



Tesla Products Liability Cases

Don Slavik

Slavik Law Firm, LLC

Steamboat Springs, CO

Outline

- ▶ Defect Issues
- ▶ Misrepresentations
- ▶ Litigation Issues
- ▶ Discovery
- ▶ Arbitration



Defects

- ▶ “Rapid Thermal Runaway
- ▶ Autopilot/Driver Disengagement
- ▶ Un-commanded Acceleration
- ▶ Airbag defects
- ▶ Speed Limiter disabled
- ▶ Steering defects



Speed Limiter Disabled Riley - verdict 1% on Tesla



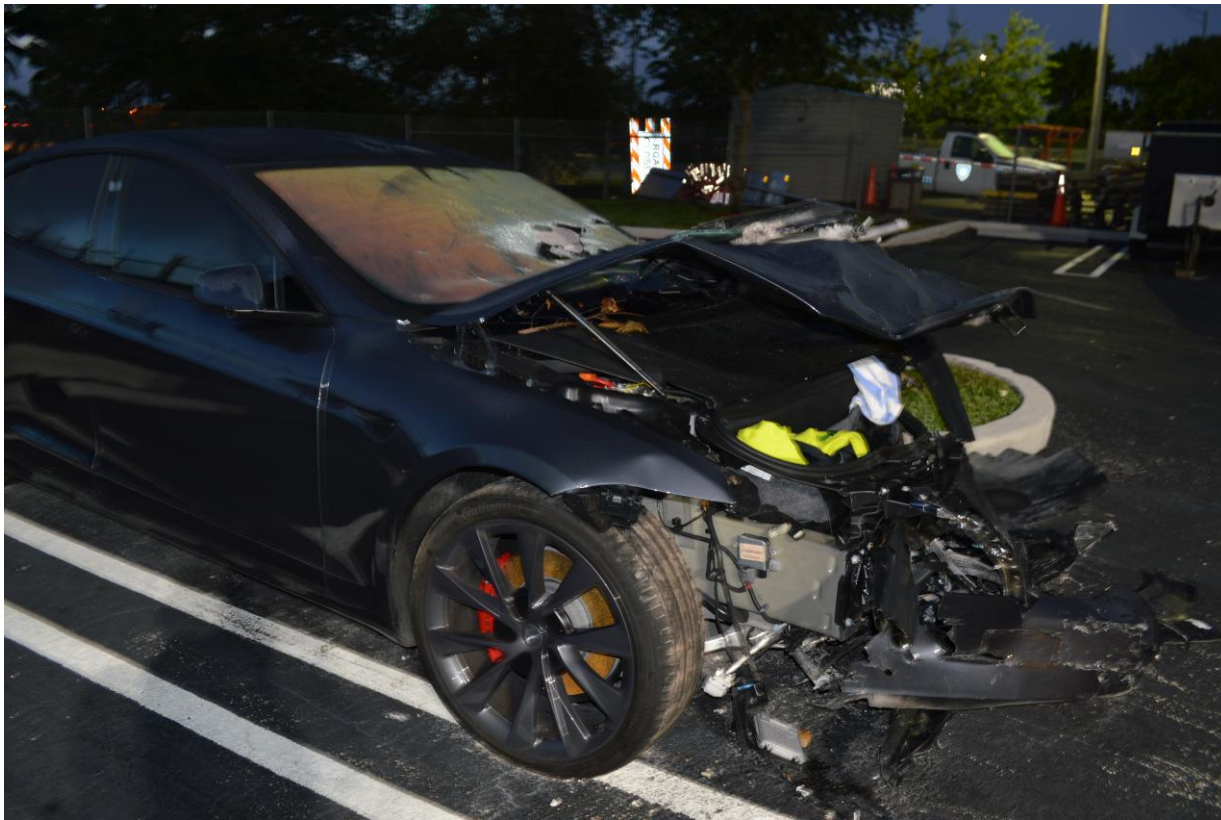
Autopilot use on city streets Hsu - defense verdict



