

Excluding Scientific Evidence Leads to Million-Dollar Judgment in Vehicle Rollover Case

Product Liability Advisory

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In January 2011, the California Court of Appeal for the Second District upheld a \$21.6 million product liability judgment against Land Rover North America Inc. in favor of a plaintiff rendered quadriplegic when his Land Rover Discovery sport utility vehicle rolled over several times after a collision on a Southern California freeway. (*Pannu v. Land Rover North America* (Cal. Ct. App. - Jan. 19, 2011).)

After a bench trial, Los Angeles Superior Court Judge Robert H. O'Brien entered judgment for \$21,654,000 against Land Rover, finding stability and roof defects in the Discovery caused the plaintiff's injuries. On appeal, Land Rover asserted the trial court erred as a matter of law in excluding certain scientific evidence, and in misapplying the "consumer expectation" test and "risk-benefit" test for product liability.

Writing for the appellate court, Presiding Justice Dennis M. Perluss weighed heavily on the fact that during trial, the plaintiff provided evidence that a production vehicle would tip under evasive steering maneuvers, but slight modifications to the vehicle's roof support "dramatically improved its rollover resistance" and "yielded substantial gains in roof strength" at a cost of only \$76 per vehicle. Justice Perluss' decision is extensive and addresses many issues, but one issue of interest is his decision affirming the exclusion of experimental evidence offered to refute the plaintiff's claim that his injuries were attributable to the Discovery's roof defects. A key issue for the defense was causation. The defense sought to introduce scientific evidence demonstrating that severe cervical injuries in rollover accidents are caused by axial loading at the point of impact rather than hyperflexion resulting from roof deformation. The test, known as the "Malibu Test," was originally conducted by General Motors on a Chevrolet Malibu, but was admitted. The purpose of the test was to demonstrate that catastrophic injury in rollover crashes results not from deformation of vehicle roofs but from initial impact of the head with the ground. The trial court excluded the Malibu Test based on a lack of substantially similarity to the conditions of the plaintiff's accident.

The Malibu testing was well known to both plaintiff and defense attorneys, as it had been offered and admitted in numerous prior lawsuits involving rollover accidents. Its relevance was not to reconstruct the accident but rather to demonstrate the mechanism of injury in rollover accidents. Oftentimes, when experimental evidence is offered to demonstrate a scientific principle the substantial similarity requirement is relaxed.

The appellate court affirmed the trial court's ruling excluding the evidence, essentially deferring to the trial court's "broad discretion" in evidentiary decisions. The case is an excellent illustration of the risks involved in relying on experimental evidence. The broad discretion afforded trial courts and

vague standards employed mean that one can never be certain if an exacting or relaxed similarity standard will be employed in a given case. In most cases, unless cost considerations dictate otherwise, it is best to assume an exacting standard will be applied.

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