A PUBLICATION OF THE ALABAMA ASSOCIATION FOR JUSTICE

Journal

Volume 46 · Number 1

FALL 2025

2025-2026 ALAJ President

Clint Mountain

and Family

ALABAMA ASSOCIATION FOR JUSTICE

FALL 2025

The Journal is the official publication of the Alabama Association for Justice, the purpose of which is to provide timely, informative and practical information to the Trial Bar. The opinions and statements expressed in editorials and articles reflect the views of the authors, and do not necessarily represent those of ALAJ. Publication of any advertising does not imply endorsement of any product or service, and the publisher reserves the right to approve any advertising submitted for publication. The Journal is distributed as a member benefit.

Please direct all inquiries about editorial content to:
Alabama Association for Justice
Post Office Box 1187
Montgomery, Alabama 36101

Phone 334.262.4974
E-mail: ALAJ@alabamajustice.org
Web: www.alabamajustice.org

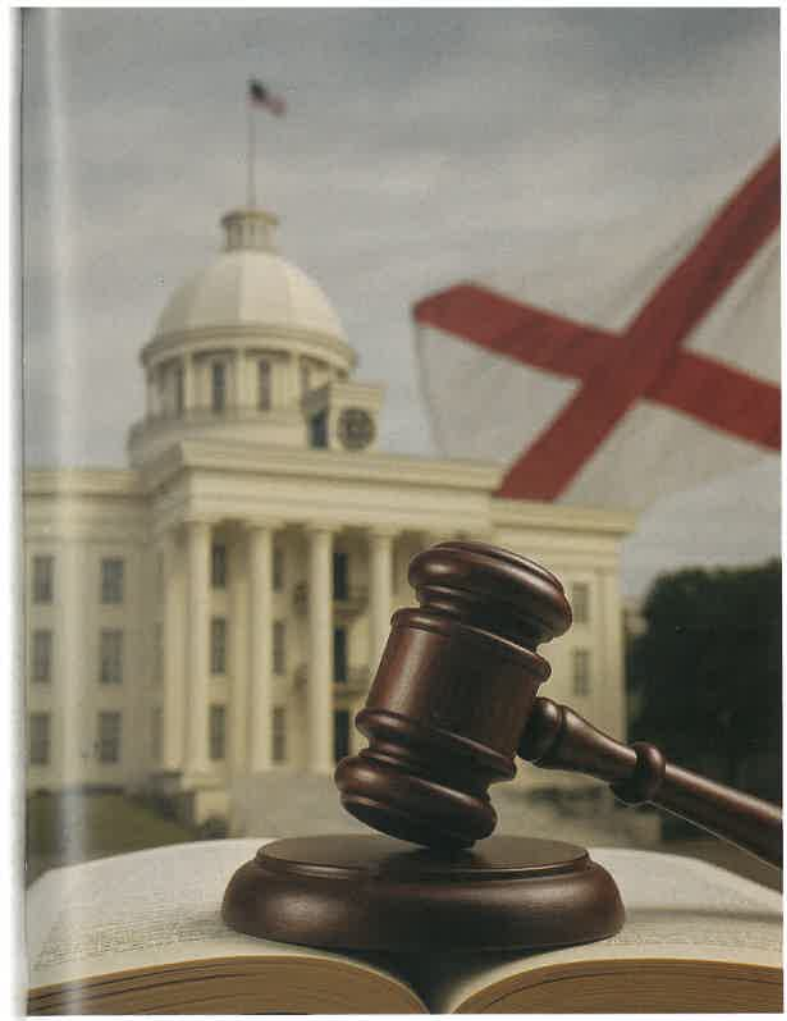
A PUBLICATION OF THE ALABAMA ASSOCIATION FOR JUSTICE

Journal

{ FEATURES | *In this issue* }

{ DEPARTMENTS | *In every issue* }

OUR MISSION *We preserve and protect the constitutional right to a trial by jury guaranteed by the Seventh Amendment to the United States Constitution by ensuring that every person or business harmed or injured by the misconduct or negligence of others can hold wrongdoers accountable in the one room where everyone is equal – The Courtroom*



Alabama's Substantial Similarity Test

What is it, and When Does it Apply?

By David Wirtes, Jr.

