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VERDICTS AND SETTLEMENTS

Passenger wins $10.2 million for faulty seatbelt

By Dick Dahl
Staff writer

For the last eight years, it has been notoriously difficult to win personal injury verdicts involving rear seatbelts, due largely to a U.S. Supreme Court decision holding that claims against automakers that comply with federal regulations are preempted.

But Larry E. Coben of Scottsdale, Ariz. bucked that trend last month when he won a $10.2 million verdict in Bucks County, Penn., on behalf of a high school student who was rendered paraplegic in a 2004 car accident.

Chelsea Pursell was in the middle rear seat of a 1992 Volkswagen Jetta when the driver lost control of the car and slammed into a utility pole.

According to Coben, faulty seat design and a lap-only seatbelt caused Pursell, now 20, to "submarine" below the belt. It rode up into her midsection with such force that it fractured her spine.

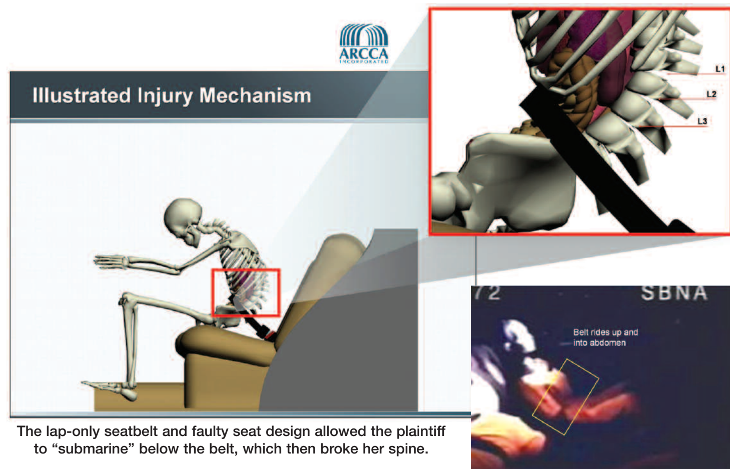
According to Coben, seatbelt cases have been difficult to carry to verdict in recent years due to courts' tendencies to find tort actions against automakers preempted in the wake of the Supreme Court's 2000 decision in Geier v. American Honda Motor Co. (529 U.S. 861).

In that case, the justices concluded that the National Traffic and Motor Vehicle Safety Act preempted a plaintiff's claim against Honda for failing to equip a car with a driver's side airbag because the federal regulations at the time the car was manufactured did not require airbags.

Since then, manufacturers have successfully expanded the preemption argument to other circumstances.

"I think in the past 10 years there have been less than a handful of rear seatbelt cases that have gone to verdict on any issue," said Coben, who has been trying motor-vehicle cases for 20 years. "Most have been settled or dismissed on the basis of preemption."

He said that before federal preemption became a common defense, there were many verdicts for plaintiffs who claimed a shoulder belt in the middle seat would have prevented their injuries.



The lap-only seatbelt and faulty seat design allowed the plaintiff to "submarine" below the belt, which then broke her spine.

Courtroom Visuals by ARCCA, Inc., Chicago.

Seat lacked a 'reaction ramp'

In the Pursell case, Coben and his two experts contended that a shoulder strap might have mitigated the injury – but they were never allowed to present that argument to the jury.

Coben said Judge Robert Mellon made it clear that the plaintiff's argument could focus solely on the design claim about the seat and the belt.

"We were not allowed to say the words 'shoulder har-

ness' in this trial," said Alan Cantor, chief executive of ARCCA, a litigation forensics consulting firm hired by Coben.

According to Cantor and his colleague, Dr. Brian Benda, the back seat of the 1992 Jetta was weak because it lacked a "reaction ramp," or solid piece of metal, in the seat cushion below Pursell. When the car hit the utility pole, the soft seat failed to stop her from slipping below the belt, they said.

Coben said this was a product liability case, not a negligence case, and the plaintiff's defective design argument was bolstered by the fact that the two other back seat passengers – neither of whom was wearing a seatbelt – suffered only minor injuries.

"What I told the jury was, 'Chelsea did what she was supposed to do. She belted up. And it let her down.'"

But he also knew that he faced potential impediments at trial.

He said one of his biggest fears was that the jury might discount the liability argument by focusing on the behavior of the young people in the car. The group had attended a local fair and the driver had "a couple of beers."

Coben said that he was successful in excluding evidence about the driver's blood alcohol level, but he also knew that the silence about whether or not the driver and his friends had been drinking could create suspicion in jurors' minds.

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"Our big concern was that the jury would just go back there [during deliberations] and say, 'Oh, this was just a bunch of drunk teenagers.' And that was something I couldn't do anything about," he said.

Critical evidence from Volkswagen

Coben believed that some of Volkswagen's own documents, obtained during discovery, were crucial in convincing the jury that the defendant knew about the "submarining" dangers and did nothing to correct them.

For example, there were documents from Volkswagen discussing the feasibility of installing an "anti-submarining" plate in the front seats, but not in the back.

"So they knew it," he said. "But they chose to not apply it to the back seat."

In his closing statement, Coben reiterated his theme that Pursell did the right thing in buckling up, only to be victimized by negligent design. He also provided estimates on past and future medical expenses and lost earnings. The total, he said, would be between $7.4 million and $9.4 million.

The trial lasted 14 days and the jury was out for about six hours over two days, according to Coben.

The jury awarded Pursell $8.7 million for economic damages and added $1.5 million for noneconomic damages.

It apportioned 51 percent of the liability to the driver, 39 percent to Volkswagen and 10 percent to the utility company, which settled with Pursell prior to trial.

Volkswagen has said that it plans to appeal the decision.

Plaintiff's attorney: Larry E. Coben of Coben & Associates in Scottsdale, Ariz.

Defense attorneys: David Richman and Stephen G. Harvey of Pepper Hamilton in Philadelphia.

The case: Pursell v. Volkswagen, Feb. 6, 2007; Bucks County, Pa. Court of Common Pleas; Judge Robert Mellon.

Experts: Alan Cantor and Dr. Brian Benda of ARCCA, Inc. in Penns Park, PA and Boston, MA.

Questions or comments
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