



October 25, 2021

Pete Buttigieg, Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590-0001

Steven Cliff, Acting Administrator
NHTSA Office of the Administrator
1200 New Jersey Avenue SE
Washington, DC 20590-0001

Robin Hutcheson, Deputy Assistant
Secretary for Safety Policy
1200 New Jersey Avenue SE
Washington, DC 20590-0001

Stephen Ridella, Director
NHTSA Office of Defects Investigation
1200 New Jersey Avenue SE
Washington, DC 20590-0001

Re: AAJ Supports Petition for NHTSA to Recall Semitrailers Due to Lack of Side Underride Guards

Dear Secretary Buttigieg:

The American Association for Justice (AAJ) supports the petition submitted by Eric Hein, Marianne and Jerry Karth, and Lois Durso for the National Highway Transportation Safety Administration (NHTSA) to recall semitrailers due to lack of side underride guards. AAJ, with members in United States, Canada and abroad, works to preserve the constitutional right to trial by jury and to make sure people have access to justice through the legal system when their rights are violated. AAJ is an advocate for motorists who have been injured or killed in highway crashes. The petition raises critical safety concerns with the lack of side underride guards on semitrailer vehicles.

Van-type and box semitrailers vehicles that do not have underride guards can result in an “underride” collision with more deadly consequences to the occupants of a passenger vehicle. An “underride” collision occurs when a semitrailer collides with a passenger vehicle causing the passenger vehicle to slide under the body of a semitrailer, often crushing the vehicle and the passengers within, or dragging the vehicle causing it to burn with passengers inside.¹ Crashes involving trucks with no side underride guards often result in serious preventable fatalities on US highways. A recent report from Government Accountability Office stated that “from 2008 through 2017, an average of about 219 fatalities from underride crashes involving large trucks were reported annually.”² These underride collisions could be eliminated, if semitrailers were required to have adequate side underride guards. Consumer Reports found that “underride guard

¹ Hein, Karth, and Durso. National Highway Traffic Safety Administration (NHTSA) Side Underride Recall Petition. 2021.

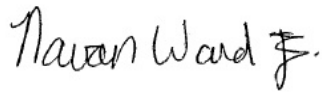
² Government Accounting Office. 2019. Truck underride guards: Improved data collection, inspections, and research needed. GAO-19-264.

are proven to help stop a car from continuing under a truck in the event of a collision, this helps avoid windshield-first crashes and improves the chances that a car's air bags, and other lifesaving built-in occupant protection systems can function as intended,"³ Therefore, side underride guards are a critical safety feature that would go a long way in reducing truck accident fatalities, and increasing highway safety.

Under 49 U.S.C. §§30118(b), 30119, and 30120 NHTSA has the authority to issue recalls for highway safety. Specifically, NHTSA can issue recalls of vehicles or equipment that pose an "unreasonable risk" to safety. An unreasonable risk to safety includes product defects in motor vehicles and other factors that hinder highway safety. According to the relevant federal statute, the Safety Act, the term "defect" is broadly defined to include defects in the performance or construction of motor vehicles, and can also involve a component or material of a motor vehicle or motor vehicle equipment.⁴ Courts have determined "defect" to include design defects, such as a missing safety part or feature from the vehicle.⁵ Van-type and box semitrailers vehicles that do not have underride guards are defective in design, under the statutory definition of defect, because they are missing the critical safety feature of the side underride guard. NHSTA is well within its authority to issue a recall on this critical design defect, that clearly poses an unreasonable risk to highway safety.

AAJ appreciates this opportunity to express our support for the petition to recall semitrailers due to lack of side underride guards. This is an important safety issue that deserves review and consideration. If you have any questions or comments, please contact Bonnie Johnston, AAJ Senior Federal Affairs Counsel, (202) 684-9608.

Respectfully submitted,

A handwritten signature in black ink that reads "Navan Ward" followed by a stylized flourish.

Navan Ward
President
American Association for Justice

³ Consumer Reports. 2019. Press release: Consumer Reports urges Congress to pass the Stop Underrides Act.

⁴ 49 U.S.C. § 30102(a)(2).

⁵ *United States v. General Motors Corporation*, 518 F.2d 420, 171 U.S. App. D.C. 27 (D.C. Cir. 1975)