Steering defect Molander - defense verdict



Benavides/Angulo v Tesla - tried to a plaintiffs' verdict with punitive damages

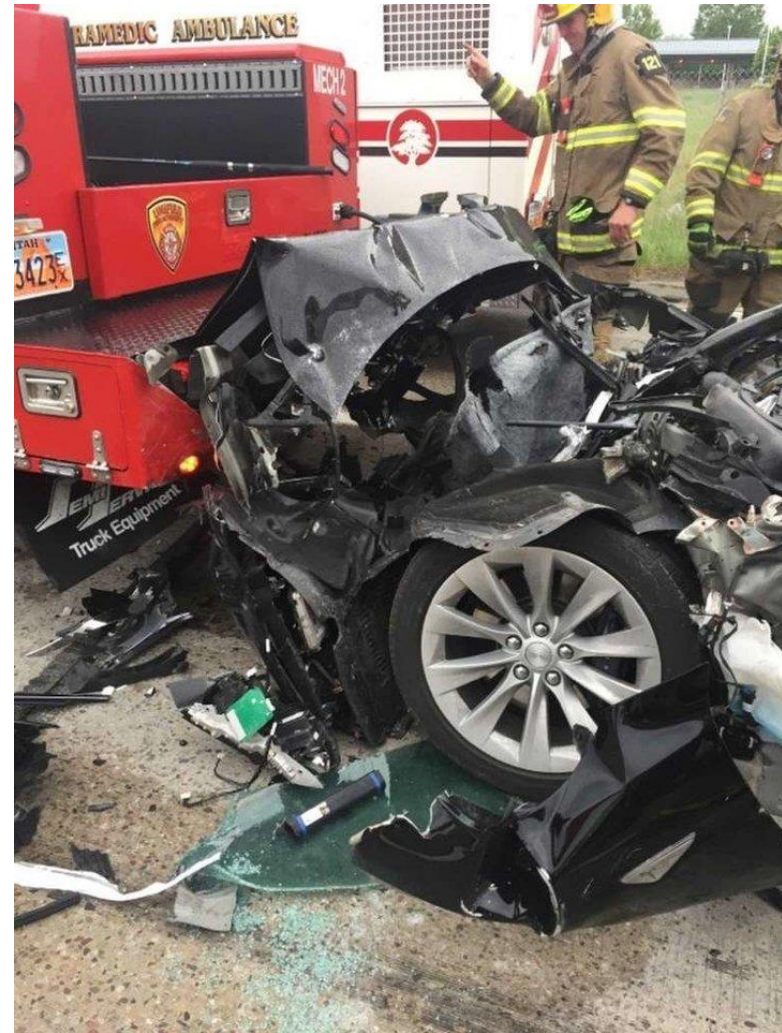


More than 50 cases presently in suit against Tesla

- ▶ Autopilot
 - ▶ Driver claims - vehicle hits object
 - ▶ “Victim” claims - vehicle hits them
- ▶ Post-Collision Battery Fed Fires
- ▶ Uncommanded Acceleration
 - ▶ Personal Injury
 - ▶ Property damage - class action or arbitration
- ▶ Misrepresentation cases
 - ▶ Class actions
- ▶ Airbag defects

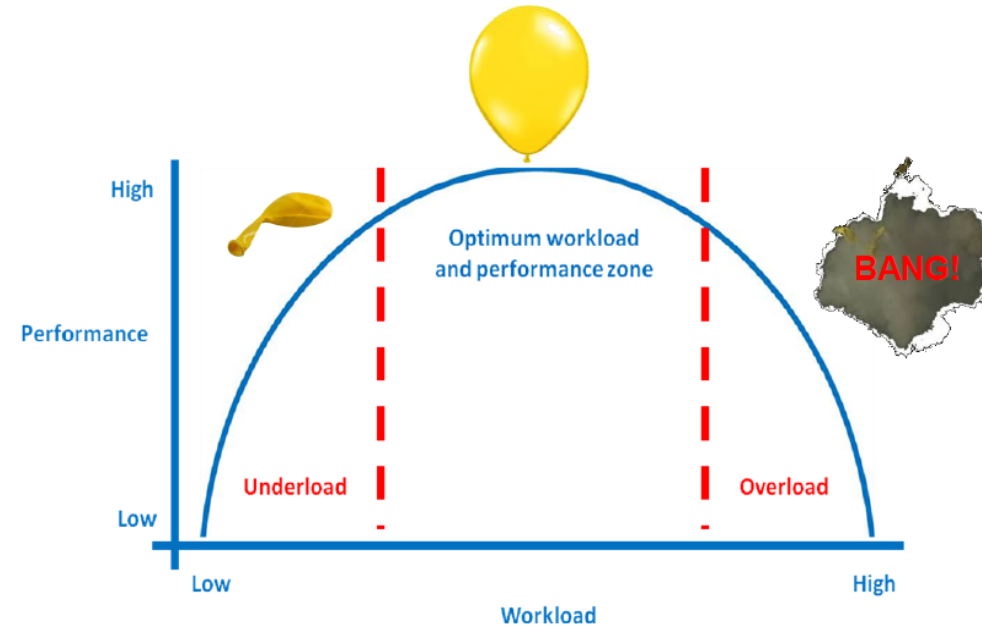
Autopilot/Full Self-Driving

- ▶ Collision with stopped first responder vehicles
- ▶ Failure to stop for red lights on city streets
- ▶ Failure to stop for stop signs
- ▶ Hitting motorcyclists