In products liability, premises liability, and industrial accident cases, evidence of other similar incidents can oftentimes be relevant and even crucial to a favorable outcome. Exclusion of such evidence can be particularly damaging, so ensuring proper application of admissibility standards is of paramount importance.

In a recent product liability case, the manufacturer presented a slickly choreographed slideshow replete with incorrect assertions about Alabama's substantial similarity test for admissibility of other similar incidents evidence. The trial court was swayed and initially struck our evidence. Our motion to reconsider demonstrated that the manufacturer's representations were inaccurate. This incident caused us to closely examine Alabama's "substantial similarity" test, and to answer what it is and when it should apply.

I. Other Similar Incidents Evidence – Generally

Alabama Rule of Evidence 404(b) provides that "other wrongs or acts...may ... be admissible for other purposes, such as proof of intent, ... plan, knowledge, ... or absence of mistake or accident." Alabama courts have interpreted this rule and its common law predecessors to mean that evidence of other similar incidents ("OSI") may be admissible for a variety of purposes such as: (1) to show the existence of a dangerous condition or a defect; (2) to show the magnitude of the risk of harm from the danger or defect(s); (3) to show causation and proximate cause; (4) to show that the product(s) in issue do not meet the reasonable expectations of ordinary consumers; (5) to show the need for adequate warnings; (6) to show why the defendant's conduct was and is unreasonable; (7) to rebut the defendant's contentions about causation and proximate cause; (8) to rebut the defendant's arguments and assertions of contributory negligence and/or product misuse; (9) to refute testimony from the defendant's expert witness(es); (10) to show that the defendant was on notice of the dangerous condition or a defect(s); and (11) to show that the risk of harm was foreseeable.[1]

II. The Substantial Similarity Test

a. **Generally**

In order to make an admissibility judgement, a threshold issue for courts is to conduct a substantial similarity analysis.[2] In products liability cases, a majority of courts make this threshold determination of similarity in reference to the defect involved.[3] This method of determining similarity is used by courts in a variety of civil actions aside from products liability where the source of harm is a common hazard, such as in industrial accident or premises liability cases.[4] These approaches are consistent with the broader concepts of relevance under Federal Rules of Evidence 401 and 402 and, by extension, their state law parallels.[5]

In order to preclude OSI evidence, the differences alleged must be more than purely cosmetic or superficial. If the differences in the OSI products, places, or worksites do not relate specifically to the defect at issue in a products case, the unsafe condition of the premises, or the tool or machine in the workplace in the industrial setting, then the test for admissibility

should be relaxed.[6]

For plaintiffs to admit evidence of other similar incidents, the burden can best be described in two parts, proof of substantial similarity and demonstration that the OSIs are not too remote. As to the first, the burden for plaintiffs in products liability, premises liability, or industrial accident cases is to show that the other incident occurred under "substantially similar" conditions.[7] This principle is outlined in *General Motors Corp. v. Van Marter*:

> On an issue of whether a place or thing was safe or dangerous at the time of the accident in question, evidence of the occurrence or non-occurrence of accidents to others at other times, in the use of such place or thing, is admissible if the condition of the place or thing at such other times was substantially the same as the condition existing at the time of the accident in suit.[8]

Van Marter further clarifies that "each ruling under this standard must be considered on a case-by-case basis. That being the case, admissibility of such evidence is within the trial court's discretion."[9] So, how have Alabama courts applied this test?

b. Just How Similar is "Substantially Similar?"

In 1941, the Alabama Supreme Court held in *City of Birmingham v. Levens*, a premises liability case, that "the matter of similarity of conditions was held not to be one of exactitude, either as to time or circumstances, and that the similarity of conditions may be inferred from circumstances."[10] Just how similar do other instances need to be in order to satisfy Alabama's test for admissibility? To illustrate, consider *Van Marter*, a products case. There, the Court upheld the admission of a defective power accessory system in a GM vehicle similar to the one that caused the plaintiff's injury, even though the exemplar vehicle and the vehicle that made the basis of the lawsuit were of a different make, model, and year of manufacture.[11] The Court explained that the evidence was admissible because the plaintiff's expert thoroughly examined the vehicles and determined the differences between them were inconsequential as to the issue of whether the power accessory system was defective:

