months later from her injuries. Langdon & Emison is litigating with General Motors for the vehicle's defective and dangerous front seats that failed during the impact.

#### **LEWIS V. ESTES EXPRESS LINES, FORD MOTOR COMPANY, ET AL.** DISTRICT COURT FOR THE PARISH OF TANGIPAHOA, LOUISIANA

Plaintiffs are husband and wife, Ashleigh and Chris Lewis, who are a professional stuntwoman and commercial airline pilot, respectively. They suffered severe injuries when their vehicle was struck head-on by a vehicle that swerved into their lane because a semi-truck had parked on the roadway to make a delivery. This case involves various negligence claims against the truck company, truck driver and company receiving the freight, all associated with the manner in which the freight was being delivered that endangered motorists traveling on the roadway. This case also involves product liability claims related to the crashworthiness of the Ford Mustang, including defects in its structure, seats and restraint systems, which caused Ashleigh to suffer catastrophic abdominal injuries and Chris to sustain severe injuries to his leg.

# ACROSS THE U.S.

#### PALING V. NAVISTAR INTERNATIONAL CORP. CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS

Plaintiff Jennifer Paling was paralyzed when the vehicle she was riding in was rear-ended by a Navistar tractor-trailer and pushed into the rear of another vehicle. The case alleges that Navistar failed to equip the tractor-trailer with forward collision warning or automatic emergency braking technology that would have prevented the collision with the vehicle in which Ms. Paling was a passenger.

#### STILES V. POLARIS, ET AL. CIRCUIT COURT IN AND FOR SALINE COUNTY, MISSOURI



Plaintiff Katelin Stiles suffered severe injuries when she was ejected from a Polaris Ranger utility terrain vehicle (UTV) during a rollover crash. The case includes product liability claims against Polaris for failing to design the subject Polaris Ranger in such a way that would prevent passengers such as Katelin from being ejected during rollover crashes as well as a negligence claim against the operator's insurance company and a negligent entrustment claim against the owner of the UTV.

#### WU, ET AL. V. CROWNLINE BOATS, EDGEWATER MARINA, ET AL. CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

Plaintiffs consist of seven family members who suffered severe injuries from a boat explosion and flash fire that occurred on Cheat Lake subsequent to fueling. Plaintiffs claim the marina that fueled the boat improperly injected gasoline into the boat's bilge by mistaking a fishing rod holder for the boat's fuel fill intake and failed to warn the plaintiffs of this improper fueling. Plaintiffs further assert product liability claims related to the lack of fire prevention and protection of the Crownline boat, including defects in the boat's blowers and lack of a flammable vapor detector. As a result of the explosion, the plaintiffs, including minor children, suffered severe burn injuries and the emotional distress of not only experiencing the event, but also seeing their family members on fire and burned.



## **Uncovering Fire Propagation Defects in Survivable Crashes**

Firm obtains confidential settlement in West Virginia fuel-fed fire case

Every case involving a vehicle fire should be evaluated for potential fuel system design defects, including not only defects as to the cause of the fire, but also defects that allow the fire to readily reach vehicle occupants. Fuel system design is critical to preventing fuel-fed fires during vehicle crashes; yet motorists continue to fall victim to vehicle fires, even in survivable crashes. In a recent case, our firm uncovered fire propagation defects that failed to prevent propagation of an external vehicle fire from entering the occupant compartment, resulting in our client's death.

#### **Fire Propagation Defects**

A vehicle should be designed so that a fire outside of it should not have a ready pathway to enter the occupant compartment. However, manufacturers commonly create pathways by running wiring through the firewall of the engine compartment or creating holes in the body of the vehicle for venting purposes. Often, these holes are exceptionally large so that vehicles can be manufactured cheaper and faster. For example, they may create a 3-inch or wider diameter opening for a grouping of wires that may be  $\frac{1}{2}$  inch or 1 inch in diameter.

The problem with creating holes in the engine firewall or in the body of the vehicle for venting purposes is that manufacturers fail to take steps to make these openings fireworthy. In fact, the materials used to seal these

openings are typically combustible rubber or plastic that only serve to further fuel the fire. This is true even though readily available materials have long been used in other applications to prevent fire propagation, such as materials developed for attic soffits to prevent homes from catching fire due to embers or flames produced by surrounding brush or forest fires. These materials allow air to pass through unless exposed to heat or flame, at which time they melt to seal the opening to prevent fire and smoke propagation.