Workload and performance

UNIVERSITY OF
Southampton



Young, M. S. and Stanton, N. A. (2002). Malleable Attentional Resources Theory: A new explanation for the effects of mental underload on performance. *Human Factors* 44 (3), 365-375.

Young, M. S. & Stanton, N. A (2004) Taking the load off: investigations of how Adaptive Cruise Control affects mental workload. *Ergonomics* 47 (8), 1014-1035.

But even if the driver is awake, handoff in a Level 2 or 3 vehicle is a major issue

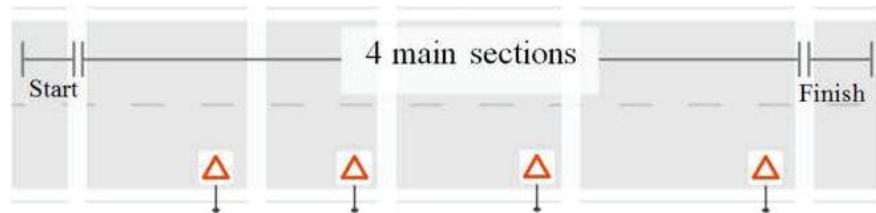
- ▶ Numerous Studies conducted of driver distraction and driver disconnect from the safe operation of the vehicle, even if monitoring the automated system.

Take-Over Requests for automated driving

6th International Conference on Applied Human Factors and Ergonomics 2015



- ▶ Response times measured are in a range between 1.4 s and 6.7 s



Takeover Performance in Complex Traffic Situations

Human Factors June 2016 pp. 642-652

- ▶ •• The experiment shows a distinct negative influence of traffic density on takeover performance.
- ▶ •• Situational complexity must not be underestimated when developing human–machine interaction for highly automated vehicles.

Takeover Time in Highly Automated Vehicles: Noncritical Transitions to and From Manual Control, *Human Factors* June 2017 pp. 689-705

- ▶ It took drivers approximately 4.46 +/- 1.63 s to resume control when not occupied by a secondary task and 6.06 +/- 2.39 s to resume control when engaged in a secondary task,
- ▶ When subjecting drivers to TORs without time restrictions, we found that drivers take between 1.97 and 25.75 s (*Mdn* = 4.56) to resume control from automated driving in normal conditions and between 3.17 and 20.99 s (*Mdn* = 6.06) to do so while engaged in a secondary task preceding the control transition.

Bottom line

- ▶ Per U.K. professor's studies, you need a 30 second handover time to regain attention.
 - ▶ Gain the driver's attention who may be distracted by other tasks, including talking on the phone, reading, playing videogames, dozing off, and more.
 - ▶ Driver orientation as to time, place, hazard confronted
 - ▶ Driver judgment as to task needed to be accomplished
 - ▶ Execution of task to avoid the hazard.
- ▶ But of course, by then, the crash has occurred.....

Un-commanded Acceleration

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

INKIE LEE; WAYNE SALLURDAY;
LORI SALLURDAY; ANANDHI
BHARADWAJ; SARGON DANIEL;
STEPHANIE GLEASON; LAVERNE
JACKSON; and SANDY XIA, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

TESLA, INC. and Does 1 through 10,
inclusive,

Defendant.