> [the expert] had examined both the 1980 Regency and the 1978 Regal and determined the power accessory system in each to be 'basically the same.' While the distinguishing features of each vehicle were brought out on cross-examination, [the expert] considered these differences to be of no significant import. Under these facts, this court cannot conclude that the trial court abused its discretion.[12]

This reflects the proposition that in making a substantial similarity determination in products cases, the most important factor is how similar the *defects* are, not how similar the surrounding circumstances of the incidents or accident may be.[13]

The Court's ruling in another products case, *General Motors Corp. v. Johnston*, is instructive. There, the Court affirmed the admission of 251 separate reports of engines stalling in other types of GM vehicles.[14] The Court reasoned that this evidence was relevant to the plaintiff's purpose of proving notice to GM of the defect because:

> The plaintiffs claimed that Lewis's pickup truck stalled because of a defect in the fuel delivery system. All 251 reports from GM's dealers and customers state that the engine stalled or idled. The majority of the reports specifically mentioned the ECM, the PROM, or sensors connected to the ECM, which controls the fuel delivery system.[15]

Another example is *Ex Parte Cooper Tire & Rubber Co*, where the Court validated a discovery order for the production of documents related to instances of tread separations on tires manufactured by the defendant, including tires that were not specific to the tires on the plaintiff's car.[16] The Court reasoned that the evidence, along with extensive expert testimony, indicated "that the 'tread separation' defect alleged by the plaintiffs... was a factor in Cooper's design and manufacturing process *in general* rather than a feature of the 'GTS 2879' tire."[17] The Court further explained that, because the plaintiffs were attempting to prove negligence in Cooper's manufacturing process, the information that a swath of its tires were experiencing the same tread separations was relevant for purposes of Ala. R. Evid. 401, and therefore discoverable under Ala. R. Civ. P. 26.[18] While the Court in *Cooper* was concerned with a discovery order, not an admissibility ruling, it reflects how the Court consistently analyzes the substantial similarity requirement.

In another example outside the context of products cases, *Alabama Power Co. v. Brooks*, the Court upheld the admission of several reports of other instances of electrocutions due to contacts with uninsulated power lines.[19] The reports sought to be admitted were of instances that had occurred not just in Alabama, but nationwide, and were admitted despite Alabama Power's argument that these were not "substantially similar."[20] The Court disagreed with Alabama Power, reasoning that

> ...the statistical information in question was not introduced to prove that the shop area of the Lanco Pit operation was, in fact, dangerous or unsafe at the time of the accident or that APCo knew or should have known that such a dangerous condition existed there. *Its purpose was to show the existence of national, industry-wide evidence of a serious problem* resulting from certain types of equipment contacting uninsulated power lines, *and it was relevant as to the degree of care exercised by APCo* in the inspection and maintenance of its lines.[21]

What these rulings mean is that the degree of *similarity* required is always dependent on the purpose the evidence is being offered for.

In the context of industrial accidents and workplace hazards, the Court in *Wyser v. Ray Sumlin Const. Co., Inc.* held admissible several OSHA citations concerning similar violations to the one that caused the plaintiff to fall into an unguarded elevator shaft and suffer injury.[22] The citations detailed similar and repeated failures by the defendant to provide proper guard railings over hazardous openings such as floor openings and fan duct pits.[23] As the Court explains "these citations are relevant to [plaintiff's] accident. They both involved a lack of proper guarding and railing that exposed employees to the possibility of a fall. Both citations referred to the type of guards and railings that are required. Therefore, the prior OSHA violations were relevant."[24]

The Eleventh Circuit has ruled on the substantial similarity test in *Crawford v. ITW Food Group*, where the court allowed into evidence several OSHA reports involving injuries due

to manually operated saw blade guards involving the same or similar models as the one the plaintiff was using when he was injured.[25] The court reasoned that the reports satisfied substantial similarity for the plaintiff's purposes of showing lack of reasonable care on the part of the defendant.[26] In the court's words, "[Defendant]... could not seriously argue that the OSHA reports are not relevant... *the OSHA reports were substantially similar in the manner most relevant in this case*—i.e., the serious danger that exists, and the foreseeable serious injury that occurs when inevitable human error combines with an unguarded saw blade."[27] The precise circumstances of each other incident were deemed immaterial to the overarching concern that other incidents, however they occurred – provided evidence of notice and foreseeability of severe harm.[28]

It is important for plaintiff's counsel to note that in products cases, the substantial similarity test should examine if the *defects* are the same across products under scrutiny, *not* whether the circumstances of the incident causing the injury were similar.[29] In premises liability cases, the substantial similarity of the place or thing causing the injury determines relevance, *not* whether the other incident happened before or afterwards, or in the morning or afternoon, as those trigger a separate inquiry: remoteness. In industrial accident cases, the substantial similarity of the *nature* of the hazard or safety measures should be the focus, *not* the exact details of how some other employee got injured.

