



Hein V. Utility Trailer Manufacturing Company: Jury Sends a Message to Trailer Manufacturers About Side Underride

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The year was 1970. The previous year, the world had watched as Neil Armstrong demonstrated the ingenuity of American engineering with a two-and-a-half-hour walk on the moon. Anything seemed possible. While NASA engineers celebrated along with the rest of the country, officials in another government agency were trying to tackle an issue much, much closer to the surface of the Earth—death by underride.

By 1970, it was common knowledge in the semitrailer manufacturing industry that the mismatch in size between tractor-trailers and passenger cars was a deadly problem in search of a solution. In a collision between a passenger car and a semitrailer, that mismatch in height creates the danger of underride, where a portion of the smaller vehicle goes into one of the open spaces under the trailer. When underride happens, the built-in safety features in the car, like airbags, seat belts and crumple zones, are likely to become useless as the larger vehicle can crash through the windshield, deform the A-frame of the car, decapitate people in the car, or trap the smaller car underneath while the big rig is still moving.



Widespread publicity of the gruesome death of Jayne Mansfield in 1967 brought the issue of underride to the general public's attention, as the famous actress was killed in an underride collision involving the rear of a semitrailer. At that time, semitrailers were required to have rear bumpers, but they were too high off the ground and too weak to be effective in many instances. As the Federal Highway Administration worked on developing improved regulations to require stronger and more effective rear guards on semitrailers, the agency also issued a notice in the Federal Register in 1970 encouraging trailer manufacturers to develop underride guards for

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the sides of trailers. (To be clear, I am talking about a device that is strong enough to stop a car; I am *not* talking about the thin skirts that you see hanging from the sides of many trailers nowadays, which are strictly for aerodynamic purposes and will not stop a car from going under a trailer.)

The semitrailer manufacturers, already resistant to the idea of putting stronger, lower rear guards on their trailers, were not impressed. Like its competitors, Utility Trailer Manufacturing Company continued to build and sell its trailers without any features intended to prevent underride in collisions involving either side of the trailer. Meanwhile, Utility Trailer and its fellow members of the Truck-Trailer Manufacturers Association successfully delayed the implementation of rear underride guard regulations, which were not finalized until three decades after the Mansfield crash.

In 2000, a jury in Texas found against Lufkin Trailers in one of the first jury verdicts against a trailer manufacturer for a side underride death. Several other lawsuits followed. Instead of responding to the verdict and the lawsuits by attempting to fix the side underride issue, trailer manufacturers banded together to fight lawsuits and to sow doubt about side underride guards.

One of the manufacturers' major efforts involved enlisting a former NHTSA official, Robert Shelton, to create a report that included a cost/benefit analysis of a hypothetical federal side underride guard requirement. TTMA's attorney solicited data from trailer manufacturers about the cost, weight, materials, and dimensions of their existing rear guards—after informing them that they would submit the data anonymously and that it would be used for a “TTMA-funded project ... to develop and evaluate possible defense strategies to side underride lawsuits.”

Shelton used the industry-provided data to generate his “cost” calculation for side underride guards. On the “benefit” side, TTMA recruited auto industry statistician Jeya Padmanaban to create a report on the annual number of side underride deaths. Ms. Padmanaban's report used a faulty and misleading analysis of crash speeds and a federal database that undercounts underride fatalities—by a factor of 3.1 to 1 according to her own calculations—to provide a shaky foundation for Shelton's analysis of the benefits of side underride guards.



The result of this “garbage in, garbage out” approach was Mr. Shelton's conclusion that it would cost \$47 million per life saved to require semitrailers to be equipped with side underride guards, assuming they used the same materials as rear guards. The TTMA submitted the Shelton report to the federal government on multiple occasions, and its members have attempted to use the report in defending lawsuits, to create the appearance that side underride guards would create an unjustifiable economic burden on the trucking industry.

While rulemaking on rear guards dragged out through the decades and trailer manufacturers did nothing to address side underride, people in passenger cars continued to die in horrific underride crashes. Researchers, including Matt Brumbelow of the Insurance Institute for Highway Safety and Padmanaban, the industry statistician, agree that the federal government's FARS database undercounts the number of deaths caused by side underride. Padmanaban has estimated the actual number is 202. Side underride collisions also result in thousands of injuries every year.

Inventors outside the industry, without the benefit of the vast resources for research and development that the top trailer manufacturers have at their disposal, have come up with varying designs for side underride guards. Perry Ponder of Tallahassee, Florida and Aaron Kiefer of Cary, North Carolina have designed different concepts that have been successfully crash tested. IIHS crash testing of Mr. Ponder's Angelwing design, which uses steel and, more recently, aluminum, showed that side guards could stop a car from going underneath a trailer in crashes up to 40mph. Kiefer has done his own crash testing that has shown his design, which uses a light-weight but strong fabric, can stop underride as well.