#### **Recent Case**

Our firm recently resolved a case involving a vehicle rollover that resulted in a fuel-fed fire that killed our client. Our legal team successfully showed that the oxidation patterns on the subject vehicle indicated that the fire originated in the area of the fuel tank, propagating toward and into the occupant compartment through a 30-square-inch cabin exhaust vent hole placed immediately forward of the fuel tank location. Unfortunately, this opening was right behind the driver's seat, which provided a ready pathway for the fire to reach him.





## Failure of Passenger Presence System Causes Airbag Non-Deployment

L&E reaches confidential settlement on behalf of severely injured client

A vehicle's Passenger Presence System (PPS) is used to monitor the type of occupant that is sitting in the front passenger seat to determine whether to enable or suppress the deployment of the front passenger airbag. The PPS is designed to reduce injuries to smaller occupants from the deployment of airbags by utilizing sensors in the front passenger seat to gather information related to the occupant's weight or mass and the kind of pressure placed on the seat.

Federal Motor Vehicle Safety Standard 208 requires that the system enable the passenger airbag when a person who weighs between 103 and 113 pounds and is between 55 and 59 inches tall is seated in the front passenger seat. However, the PPS can fail to correctly determine that an adult is seated in the front passenger seat, and in turn, can improperly deactivate the front airbag, increasing the risk of serious or fatal injury in a collision.

#### **Recent Case**

In a recent case, our clients were traveling in a 2013 Chevrolet Sonic that was involved in a significant frontal collision. During the crash, the driver's front airbag properly deployed; however, the front passenger airbag failed to deploy. As a result, the passenger sustained serious injuries, while the driver walked away with only minor injuries.

The crash data retrieval (CDR) recorded the subject collision as a "deployment" event and properly commanded the vehicle to deploy the driver's front airbag; however, during the collision, the vehicle's PPS misclassified the passenger, a 160-pound adult, as a "small adult." As such, the subject vehicle suppressed the deployment of the front passenger airbag. This failure resulted in severe injuries to our client. In cases involving passenger side frontal airbag nondeployment:

- Determine the size of the passenger (The PPS must enable the airbags for any person over 113 pounds.)
- Determine belt use of the passenger
- Determine seat position of the passenger
- Review the CDR to determine:
  - Vehicle's longitudinal delta-v was above the threshold for deployment
  - CDR recorded the subject collision as a deployment event
  - Failure of the vehicle's PPS to properly identify the front passenger seat occupant and to issue a command to deploy the front passenger airbag



### **Failure Modes in Seatback Failures**

Langdon & Emison is litigating 12 seatback cases nationwide against six different auto manufacturers. Front occupant seatbacks play a vital safety role in rear-end crashes, similar to the purpose of airbags and seatbelts in frontal impacts. In a rear impact, a front seat should be designed to absorb energy and contain the occupant in the front seating space. Weak, defective front seats can fail, collapse and

cause front occupants to catapult into the rear of the vehicle. This creates a dangerous hazard to both the front occupant and anyone in the rear seat behind the occupant.

There is a misconception that in a seatback failure the seat must "break." Many times, a component part may break; however, it is common that a defective seat may not have any broken parts. The "failure" is the seating system's failure to safely contain an occupant in the front occupant space. Weak seats may dynamically and rapidly yield rearward regardless of whether a part breaks.

The exact failure mode in a seatback is difficult to determine until the seat is detrimmed – the cushioning is removed to reveal the structure of the seat.

#### **Common Failure Modes**

- Rapid yielding which leads to collapse
- Recliner failure
- Seat tracks
- Bolts connecting seat to the floor
- Broken weld
- Inadvertent unlatch
- Head restraint failure

#### **Failure Modes in Defective Seatbacks**

The figure below right of a detrimmed seat illustrates the various components of a seatback and potential failure modes to consider when evaluating a seatback failure case.

A recliner is the mechanism that adjusts the seatback. The seat in the diagram to the right is a single recliner; however, most seats during the past 10 to 15 years utilize recliners on both sides of the seat (dual recliners). A recliner should provide sufficient rearward resistance in a rear impact. There are numerous different recliner designs, but they have similar failure modes. When a recliner fails, the seating system as a whole dangerously collapses.

Some defective seating designs are susceptibe to inadvertent unlatching during a rear-end event. In this failure mode, dynamic forces lead the seat to



**Detrimmed Front Seat** 

disengage and release the recliner mechanism and collapse. This can be caused by a number of different defective designs. Typically, after an inadvertent unlatch occurs, there is a complete collapse, so the seat frame will have very little deformation and bending because the seat does not absorb any energy.