Federal Courts outside of Alabama have similarly held that the substantial similarity is more relaxed when the evidence is offered for purposes other than proof of defect, such as notice of the danger.[30] One case that is particularly informative is the Sixth Circuit's holding in *Morales v. American Honda Motor Co., Inc*, where the plaintiffs sought to admit statistical accident evidence involving minibikes and motorbikes that the defense claimed were not "substantially similar."[31] The court held that the evidence should be admitted, despite the statistical evidence containing several types of vehicles different in design from the motorbike that injured the plaintiff's son. As the court explains, because the evidence was used to "develop Plaintiffs' age appropriateness argument" the evidence satisfied substantial similarity so long as the others involved "minibikes and small vehicles of the same sort" because "it may be said that these vehicles perform a similar purpose."[32]

Morales exemplifies how the threshold of "substantial similarity" is relaxed when other incidents evidence is offered for purposes other than proving the precise defect. Other federal courts are even more explicit. For example, in *U.S. Aviation Underwriters, Inc. v. Pilatus Business Aircraft, Ltd*, the Tenth Circuit held that

> In product liability cases, evidence of other accidents is admissible if the other incidents are "substantially similar" to the incident in question... The degree of similarity required varies depending on how the evidence is used... Evidence proffered to illustrate the existence of a dangerous condition necessitates a high degree of similarity... The requirement is relaxed, however, when the evidence of other accidents is submitted to prove notice or awareness of the potential defect.[33]

In deciphering the relative degrees of similarity needed for admission of other incidents, one notable legal scholar succinctly explains that "It is sometimes noted that the substantial similarity requirement is *heightened* if the other incidents are offered to prove *defectiveness or causation*. Likewise, the requirement is *relaxed* if the evidence *merely reveals the defendant's notice of the possibility that its product is dangerous or defective*."[34]

A highly informative article, which examines the history and evolution of the substantial similarity doctrine, explains that it emerged to "avoid a specific type of prejudice... i.e., admission of a misleading accident re-creation or misleading notice argument."[35] The article concludes that "courts that misapply the substantial-similarity doctrine have applied the doctrine as a way of avoiding their gatekeeping function, rather than as a way to facilitate the gatekeeping function,"[36] but notes that "most courts have continued to apply the doctrine in a way that properly excludes evidence of dissimilar accidents *only when offered as experimental evidence, typically to prove a defect, notice of a defect, or to otherwise recreate some aspect of the event in question.*"[37]

A treatise that discusses the topic of substantial similarity is the *American Law of Products Liability 3d*. The treatise echoes the proposition that:

> The degree of similarity required is in part a function of the proponent's theory of proof, so that if dangerousness is at issue, a high degree of similarity is essential, while if evidence of other accidents is offered to prove notice, a lack of exact similarity of conditions does not require exclusion if the accidents were of a kind that should have served to warn the defendant.[38]

McElroy's Alabama Evidence implies that substantial similarity is dependent on the evidence's proffered purpose. For example, *McElroy's* states that "the evidence must warrant a finding that the condition of the place of the accident in suit was substantially the same at such other times."[39] To back this up, *McElroy's* cites several cases from Alabama and elsewhere that point to substantial similarity being more lax depending on what the evidence is offered for.[40]

Other states' supreme courts have ruled on substantial similarity as well. In *Lovick v. Wil-Reich*, a products case, the Supreme Court of Iowa allowed nine prior instances of falling cultivator wings causing injury to tractor operators, despite the specific causes of the falling wings being different to the cause that injured the plaintiff.[41] The court reasoned that

> While [Defendant] attempts to distinguish the various origins of each incident resulting in the collapse of the cultivator wing, their commonality was the location of the wing lock bracket which caused the operator to come under the wing to remove the lock. The design defect therefore concerned the location of the lock rather than the technical events creating the possibility for the wing to fall. This evidence was clearly relevant and was *highly probative on the issue of the existence of a dangerous condition.*[42]

