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## Time to tell jurors when truck crash warning system missing

The trucking industry continues to refuse to implement common crash prevention technology that is standard on most modern vehicles.

Trial courts throughout Illinois should admit evidence of these failures as trucking companies seem to have no issue adopting cost-saving operations technology such as electronic logs and GPS.

The 2019 Chevrolet Spark, a subcompact car with a manufacturer standard retail price of under \$14,000, comes standard with a forward collision warning system.

This technology monitors the distance between vehicles and their speed. In the event the vehicles get too close, the technology activates a visual and audible signal to alert the driver to take evasive action. Additional standard accident prevention technology today includes lane departure warnings, automatic emergency braking and even facial recognition.

If cars can include these types of systems and be sold to the public for under \$14,000, it is difficult to understand why trucking companies, some that have billions of dollars in annual revenue, fail to implement accident prevention technology in their tractors.

There is a nexus between Illinois product

liability law and admitting into evidence a trucking company's failure to implement this technology.

For product cases pending in Illinois, "state of the art" evidence — evidence of an alternative product design that is effective, practical and economical — is admissible but inconclusive of the existence of a design defect. *Rucker v. Norfolk & Western Railway Co.*, 77 Ill. 2d 434, 437-38, 396 N.E. 2d 534, 536 (1979).

Trucking companies will argue that this technology is not standard in the industry and that industry standards is a factor to be considered in the balance of determining whether a defendant has exercised reasonable care. Although relevant, conformance of industry standards is not dispositive with the issue of negligence.

Accident prevention technology, though, is certainly pervasive today. Jurors should be allowed to determine whether accident prevention technology systems are the standard. The trucking industry's ongoing failure to implement this technology shouldn't be viewed as a standard but a continual conscious course of action taken to the detriment of the public.

These companies should

not be permitted to escape the truth of failing to implement affordable technology that could have prevented the accident that brought them to court.

The advent of accident prevention technology certainly makes vehicles today safer than vehicles of past times. This technology, in numerous modern, affordable vehicles, for one example, has the ability to send a loud audible warning while vibrating a driver's seat if the vehicle begins to drift, something indicative of a driver dozing off.

These systems have been around for more than a decade, but most trucking companies, despite being aware of their effectiveness, continue to refuse to implement this technology.

The most recently implemented accident prevention technology in modern vehicles is facial recognition. The advent of facial recognition technology dates back to the 1960s, however, widespread consumer use took hold in just the last two years.

This technology has been implemented in the 2019 Subaru Forester as well as in Apple's latest iPhone X that succeeds prior fingerprint ID padlocks. The software uses infrared sensors to detect distraction and fatigue.



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For example, if drivers look away for more than three seconds or their eyes close, the sensors issue an alert. The sensors can measure factors such as how wide-open eyes are, whenever one's mouth moves indicative of a yawn, along with the position and angle of the head. Here, the sensors detect if one is keeping a proper lookout or looking elsewhere. The technology uses biometrics to map and react to facial movements and features.

In 2016, Caterpillar partnered with tech company, Seeing Machines, to create and install fatigue prevention facial recognition software in thousands of heavy-duty trucks. The system in these specific trucks detect potential fatigue in the driver and immediately sound an alarm

while contemporaneously forwarding a video clip of the driver to Caterpillar's 24-hour command center.

From there, a Caterpillar safety adviser contacts the driver through onboard communications to intervene. Caterpillar is just one example of a large corporation implementing this technology as a safety benefit.

But Caterpillar appears to be an exception. As most trucking companies continually choose to refrain from implementing available forms of accident prevention technology, plaintiffs' attorneys should seek to establish and highlight the truth.

Accident prevention systems are available and affordable, but trucking companies inexplicably continue to make the conscious decision of profits over safety in refraining from modernizing their fleets.

Jurors should be permitted to learn that these accidents are not solely attributable to the driver's conduct but are also caused by a trucking company's failure to implement this technology.

For example, in a case where a truck driver rear-ends a vehicle, a trucking company's failure to have a forward collision warning system

that was readily available should be admitted into evidence for jurors to determine the total degree of the trucking company's fault. A failure to implement a forward collision warning system under this rear-end hypothetical certainly is probative.

Plaintiffs' lawyers today should include allegations that include a trucking company's failure to implement accident prevention technology that is becoming more and more of a industry standard.

As defendants in product-liability cases are able

to introduce state-of-the-art type of evidence as rebuttal evidence in an alternative design case, plaintiffs in trucking cases should be permitted to introduce evidence that trucking companies with vast financial resources consciously fail to implement such technology

even though it has been proven to prevent accidents.

If our largest car manufacturers can implement this technology in many vehicles that sell for under \$25,000, and because trucking companies are not adverse to implementing bottom

line cost-saving technology such as electronic logs or GPS systems to ensure on-time deliveries, jurors should be permitted to question why those same trucking companies continually turn a seemingly distracted eye from this life-saving technology.