Still, trailer manufacturers have not made any move to adopt side underride guards, arguing that side guards would make their trailers too expensive and that no one will buy them, that they will reduce fuel efficiency, and that they will cause trailers to bottom out on severely raised railroad crossings, on steep loading docks, and on other sharp grade changes. Utility Trailer never made any independent attempt to research a workable solution, to develop its own design, or to improve on the designs that it has devoted its resources to criticizing.



THE UNDERRIDE CRASH THAT KILLED RILEY HEIN

Forty-five years after the federal government encouraged trailer manufacturers to develop side underride protection, a side underride crash claimed the life of one of New Mexico's brightest young stars. Riley Hein, age 16, was nearing the midpoint of his junior year at Albuquerque's Manzano High School, where he played trombone in the marching band, ran cross country, maintained high grades, and made friends with everyone from the popular kids to the awkward new kids in school. Passionate. Kind. Funny. These were the words his sister, mother and father chose as best portraying Riley's spirit. He was interested in joining the Coast Guard but had not made up his mind just yet. He had limitless potential.

On November 13, 2015, a truck driver hauling a Utility Trailer 3000R refrigerated trailer was headed west on Interstate 40, through the mountain village of Tijeras, New Mexico, where Riley's family lived, down toward Albuquerque. Riley was driving

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to early morning band practice. He left his house in Tijeras, got onto I-40 in his Honda Civic, and stayed in the rightmost of the three westbound lanes. He was probably listening to NPR, his favorite station. As the Civic and the tractor-trailer approached a curve in the road, with the truck overtaking the slower-moving Civic, the truck began moving into Riley’s lane. Riley swerved to the right to avoid a crash but was immediately confronted by the end of a concrete Jersey barrier running along the shoulder. He swerved to his left to avoid the barrier and went back onto the roadway, this time colliding with the tractor at a shallow, glancing angle. The collision redirected the Civic back onto the shoulder, where it hit the barrier and bounced back onto the roadway. Now the Civic was next to the semitrailer, which Utility Trailer had chosen not to equip with any kind of side underride protection.

The Civic went under the trailer at a shallow angle, at a relative speed of about 14.5 mph—much lower than the speeds at which both Ponder’s and Kiefer’s designs have prevented underride. The bottom rail of the trailer hit the A-pillar of the Civic and pinned the Civic underneath the trailer, which continued to move, as the truck driver was unaware of what was happening. The truck driver continued to drive until, according to his statement to police, he saw a fire in his right-side mirror. Believing a tire had caught fire, the truck driver slowly lowered his speed and pulled onto the shoulder. The Civic scraped against and rode up along the concrete barrier as the tractor-trailer came to a stop. The Civic was fully engulfed in flames, and Riley died before anyone could get to the car.

THE LAWSUIT AND TRIAL

I had the honor of representing the Hein family, working under the supervision of the best trial attorney I know, my boss Randi McGinn. The insurance company for the semi-truck driver and motor carrier settled shortly after we filed suit. A motor carrier that had served as an unlicensed broker settled after a few months of litigation. It was during this litigation that Riley’s father, Eric Hein, first learned that a safety device the



industry had refused to put on their trailers could have saved Riley’s life. By sheer happenstance, he had been listening to Riley’s favorite radio station, NPR, and heard a story about a group of mothers and fathers who had lost their children in underride collisions and were advocating for side underride guards (and stronger rear guards).

We investigated the issue and agreed that a claim should be made against the manufacturer of the trailer. So we amended the complaint and began the uphill battle against the largest manufacturer of reefer trailers in North America.

Utility Trailer hired a local trial lawyer to defend the case, with the TTMA's attorney working in the background but never officially entering his appearance on behalf of Utility. Despite the inevitable obstruction, delay and obfuscation from the defense, our discovery efforts confirmed two undeniable, basic truths: (1) Utility Trailer had known about the danger of side underride for decades; and (2) Utility Trailer never lifted a finger to even draw up, let alone build or test, a side underride guard. After we filed suit, Utility Trailer bought two sets of underride guards (the AngelWing) and "tested" them for the first time in Utility's more than 100-year existence. Although Utility Trailer ran a battery of tests on the guards, the testing was primarily aimed at demonstrating that the underride guards, as Utility installed them, can scrape the ground when a trailer encounters an off-standard loading dock.

Perhaps because of the overconfidence of its attorneys, Utility Trailer never made a serious offer to settle the case until just before trial. They made an offer during trial that many plaintiffs would have accepted. The Hein family was more interested in forcing industry-wide change than getting money, so they rejected the last-minute offers and we took the trial all the way to a verdict in Santa Fe, New Mexico, in August 2019.