Similarly, in *Jones v. Ford Motor Co.*, the Supreme Court of Virginia allowed evidence of other instances of sudden acceleration events in Ford vehicles, despite not all of them

occurring in reverse, which occurred with the plaintiff's vehicle.[43] As the court explains, "Even though all the witnesses did not experience sudden acceleration events while operating their cars in reverse gear, this distinction is not material. All the witnesses experienced unintended sudden acceleration and none was able to stop his car with the normal application of the brake pedal."[44] The court held that despite the differences, the evidence was sufficiently similar to "establish that Ford had notice that its vehicles would accelerate suddenly without operator error and that these vehicles would not stop when the drivers applied the brake pedals."[45]

In summary, most state and federal appellate courts hold that the level of similarity required to satisfy "substantial similarity" depends on what the evidence is offered for.[46]

Of course, "substantial similarity" is only one part of the plaintiff's burden to admit other similar incidents, another component of it is to ensure the other incidents are not too remote in time. So how do courts evaluate remoteness?

c. How Remote Is Too Remote?

Alabama courts have addressed remoteness in many cases. Returning to *Van Marter*, the Court found that a two-year period between the defect and the manufacture of the vehicles was not too remote in time to preclude its admission.[47] In *M.C. West, Inc. v. Battaglia,* the Alabama Court of Appeals allowed testimony prior flooding that occurred seven years before the flood that damaged the plaintiff's property.[48] In *Ex Parte Wal-Mart, supra,* a premises liability case, the Court allowed discovery of other falling-merchandise incidents for the five years preceding the date of the accident that injured the plaintiff.[49]

McElroy's Alabama Evidence states the proposition that "remoteness exists when the offered evidence arose so long ago that it no longer possesses a tendency in logic to make the fact for which it is offered more or less probable than it would be without the evidence."[50] Further,

> Generally, there is no specific time limit under the Alabama Rules of Evidence or case law which sets the parameters of remoteness. The only exception to this principle is the ten-year remoteness rule found in Rule 609(b) under which one cannot use a conviction for impeachment when more than ten years have passed since the date of conviction or release. This ten-year remoteness limitation, however, applies only when the evidence is offered under Rule 609(b). If the evidence is offered under any other Alabama Rule of Evidence then the general doctrine of remoteness applies unencumbered by the fixed ten-year limitation.[51]

Accordingly there is no strict timeline of what is considered "too remote," so long as the evidence can logically be deemed probative of the purpose offered for.

III. Conclusion

Don't let Alabama's substantial similarity test be misinterpreted as imposing some stringent burden. Exactitude is not the standard; the other incidents need to be substantially similar in the ways most important to the evidence's purpose. In products liability cases, this most often means the defect. In premises cases, it is the condition of the place or thing causing injury and in industrial accident cases, it is the nature of the hazardous workplace equipment or conditions. How close the surrounding circumstances need to be depends on what purpose the evidence is being offered. e.g., relaxed for things like proving awareness of a particular danger or the degree of care exercised. There is no strict standard for how close in time the incidents must be to satisfy remoteness. As long as the other incident still has some probative value to the purpose it is offered for, even if years have passed, the evidence should still come in.

In the end, the admission of other similar incidents evidence is determined by how plaintiff's counsel frames the purposes that the evidence of other incidents is being offered for. Understanding that the substantial similarity test requires heightened scrutiny, or relaxed scrutiny, is necessary for properly framing the issue and winning the admissibility battle at trial.

(Endnotes)

