

The Standard Corporate Defense: Blame the Victim

Commentary by Michael Hersh



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This past June, a Wal-Mart truck on a late-night run rear-ended a limo van on the New Jersey Turnpike. The accident killed one passenger, and critically injuring comedian Tracy Morgan, among others.

Investigators found that the truck driver hadn't slept in the 24 hours before the accident, a violation of federal safety regulations. He was charged with vehicular homicide.

Yet attorneys for Wal-Mart Stores Inc. reportedly filed court papers arguing that any injuries suffered by Morgan and the other passengers were caused by their failure to properly wear their seat belts.

Wal-Mart has effectively blamed the victims, even though its driver slammed into the limo and has been charged.

Many found Wal-Mart's

attempt to shirk responsibility shocking. Yet it's become a standard defense tactic in accident and personal injury cases. Blaming the victim has become commonplace in American society. Defendants increasingly attempt to place fault on the injured plaintiff, even in cases where the cause of the harm would seem obvious and trying to pass blame would appear inappropriate, even egregious.

Wal-Mart is not alone. In a recent case, Toyota Motor Corp. tried to blame a victim left paralyzed following a car accident when the lap-only belt she was wearing resulted in her spine being severed.

The four other passengers in the 4Runner were wearing three-point seat belts equipped with shoulder restraints. They suffered minor injuries.

Lap-only belts have a history of causing paralysis and other injuries, so much so that injuries from lap-only belts are now known as "seat-belt syndrome." Reports of such injuries prompted advancements



in passenger safety rules, including a 2005 federal regulation requiring manufacturers to install shoulder belts in all U.S. passenger vehicles. Reports suggest

that the dangers of lap-only seat belts were known nearly a decade before Toyota released the 4Runner.

Still, in closing arguments earlier this month, Toyota

blamed the paralyzed victim. Toyota's lawyers reportedly argued that the woman's indifference cost her the ability to walk. It wasn't enough that she wore her seat belt. Toyota's attorney reportedly blamed her for not properly adjusting her belt. Moreover, the attorney suggested that she was not focused on safety, but instead on getting back together with her ex-boyfriend.

The jury didn't buy Toyota's argument and returned a \$12 million verdict against the carmaker.

This was one small victory in the ongoing battle between injured plaintiffs and large corporate defendants. Blaming the victim is standard practice for corporate defendants, regardless of whether such a tactic flies in the face of reason or decency.

No doubt the strategy will continue as corporations and their defense counsel seek to limit losses by deflecting blame and liability. Those seeking justice can only hope juries will see through the blame game.

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