The trial lasted two weeks. Perry Ponder was our first witness, teaching the jury about the history of the side underride problem, the various side underride guard designs that had been developed over the years, including his own design, and Utility Trailer's ongoing decision to fight lawsuits and regulatory reform rather



than fix the problem inherent in their trailers. Aaron Kiefer testified about his lightweight and flexible design and how his efforts to tell Utility Trailer about his design had gone ignored.

A truck driver from Indiana who used a trailer with an early iteration of the AngelWing testified about how he had used the trailer for more than 600,000 miles with no issues. We put on video deposition testimony of Utility Trailer's corporate executives, who confirmed that Utility Trailer had never assigned a single engineer to try to develop a side underride guard.

Accident reconstructionist Will Bortles used two animations, admitted into evidence, demonstrating, first, how the crash happened and second, illustrating Perry Ponder's testimony about how the crash would have happened if Utility Trailer had designed the 3000R trailer with AngelWing side underride guards—i.e., the car would never have been trapped under the trailer.

The pathologist who performed the autopsy testified about Riley's cause of death and gave some testimony that was shocking to Utility Trailer—because Utility's counsel, who listed the pathologist as both an expert and lay witness—had

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inexplicably failed to interview this independent witness before trial to find out what she knew.

Economist Brian McDonald, Ph.D., testified about the bogus nature of the Shelton Report and educated the jury about the concept of the value of a statistical life.

Riley’s parents and sister spoke about their incredible son and brother and about how his death had stolen the music and the laughter from their home. Through stories about Riley and photos from his life, they made Riley’s presence felt in the courtroom.

The defense consisted mostly of criticizing the AngelWing design and putting the blame on the semi-truck driver who caused the initial crash. Industry expert David Kemp and Utility’s corporate representative tried to create the appearance that there is simply nothing that can be done to stop side underride crashes without rendering trailers completely useless.

Jeya Padmanaban, whose company (which she and her husband fully own) has made between \$40 million and \$50 million as a paid expert for the auto manufacturing and trailer manufacturing industries, tried to minimize the risk of death by side underride, manipulating statistics and telling the jurors they were more likely to die from a lightning strike than by side underride. Focusing on the relevant population of statistics, though, Ms. Padmanaban had to admit that side underride is a common occurrence in crashes involving the side of a semitrailer, accounting for about two-thirds of all deaths in collisions involving the side of a tractor-trailer combination. An economist named Thomas Cargill quibbled with our economist’s calculations of lost earning capacity and other damages, and on cross, rattled on at length in a bizarre rant about eugenics that had the jurors scratching their heads.

Randi McGinn delivered a powerful closing argument for the Hein family, highlighting all the opportunities Utility had over the decades to prevent Riley’s death. The defense attorney gave a closing that consisted mostly of personal attacks, complaints about our trial strategy, and, of course, criticism of the side underride guard that an outsider with few resources had developed because Utility Trailer had not stepped up to make its own.

The jury got the case at about 4:30 p.m. on Thursday and deliberated for a half hour before retiring for the day. They went back to work at 8:30 a.m. Friday. Finally, at 3:01 p.m., the bailiff led the jurors into the courtroom to deliver the verdict. On the claim for strict products liability, Utility Trailer was not liable. But the jury found that Utility Trailer was negligent and that its negligence had contributed to cause Riley’s death. His total damages: \$38 million. Loss of consortium damages: \$2 million for each of Riley’s parents. The jury found that the truck driver was 55 percent at fault, while Utility Trailer was 45 percent at fault. The total verdict against Utility Trailer came out to \$18.9 million. Utility Trailer’s counsel immediately vowed to appeal.

Today as I write this, it has been four years to the day since Riley’s preventable death. This morning as I drove to work on the interstate, with semitrailers on either side of me, I imagined, as I have hundreds of times before, what it must have been

like for Riley going into that open space under the trailer. I thought about my own children and reflect on how precious their lives are. And I pray that neither I nor any other parent will have to endure what the Heins have had to endure. I hope that the Heins' verdict will inspire others to take these cases and to take them to trial so the trailer manufacturers will have no choice but to make a change.

America put a man on the moon 50 years ago. Thousands of technologies no one ever thought possible have come into existence since then. Surely we can figure out a way to make the simple structure of a semi-trailer safer for the people who share the road with them and, inevitably, sometimes crash into them.



Michael Sievers is an attorney in his seventh year of practice at the plaintiffs' law firm of McGinn, Montoya, Love & Curry in Albuquerque, New Mexico, where he lives with his wife, Amanda, and two children, Hunter and Harper, who are 4-year-old Irish twins. Michael represents people against wrongdoers in many types of cases but has a special interest in large truck crashes, products liability and medical malpractice.

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