**Broken Headrest** 

If a headrest is broken or pulled out in a rear end impact, it should raise a red flag for a head restraint failure. The headrest should be designed in conjunction with the seatback to support the occupant and prevent the occupant from ramping. When a seat yields rearward and a front occupant loads the headrest, weak and defective head restraints may pull out or break.

Another key piece of evidence is the head restraint "guide sleeves" – the plastic pieces at the top of the seatback where the head restraint

prongs are inserted into the seatback. In a head restraint failure, the guide sleeves may break.

Langdon & Emison is currently litigating 12 seatback cases nationwide against six different auto manufacturers. If you suspect a defective seat was the cause of your client's auto crash injuries, contact Langdon & Emison at 800-397-4910 or LangdonEmison.com. We would be pleased to help evaluate your case or to help however we can.



Broken Guide Sleeve



## LANGDON & EMISON'S NATIONAL FOOTPRINT

Our law firm is currently litigating personal injury cases in 27 states across the country. For more than 30 years, our law firm has built a nationwide practice, working with co-counsel across an array of personal injury litigation and serving clients from coast to coast.





## **Tips for Pursuing Underinsured Motorist (UIM) Claims**

Underinsured motorist coverage (UIM) can often be available to clients who have been involved in a car crash as an additional avenue for recovery if the correct steps are followed in pursuing the claim.

UIM coverage generally applies when the other driver(s) involved in the crash are at fault but lack sufficient insurance coverage, making them an underinsured at-fault driver. The language of your client's UIM policy typically defines what being "underinsured" means. It can be defined as:

- Not having insurance in the same amount of your client's UIM policy; or,
- Not having sufficient insurance to cover all your client's damages.

#### **Practice Tips**

If you determine that your client has a viable UIM claim:

- 1. Make a demand to the insurance company pursuant to the policy, but do not file a lawsuit until your client has complied with all duties under the policy and the insurance company either denies the claim or makes a counteroffer. Otherwise, your client may violate the insurance policy's cooperation clause and the insurer may refuse to pay anything on the claim and/or move for summary judgment.
- 2. Once you have filed suit, work up the case by using all necessary experts to prove the insurance company's mishandling of the claim and to prove all damages, including any extracontractual damages such as attorney's fees available under the laws of your state. A crucial step in doing this is obtaining both the insurer's file on your client's claim as well as its claim handling policy.

By taking these steps and continuing to hold the insurance company's feet to the fire, you will be able to maximize your client's recovery from the underinsured coverage for which he or she has paid, but the insurance company is reluctant to pay.

UIM claims can provide an additional recovery avenue for injured clients if the proper steps are followed.



## U.S. Government Releases Scathing Report Aimed at Child Booster Seat Manufacturers

Report cites misleading claims, meaningless safety testing and unsafe advice to parents

A U.S. House of Representatives Subcommittee has released a report laden with harsh criticism of booster seat manufacturers after an investigation into the safety of child booster seats marketed in the U.S.

The investigation, prompted by concerns from parents and consumer advocates, found that booster seat manufacturers have "endangered the lives of millions of children and misled consumers about the safety of booster seats by:

- Failing to conduct appropriate side impact testing.
- Deceiving consumers with false and misleading statements and material omissions about their side-impact testing protocols.
- Unsafely recommending that children under 40 pounds and as light as 30 pounds can use booster seats."

According to the report, top manufacturers, including Evenflo, Graco, Baby Trend, Artsana (Chicco) and Kids Embrace dangerously marketed booster seats for 30-pound children despite experts' warnings. Internal documents found that executives of Evenflo—one of the worst offenders—spent \$30,000 for different labels in the U.S. and Canada to keep the unsafe 30-pound recommendations for seats sold in the U.S. rather than use the safer 40-pound recommendations required in Canada.



Image from the report shows contortion to the dummy's neck and body in a crash test deemed "successful" by the manufacturer

Manufacturers have deceptively marketed their booster seats as "side-impact tested," yet their testing conditions do not even involve an impact or test directly for risk of serious injury to children. Further, manufacturers grade their seats' performance on standards that are grossly inadequate.

For nearly two decades, child safety experts have recommended that parents delay transitioning their children to booster seats until they weigh at least 40 pounds, yet federal regulations do not prohibit the marketing of booster seats to children under 40 pounds. The report says the National Highway Traffic and Safety Administration's failure to create a side-impact testing standard and "implement authoritative rulemaking" has allowed manufacturers to market their booster seats in ways that put children at risk of serious injury.



