SUMMER 2003

PRODUCT LIABILITY UPDATE

In an effort to make products safer for the public, the attorneys at Shamberg, Johnson and Bergman occasionally publish a product liability update. We hope that you find this information useful for your practice and clients.

Defective Rear Occupant Space on Ford Escort Injures Child

SJB animation showing (top) 1991 Ford Escort rear occupant space and (bottom) intrusion into rear occupant space.

SAFETY EXPERTS ALL RECOMMEND that parents put their young children in child car safety seats in the rear outboard seat locations. Based upon statistics, this is generally good advice. However, the advice assumes that the rear energy management system of the vehicle has been appropriately designed to protect rear seat occupants in rear impact accidents. Unfortunately, there are no federal motor vehicle safety design or performance standards for rear impact crashworthiness and, as a result, automotive manufacturers do not design or test vehicles to maximize the protection of occupants of the rear seat during foreseeable rear impacts. The rear energy management system is designed to protect the gas tank and fuel system as required by a federal motor vehicle safety design and performance standard – but the safety of the rear seat occupants has been largely ignored by the automotive industry.

Lynn Johnson recently settled a case with Ford Motor Company on behalf of Jayse Wolfe, who suffered a severe head injury in a rear impact accident even though he was appropriately restrained in a child safety seat in the left rear seat of his mother's 1991 Ford Escort. Because of the failure of the rear energy management system, Jayse Wolfe and his child safety seat were hurled forward, causing him to strike his forehead on the back of the front seat. Jayse's mother, who was driving the Escort, and a friend who was in the right side front seat, were able to walk away from the accident without serious injury.

In order to visually illustrate and demonstrate the design of the rear energy management system, we utilized an animation prepared by Fearless Eye, Kansas City, Missouri. The animation successfully demonstrated the dynamic deformation of every piece of structure of the rear of the Escort, as well as the rear seats and front seats during the accident sequence. Although the animation was compelling and clearly demonstrated various aspects of our experts' testimony, we also felt that the jury needed to have a "hands on" model of the rear of the Escort. We had prepared and had available for trial two Escort exemplar rear-ends which could be assembled and disassembled in front of the jury. These exhibits would provide the jury with a 3-dimensional view of all of the relevant design features of the rear of the Escort, and would also confirm the accuracy of the computer drawings and animation prepared by Fearless Eye. When jurors are given the opportunity to closely inspect and perhaps even sit in exemplar vehicles, it enhances their ability to make appropriate decisions concerning the crashworthiness of a particular vehicle's design.

Century Child Safety Seat Failure Kills Toddler

ON JUNE 7, 2000, Lynne Tankersley properly secured and positioned her 18-month-old son, Dylan, in the Century child car seat in the rear of her 1997 Chevrolet Blazer. Mrs. Tankersley lost control of the SUV, causing it to roll over, fatally ejecting Dylan from the Century car seat. The primary restraint system of the Century car seat is a T-shield. The geometry of the T-shield did not provide adequate pelvic restraint during rollover accidents. This allowed the toddler to be ejected from the child safety restraint. Our evidence was that Dylan would not have been ejected with a well-designed 5-point harness, or an alternative T-shield with better geometric design. Dylan's case was settled prior to trial for a confidential amount. We hope that all child safety seats will eventually be designed to truly be safety seats that will prevent injury and death to small children during all foreseeable types of accidents.

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Verdict in Suzuki Sidekick Case

AFTER A THREE WEEK JURY TRIAL, Lynn Johnson achieved the first successful verdict finding that the 1994 Suzuki Sidekick is unreasonably dangerous and defective in its rollover resistance design and performance. The jury verdict also implicated the 1989 through 1998 model years of the Suzuki Sidekick and its sister vehicle, the General Motors Tracker. The jury apportioned 30% of the causal fault to Suzuki Motor Corporation and 70% of the fault to the driver, Wendy Griffin. Lynn represented the deceased driver, Wendy Griffin and her injured daughter Latasha Griffin, who suffered serious spinal cord injuries resulting in paraplegia. The Suzuki rolled over on the highway as a result of an emergency steering maneuver. Our claim at trial was that with appropriate reasonable alternative design features, the accident would not have occurred. The trial was bifurcated by agreement of the parties in separate liability and damages phases. Following the finding of liability, but before the damages portion of the proceeding, Suzuki stipulated to economic damages of $8,168,127.75 and non-economic damages of $1,500,000 and then proceded with an appeal of the liability findings.

The photos at the right illustrate how the Suzuki Sidekick reacts in a test environment. Top photo was captured from the video before the wider track and lower center of gravity alterations were made. Bottom photo illustrates the outcome of the test after the alterations.

Product liability cases alleging rollover defects are among the most challenging of all automotive product liability cases. Plaintiffs' experts testified on the subjects of rollover stability, dynamic testing, and alternative design. Dynamic testing was done by Automotive Testing, Inc. comparing the Sidekick's track width and center of gravity with a wider track and lower center of gravity. The videotaped testing eliminated human error through the use of a "programmable steering machine," and showed how the design improvements would greatly reduce the probability of the Griffin accident.

Sport utility vehicle rollover accidents continue to cause an inordinate number of preventable fatalities and serious personal injuries as a result of the automotive industry's resistance to appropriate design and performance standards that would reduce the risk of all rollover accidents and particularly on-road rollover accidents similar to the Griffin tragedy.

SUVs are marketed and sold to the American public as being safe and reliable family vehicles. The reality is they are difficult to control during foreseeable emergency maneuvers and many models have poor rollover resistance design and performance. The automotive industry has tremendous influence over the National Highway Safety Administration which still has not adopted any federal motor vehicle safety design or performance standards that relate to rollover resistance design and performance of SUVs. Our hope is that the Griffin case and other similar automotive product liability lawsuits throughout the country will exert pressure on the industry to design safer vehicles that will not rollover under foreseeable driving circumstances.

General Motors Recalls and Replaces Seat Belt Buckle Assembly on 1997 Blazer

IN OUR SPRING 2002 NEWSLETTER, we reported on GM's "rip stitching" (also known as an energy management loop or load limiter) driver side seat belt that failed during a June 7, 2000 rollover accident of a 1997 Blazer, resulting in Lynne Tankersley's death. In addition to successfully resolving the Tankersley's wrongful death case against General Motors, our firm notified the National Highway Traffic Safety Administration (NHTSA) of this very dangerous design. We discovered at least three other similar tragedies in rollover accidents resulting from the defective "rip stitching" seat belt design in the GM vehicles.

We are happy to report that on April 2, 2003, General Motors announced that it was recalling the 1997 Blazer, Jimmy, and Bravada SUVs to replace the defective "rip stitching" seat belt buckle assembly. Seat belt repairs will be performed at no cost to the customer. We believe that the Tankersley case and the other similar cases were major factors in GM's decision and are examples of how product liability litigation results in safer vehicles and significantly reduces the risk of serious injury or death. According to General Motors, there are still approximately 341,000 1997 Blazers, Jimmys and Bravadas on the road – certainly this recall will prevent deaths and serious injuries in future rollover accidents involving these vehicles.