

## NEWS

### ■ CALIFORNIA ■

# \$45 million in lap belt suit

A discovery battle led to key Ford memos and crash-test reports.

By Dee McAree

STAFF REPORTER

A COMBATIVE DISCOVERY process turned up documents that were instrumental in a recent \$45 million jury verdict against Ford Motor Co. due to a lap belt's alleged failure to protect a child from serious injury.

Ford's co-defendants—two trucking companies that caused the accident—are also responsible for the verdict. An attorney for Ford said the automaker will appeal.

The suit, filed on behalf of a 5-year-old boy who was restrained paraplegic in an auto accident, took seven years to get to a jury, according to plaintiff's counsel Tom Girardi of Girardi & Keese in Los Angeles.

Girardi and his partner, David Lira, engaged in what he called an exhausting and contentious discovery process. They looked at thousands of Ford documents going back to the 1960s, clashing with Ford's attorneys so sharply that a "discovery referee" was appointed.



TOM GIRARDI: Ford's key documents.

The search paid off for the plaintiffs. At the trial, Girardi presented internal Ford memos and crash test reports allegedly showing the company knew about the flaws in its lap belt for 20 years.

After seven days of deliberations, a Chatsworth, Calif., jury found Ford Motor Co. 40% liable for Johan Karlsson's injuries. The trucking companies that owned the other vehicles involved in the accident were found 60% liable. It awarded \$30.4 million in compensatory damages and \$15 million in punitive damages. *Karlsson v. Ford Motor Co.*, No. PC019980 (Los Angeles Co., Calif., Super. Ct.).

The accident occurred on Nov. 23, 1996, while the Karlsson family was traveling in a 1996 Windstar van on a California freeway.

Johan Karlsson was riding in the center-rear seat and restrained with a lap belt while his siblings—ages 9 months to 8 years—were

restrained by shoulder harnesses. The van driven by his uncle plowed into a 29,000-pound roll of steel that had fallen into the roadway from a truck that had collided with another truck.

Johan was left paralyzed after his spine was severed. His family sued the trucking companies that caused the accident and Ford for failing to warn them that the center seat lap belt did not provide adequate protection to a child.

Girardi and Lira alleged that Ford knew about the problem of "jackknife spinal severing" and had begun to install three-point harnesses in cars in Europe and Australia that could have prevented the injuries to Johan.

A paralegal for the trucking companies discovered documents describing a U-belt system used in Australia for 20 years, and a Ford witness who testified about safety warnings confirmed this during a deposition.

"What blew me away was that Ford had all this data about how harmful these lap belts are and for 20 years they didn't do anything about it," Girardi said.

The plaintiffs' lawyers showed the jury that Ford's own crash-test results indicated that child-sized dummies restrained in lap belts were nearly split in half upon collision.

They claimed that it would cost the company \$15 at the point of manufacture and \$35 as a recall to install three-point restraints in its vehicles. Ford vehicles are still sold with center-rear lap belts.

Girardi told the jury that the Karlssons had leased the vehicle because of a Ford advertisement indicating that it was a safe family vehicle.

"They marketed it as a vehicle for the junior hockey team," said Girardi.

The discovery period was more difficult than the trial, asserted Girardi, who was arguing his first lap belt case against Ford, although he has brought similar cases against other manufacturers.

Ford was uncooperative and withheld documents, he alleged.

The discovery referee, Thomas E. Nuss, a retired judge, was appointed to mediate. He filed a report to the court citing Ford's failure to produce in timely



JOHAN KARLSSON: He was sitting in the center-rear seat with a lap belt on in the 1996 crash that left him a paraplegic.

fashion documents and knowledgeable witnesses that could talk about warnings and safety.

"The Referee finds that for approximately two years [opposing party] has been seeking the deposition of Ford's warnings PMK [person most knowledgeable] to cover the issue of why booster seat material was in the 1996 Aerostar Owner's Guide but not in the subject 1996 Windstar Owner's guide and has been thwarted by the inactions and actions of Ford," Nuss wrote.

Ford's lawyer, Frank P. Kelly, a partner in the San Francisco office of Kansas City, Mo.-based Shook, Hardy & Bacon, said it was never made clear what behavior Ford was sanctioned for. "There isn't a clear

description of what discovery conduct was at root of the order," Kelly said.

As penalty, the referee recommended that the court should instruct the jury that the center lap belt had not provided adequate protection and that Ford had failed to warn the plaintiffs of this dangerous condition.

Kelly said that the court's instruction left the defense at a significant disadvantage with the jury. "The defense was not permitted to refute that the lap belt was a dangerous condition," he said.

Ford sought review by filing a writ of mandate to the Court of Appeals, which made two amendments to the sanctions, but granted Ford no relief.

Instead, Ford's lawyers argued the issue of causation, telling the jury that Ford had not caused the accident. Kelly introduced evidence showing that in severe accidents like this one, more than 90% of victims suffer critical injuries whether or not they are restrained.

Ford's lawyers expect the court to consider pretrial settlements among the trucking companies and the plaintiffs totaling \$12 million, which could offset the amount. ■

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