## **Identifying Design Defects in ATV, UTV Cases**

Polaris has recalled more than 10,000 of its 2020 Ranger utility terrain vehicles (UTVs) because the safety belts malfunction, creating risk of serious injury to occupants. When evaluating an all-terrain vehicle (ATV) or UTV crash case, consider whether design defects could be the cause of injury.

ATVs are commonly used for recreation. They contain three or four wheels and a straddle seating position, handlebar steering and the ability to maneuver through a variety of terrain conditions. In contrast, UTVs are built and used for work more than recreation and are faster and more powerful. They are composed of four wheels and handle like a car because they are steered via a steering wheel and have foot pedals to control braking and accelerating. Normally, two to four passengers can ride in a UTV.

#### **Design Defects**

The failure of manufacturers to sufficiently protect occupants is the primary factor in the severity of injuries from ATV and UTV crashes. ATVs lack occupant restraints or an enclosed occupant area, which combined with their propensity to roll over in a crash, make them unreasonably dangerous.

#### **Common Failures**

- Seatbelt/restraint system
- Safety technology
- Stability/rollover defects
- Design defects

Even when UTVs are equipped with an enclosed area, they often lack doors or other structures sufficient to keep occupants inside the vehicle during a rollover. In some UTVs, the only safety material between an occupant and the dangers outside of the vehicle are mesh, straps or ropes, which commonly fail to contain occupants during rollover crashes.

Further, UTVs often lack safety technology to ensure restraints are worn during operation. And, even when UTVs incorporate such safety measures, the technology is known to fail or the

restraints themselves fail to work properly under foreseeable circumstances. For more information about litigating ATV or UTV cases, contact our firm at 800-397-4910 or LangdonEmison.com.

## **Mass Torts Update**



## Langdon & Emison Accepting Zantac Cases Nationwide

The popular heartburn drug Zantac, also known as ranitidine, has been reported to contain unsafe, elevated levels of a chemical known to cause cancer. Our firm is reviewing cases for individuals across the country who have developed gastrointestinal or bladder cancer after regular use of brand-name or generic Zantac for at least one year.

In April 2020, the Food and Drug Administration (FDA) announced its request that all Zantac brand heartburn drugs—prescription and over the counter—be immediately pulled from the market. This action came amid the FDA's ongoing investigation of the safety of ranitidine after a drug-testing company reported it had high concentrations of a probable human carcinogen.

**Hernia Mesh Litigation.** Several brands of hernia mesh products have been associated with a high failure rate. We are actively litigating hernia mesh cases and continue to review new cases in which the claimant had hernia repair surgery and later required revision surgery.

**3M Bair Hugger Warming Blanket.** Langdon & Emison has obtained a January 6, 2022, trial date for one of its Missouri state-court filed cases against 3M, the manufacturer of the surgical warming blankets, and other defendants. The case, which had been remanded, is one of the only active Bair Hugger cases in the country pending leadership appeal of the entry of summary judgment in the multidistrict litigation.

The briefing on the appeal was completed in September 2020 with the oral argument expected by spring 2021. Our firm continues to review potential Bair Hugger claims for patients who suffered a serious deep joint infection within one year of a joint replacement surgery.

If you have questions about whether your mass tort case may qualify, contact Brett Emison or Tricia Campbell at 800-397-4910 or LangdonEmison.com.



## **Passenger and Cargo Vans Prone to Deadly Rollover Crashes**

(Continued from p.1)

#### **Stability Defects**

These vans were not designed or adequately tested to ensure a reasonable level of stability because of their high center of gravity, short wheelbase and vehicle body overhang rearward of the rear axle. For years, automakers have known that readily available, economical and technologically feasible design alternatives would minimize or eliminate the risk of serious injury or death from handling defects and rollover instability of these vans. In the early 1970s, engineers identified the instability problem and recommended adding dual rear wheels to enhance load capacity and improve traction and handling. However, cost considerations took precedence over the potential to save human lives.



Further, automakers failed to conduct and issue proper design validation test requirements for these vans to evaluate the hazards of loss of control and rollover. Rather, the handling and rollover stability testing of these vehicles has been confined to requirements that do not address emergency maneuvering conditions well known to influence vehicle dynamic stability.

#### **Lack of Occupant Protection & Containment**

The risks presented by the inherent instability of these vehicles are further compounded when the crashworthiness of these vans is considered. Because the vans' inherent instability leads to an increased risk of crashes—including rollover crashes—occupant protection and containment is critical.