1 See e.g. Gen. Motors v. Johnston, 592 So.2d 1054 (Ala. 1992) (offered to show defect); Ala. Power v. Brooks, 479 So.2d 1169 (Ala. 1985) (offered to show foreseeability of harm and reasonableness of defendant's conduct); Gen. Motors v. Van Marter, 447 So.2d 1291 (Ala. 1984) (offered to show defect and danger of condition); City of Birmingham v. Levens, So. 888, 889-90 (Ala. 1941) (offered to show notice of defect and danger of condition); Hyde v. Wages, 454 So. 2d 926, 931 (Ala. 1984) (offered to show reasonableness of defendant's conduct and notice); Flint City Nursing Home, Inc. v. Depreast, 406 So. 2d 356, 362 (Ala. 1981) (offered to show notice and causation); See also Weeks v. Remington Arms, 733 F.2d 1485 (11th Cir. 1984) (offered to show defect, risk of harm from danger of defect); Crawford v. ITW Food Group, 977 F.3d 1331, 1351 (11th Cir. 2020) (offered to show foreseeability of danger).
See, generally, David G. Wirtes, Jr., George M. Dent III, Suggested Strategies for Admission of Other Similar Incident Evidence, 30 Ala. Assoc. J. Jnl. 2 (Winter 2010).
2 Charles W. Gamble, Robert Goodwin, Terrence McCarthy, McElroy's Alabama Evidence § 83.01 (7th ed. 2024); See, also, Francis H. Hale, Jr., Admissibility of Evidence Concerning Other Similar Incidents in a Defective Design Product Case: Courts Should Determine "Similarity" by Reference to the Defect Involved, A. J. Trial Advoc. 491, 514 (Spring 1998); Ally Howell, Trial Handbook for Alabama Lawyers § 36:6 (3d ed. 2025).
3 Id.
4 Id. at 491.
5 Id. at 515.
6 Id at 515 (citing Bastian v. TPI Corp., 633 F. Supp. 474, 477 (N.D. Ill. 1987) (admitting OSI evidence over defendant's contentions that they were not substantially similar because "the differences in the models involved are mostly cosmetic, and do not relate to the design defect which they think is present in each of the models."); See also Kmart Corp. v. Peak, 757 So.2d 1138, 1140 (Ala. 1999) (admitting OSI evidence of automatic door failures at store despite involving three separate doors because all three were identical in all relevant respects) and Wyser v. Ray Sumlin Const. Co., Inc, 680, So.2d 235, 237 (Ala. 1996) (upholding admission of OSHA violations where citations involved failure to employ the same type of safety equipment for a common hazard, i.e. hazardous pits).
7 e.g. Southern Ry. Co. v. Lefan, 70 So. 249, 297 (Ala. 1915) (Admissibility of OSI in negligence case); Levens, 200 So. at 890 (Ala. 1941) (Admissibility of OSI in premises liability case); Depreast, 406 So. 2d at 362 (Ala. 1981) (Admissibility of OSI in negligence case).
8 Van Marter 447 So.2d at 1293 (Ala. 1984).
9 Id. (citing Birmingham Electric Co. v. Woodward., 35 So.2d 369 (1948)).
10 Levens, 200 So. at 890.
11 Supra Van Marter, 447 So.2d at 1292-93 (Ala. 1984).
12 Id. at 1293.
13 Hale, supra note 2.
14 Johnston, 592 So.2d at 1058 (Ala. 1992)
15 Id. at 1059.
16 Ex Parte Cooper Tire & Rubber, 987 So.2d 1090, 1104 (Ala. 2007).
17 Id. at 1103 (emphasis added).
18 Id.
19 Alabama Power Co. v. Brooks, 479 So.2d at 1177.
20 Id. at 1176.
21 Id. at 1177. (emphasis added)
22 Wyser, 680, So.2d at 237 (Ala. 1996).
23 Id. at 238.
24 Id.
25 Crawford, 977 F.3d at 1351. While Crawford concerns Florida law, the substantial similarity analysis is the same.
26 Id.
27 Id. (emphasis added)
28 Id at 1350.

29 Hale, supra note 2.
30 e.g. Shields v. Sturm, Ruger & Co., 864 F.2d 379, 381 (5th Cir. 1999) (stating that substantial similarity is "relaxed when the evidence is offered to show the defendant's awareness of danger"); Seese v. Volkswagenwerk A.G., 648 F.2d 833 (3rd Cir. 1981) (admitting evidence of other accidents in a products case even though circumstances were not perfectly similar); Benedi v. McNeil-P.P.C., Inc., 66 F.3d 1378, 1386 (4th Cir. 1995) ("When prior incidents are admitted to prove notice, the required similarity of the prior incidents to the case at hand is more relaxed than when prior incidents are admitted to prove negligence. The incidents need only be sufficiently similar to make the defendant aware of the dangerous situation").
31 Morales v. American Honda Motor Co., Inc., 151 F.3d 500, 511 (6th Cir. 1998).
32 Id. at 512.
33 U.S. Aviation Underwriters, Inc. v. Pilatus Business Aircraft, Ltd., 582 F.3d 1131, 1147-48 (10th Cir. 2009) (citing Wheeler v. John Deere Co., 862 F.2d 1404, 1407-08 (10th Cir.1988)).