Case No.:

Judge Assigned:
Complaint filed: January 20, 2020

CLASS ACTION COMPLAINT

1. Violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.
2. Violation of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et seq.
3. Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.
4. Violation of California False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq.
5. Violation of the Song-Beverly Consumer Warranty Act for Breach of Implied Warranty of Merchantability, Cal. Civ. Code §§ 1792 & 1791.1

Numerous UA Complaints



- ▶ Far higher complaint rate of UA for Tesla now than it was for Toyota in the 2004-2010 time frame.
- ▶ Most are low speed parking or maneuvering events
- ▶ Tesla Obstacle Aware Acceleration (OAA) and Pedal Misapplication Management (PMM software functions added but do not affect many scenarios
- ▶ Arbitration issues - discussed later

Airbag Defects



Deployment at
low impact
severity

Takata airbag
inflators

Failure to Deploy

Misrepresentations

- ▶ Fewer crash fires than ICE
- ▶ Autopilot safer than human
- ▶ Fully autonomous next year
- ▶ Drivers can take over in case of problems
- ▶ Use autopilot almost anywhere



Musk's Claims

- ▶ **December 2015:** "We're going to end up with complete autonomy, and I think we will have complete autonomy in approximately two years."
- ▶ **June 2016:** "*I really consider autonomous driving a solved problem, I think we are less than two years away from complete autonomy, safer than humans, but regulations should take at least another year,*" Musk said
- ▶ *Indeed, if anyone bothered to do the math (obviously, you did not) they would realize that of the over 1M auto deaths per year worldwide, approximately half a million people would have been saved if the Tesla autopilot was universally available. Please, take 5 mins and do the bloody math before you write an article that misleads the public.*

NHTSA's Implausible Safety Claim for Tesla's Autosteer Driver Assistance System

February 8, 2019

Report by Quality Control Systems Corporation, Crownsville, Maryland

NHTSA Faulty Analysis of Autopilot Safety

Not a 40% Decrease in Airbag Deployments with Autopilot, but a 59% increase - More accidents when using Autopilot than without

- ▶ we discovered that the actual mileage at the time the Autosteer software was installed appears to have been reported for
- ▶ For the remainder of the dataset, NHTSA ignored exposure mileage that could not be classified as either before or after the installation of Autosteer. fewer than half the vehicles NHTSA studied
- ▶ the overall 40 percent reduction in the crash rates reported by NHTSA following the installation of Autosteer is an artifact of the Agency's treatment of mileage information that is actually missing in the underlying dataset.
- ▶ Based on the data for crash rate numerators and denominators shown in Figure 1, the resulting calculations reveal a 59 percent increase in the airbag deployment crash rate from 0.76 per million miles of travel to 1.21 per million miles of travel following the installation of Autosteer.

Litigation Issues

- ▶ Four trials to date
 - ▶ **Riley** - speed limiter - 1% on Tesla
 - ▶ **Hsu** - A/P - defense
 - ▶ **Molander** - steering - defense
 - ▶ **Benavides** - A/P - plaintiff
 - ▶ Several settlements recently
 - ▶ No insurance
 - ▶ Deposing Musk
 - ▶ Resistant to discovery
 - ▶ Protective Orders
 - ▶ Corporate Rep depositions
- ▶ **SHARING LANGUAGE**
 - ▶ Persons authorized to receive Confidential Information. Confidential Information, as defined in Paragraph 2(a), may be disclosed only to the following "Qualified Persons":
 - ▶ "...other attorneys of record in other pending lawsuits against Tesla, Inc. in the United States of America involving the same alleged defect claims as stated in plaintiffs' operative complaint, involving a 2012-2019 Tesla Model S or X vehicle resulting in personal injuries and/or death ("Sharing Attorneys").

Discovery

- ▶ EDR data
- ▶ Log Data
- ▶ CSF
- ▶ D reports
- ▶ Log file completeness
- ▶ “Engineering Analysis” talking heads

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JUSTINE HSU, an individual,
Plaintiff,

vs.

TESLA, INC. fka TESLA MOTORS, INC.;
DOES 1 through 100, Inclusive,
Defendants.

) Case No. 20STCV18473
) [Assigned to: Hon. Daniel Crowley; Dept. 28]
)
) **DEFENDANT TESLA, INC. fka TESLA**
) **MOTORS, INC.'S OBJECTION TO**
) **PLAINTIFF'S NOTICE OF DEPOSITION OF**
) **TESLA, INC.'S PERSON(S) MOST**
) **KNOWLEDGEABLE REGARDING THE**
) **DESIGN AND OPERATION OF YOUR**
) **AUTOPILOT SYSTEM IN THE MODEL S**
) **FROM 2014 TO DATE AND REQUEST FOR**
) **PRODUCTION OF DOCUMENTS**

Complaint Filed: May 14, 2020
Trial Date: None



Summary

- ▶ Once person calls all the shots at Tesla
- ▶ Discovery obstruction in every case
- ▶ Many fanatical customers believe Musk can do no wrong
- ▶ Prepare for trial from the onset