Inadequate Roof Strength. A common issue in van cases is the vehicle's weak roof structure. When the roof structure is weak, the roof crushes downward into the occupant compartment during a rollover crash, causing catastrophic injuries to occupants. Further,

#### **Characteristics of Passenger Vans**

- Difficult to control in emergencies
- Unstable by design
- Lack adequate crash protection for occupants

when the roof structure collapses, the windshield and side windows can break out, creating massive areas for occupant ejection.



Lack of Laminated Glass. The side windows of passenger vans are commonly made of tempered glass, which easily fractures and often breaks out in reasonably foreseeable crashes, creating risks of ejection and enhanced injuries. Automakers have known for decades that when side windows are made with laminated glass, the risks of ejection and ejection-related injuries are essentially eliminated.

*Restraint systems*. Poor seatbelt geometry is common in vans, especially as it relates to rear seat occupants. Automakers have chosen ease of installation over passenger safety.

Passenger and cargo vans are notorious for being unsafe, and the death toll in passenger and cargo van crashes is appalling. For help evaluating or litigating a passenger or cargo van case, contact Langdon & Emison at 800-397-4910 or LangdonEmison.com.

## **News and Notes**



Brett Emison

## Partner Brett Emison Receives 2020 Legal Innovation Award

Langdon & Emison partner Brett Emison recently received the 2020 Top Legal Innovation Award from Missouri Lawyers Media. Brett was honored for his leadership in expanding the firm's work into the competitive world of mass torts. He was also recognized for championing the leadership role of women colleagues in mass tort litigation. The award celebrates attorneys, firms and businesses from around the state in recognition of their progressive work to drive new practice areas, services

and business strategies. Congratulations, Brett!

## **L&E Promotes Three Attorneys to Partner**



Tricia Campbell Brennan Delaney Michael Serra

Langdon & Emison recently announced the promotion of attorneys Tricia Campbell, Brennan Delaney and Michael Serra to partner, effective Jan. 1, 2021. Since joining the firm, these attorneys have made substantial contributions to the firm's success and have distinguished themselves as attorneys and members of the legal community. Tricia provides day-to-day oversight of the mass torts litigation department and has been integral to expanding the firm's mass torts docket and

growing the department. Brennan and Michael have assumed critical roles in an array of product liability and personal injury litigation and have successfully represented clients nationwide. We congratulate these new partners on their well-deserved promotions.

## **L&E Launches Truck Accident Litigation Resource Center**



Langdon & Emison recently launched an online resource center for lawyers litigating truck accident cases on behalf of plaintiffs nationwide. The tool is useful for case work-up and includes attorney-authored articles, sample documents from trucking cases and a series of webinars the firm will hold regularly throughout 2021. The portal is open only to members of the plaintiff's bar. You can register for access by visiting portal.langdonemison.com.

## Firm Adds Four Attorneys to Chicago, KC Offices

Our firm is pleased to announce the addition of four attorneys to its practice. Kevin Conrad joins Langdon & Emison's tort litigation department and will be based in the firm's Chicago office. Kevin spent the last three years with the Kane County (III.) Public Defender's Office, and before that, worked as an attorney for Jenner & Block and Johnson & Bell in Chicago. Greg Frias and Andrew Gnefkow are the newest additions to the firm's mass tort department. Greg and Andrew come to Langdon & Emison after completing judicial clerkships for the Hon. Justine E. Del Muro and the Hon. James F. Kanatzar, respectively. Both attorneys will be based in the firm's Kansas City, Mo., office. Sharon Kennedy, also based in Kansas City, joins the firm's tort litigation department after a 19-year career with Polsinelli and its predecessors and spending the last two years with James Sobba LLC.



## Langdon & Emison Accepts Co-Counsel Opportunities Nationwide

Maximize the recovery for your client's personal injury case

In this edition of our firm's quarterly newsletter, we share information about the many recovery avenues to explore in personal injury cases and offer practical tips for evaluating and litigating a range of personal injury

cases. We deeply value the opportunity to work with law firms across the country to help maximize their clients' recoveries in cases involving defective products, negligence and catastrophic injury. We welcome the opportunity to work with you.

Our presence on a case adds unparalleled experience and a name that corporate defendants recognize from nearly 40 years of practice in personal injury litigation. Likewise, a co-counsel partnership not only benefits your client's recovery, but also benefits your law firm. In just the past three years, we have paid more than **\$25 million to co-counsel** in personal injury cases nationwide. We can help you explore all potential recovery avenues and maximize your clients' compensation.

#### **Topics Covered Inside**

- Deadly passenger vans
- Cases recently filed
- Fire propagation defects
- Seatback failure modes
- Passenger presence systems
  - All-terrain vehicle claims
- Mass torts updates





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