34 David G. Owen, Proof of Product Defect, 93 Ky. L.J. 1, 24 (2004-05) (emphasis added).
35 Jeremy L. Kidd, David C. Viano, Evan Stephenson, Survival of the Fittest? The Origins and Evolution of the Substantial Similarity Doctrine, 57 Wayne L.R. 423, 437 (2011).
36 Id. at 470.
37 Id. at 471 (emphasis added).
38 American Law of Products Liability 3d, § 54:21 Evidence of Other Accidents (May 2025).
39 Supra, note 2, McElroy's Alabama Evidence § 83.01.
40 Id (citing e.g. Arabian Agric. Servs. Co. v. Chief Indus., Inc., 309 F.3d 479, 485 (8th Cir. 2002) (recognizing that other accidents with the defendant's product, if occurring under substantially similar circumstances, may be relevant in a products liability action to prove the defendant's notice of defects, ability to correct known defects, the magnitude of the danger, the product's lack of safety, or causation); Clark v. Chrysler Corp., 310 F.3d 461, 472-74 (6th Cir. 2002) (affirming admission of expert testimony of similar instances of failed door latch responsible for accident in question, circumstances surrounding the prior accidents need only be "substantially similar" and not identical to the current case); Wal Mart Stores, Inc. v. Manning, 788 So. 2d 116, 118 (Ala. 2000) (indicating that there may be a sufficient level of similarity for admissibility of collateral accidents and yet not be sufficient similarity to form the basis where a jury could conclude that the defendant had constructive notice of the dangerous condition)).
41 Lovick v. Wil-Rich, 588 N.W.2d 688, 698 (Iowa 1999).
42 Id. (emphasis added)
43 Jones v. Ford Motor Co., 263 Va. 237, 255 (Virginia 2002).
44 Id.
45 Id.
46 See, also, Andrews v. Harley Davidson Inc., 106 Nev. 533, 538 (Nev. 1990) (Admitting evidence of similar motorcycle accident where "[t]he differences in their accidents are trivial and would have little or no effect on their injuries"); McCathern v. Toyota Motor Corp., 332 Or. 59, 71-72 (Ore. 1998) (Upholding admission of 15 instances of Toyota vehicle rollovers as "substantially similar" when provided as basis of expert's testimony); Newman v. Ford Motor Co., 975 S.W.2d 147, 152 (Mo. 1998) (Admitting similar instances to plaintiff's accident, i.e. ejection from Ford vehicles despite engagement of seatbelts - where evidence offered on issue of the effect seatbelt has in restraining occupants in rear-impact crashes, i.e. reasonable expectations of consumers); Uniroyal Goodrich Tire Co. v. Martinez, 977 S.W.2d 328, 340-41 (Tex. 1998) (Admitting evidence of 34 earlier accidents involving mismatching Goodrich tires and that "the absence of pictographic warnings on the tires does not render the accidents so dissimilar as to preclude their admission" when offered to show lack of warning.)
47 Van Marter 447 So.2d at 1293 (Ala. 1984).
48 M. C. West, Inc. v. Battaglia, 386 So. 2d 443, 448 (Ala. Civ. App. 1980).
49 Ex parte Wal-Mart, Inc., 809 So. 2d 818 (Ala. 2001).
50 McElroy's Alabama Evidence § 21.01.
51 Id

David Wirtes, Jr.
Dave works behind the scenes on strategic planning, legal issues, and appeals. Dave's efforts over the past forty years have helped protect working men and women in Alabama and throughout the country in ways most will never know: he has won many battles against unfair "tort reform" laws such as indiscriminate caps on recoverable damages, special immunity statutes, and other efforts intended to deprive people of their constitutional rights to trial by jury and an adequate remedy for their injuries and losses. Dave is admitted to practice before all state and federal courts serving Alabama and Mississippi, the Fifth and Eleventh Circuit Courts of Appeals, and the Supreme Court of the United States. He has been rated by his peers as "AV" (preeminent for ethical standards and legal abilities) as shown at martindale.com.