

## [Products Liability Law Daily Wrap Up, DAMAGES—MOTOR VEHICLE EQUIPMENT— Pa. Ct. Com. Pl.: \\$55.3 million jury verdict for driver in rollover accident affirmed, \(Sept. 22, 2015\)](#)

Products Liability Law Daily Wrap Up

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By Kathleen Bianco, J.D.

A \$55.3 million jury verdict in an action stemming from a vehicular rollover accident was affirmed by the Court of Common Pleas of Philadelphia County. The court addressed a number of issues on appeal, including the sufficiency of evidence, expert testimony, preemption, jury instructions, and recent court precedent ([Martinez v. American Honda Motor Co., Inc.](#), September 17, 2015, New, R.).

**Background.** On May 8, 2010, Carlos Martinez was severely injured when the 1999 Acura Integra he was driving rolled over. Martinez's complaint asserted that he was wearing his seatbelt at the time of the accident and alleged that during the rollover, his restraint system failed to provide "meaningful occupant protection." As a result of the accident, Martinez's spine was fractured (a "C6/C7 fracture dislocation") and his injuries rendered him paralyzed with ongoing pain and suffering.

Martinez filed suit against American Honda Motor Co., Ltd. (Honda), the manufacturer of his vehicle, in April 2012. He asserted claims for strict liability and negligence, alleging that "[t]he vehicle was defective and unreasonably dangerous to the ultimate users, operators or consumers, including ... Martinez, when it was designed, manufactured, tested, assembled, marketed, distributed, and sold" by Honda. In support of this claim, Martinez contended that the vehicle was not "designed, manufactured, tested, nor assembled with a restraint system that would adequately protect and/or restrain its occupants to its seats during an accident." Martinez further alleged that Honda failed to adequately warn of the "hazardous conditions" described in the complaint.

Following a jury trial that lasted 10 days in the Philadelphia Court of Common Pleas, a unanimous \$55,325,714 verdict was issued in favor of Martinez. The jury determined that the car's seatbelt was defectively designed and Honda failed to use a safer, alternative design and failed to provide adequate warnings to consumers about the Acura's defective design. Pending before the court is Honda's appeal of the judgment.

**Sufficiency of evidence.** On appeal, the manufacturer alleged that the injured driver had failed to sustain his burden of proving with relevant and admissible evidence that the seat belts were defectively designed and that there was an alternative, safer, practicable design. In support of its contentions, the manufacturer challenged the admissibility of the all-belts-to seat (ABTS) seatbelt system as an alternative design. The manufacturer argued that the ABTS evidence should have been precluded as it demonstrated subsequent remedial measures that unduly prejudiced the jury because the proposed seatbelt was designed after the vehicle had been manufactured, but before the date of the accident. The court rejected the manufacturer's claim, finding that the ABTS technology had been in use from at least 1992, seven years before the vehicle was manufactured. Furthermore, the court determined that the evidence of the ABTS system did not represent subsequent remedial measures because the system was not devised to respond to this particular accident. Accordingly, the court found that it did not err in allowing the ABTS evidence.

**Preemption.** The manufacturer further contended that federal regulations concerning seat belt design preempted the injured driver's claims. The court disagreed following U.S. Supreme Court precedent, holding that while federal regulations provided manufacturers with choices between seat belt designs, injured parties were still able to raise state court claims of defective design based upon a manufacturer's decision to use an allegedly less safe design.

**Expert testimony.** As to the testimony of expert witnesses for both parties, the court found no issues with the admissibility of any expert testimony, opining that the fact that the jury chose to give greater weight to the opinions of the injured driver's witnesses was not an appealable issue.

**Jury instructions.** The manufacturer challenged the jury instruction on the "second collision/enhanced injury" as well as the "heeding presumption." The court found both instructions to be in accordance with the facts of the case, standard instructions, and the law.

**Remittitur.** The manufacturer also asserted that the court erred in denying its request for a reduction in the jury verdict. The decision to grant or deny a request for remittitur is within the trial court's discretion and should only be granted when the award shocks one's sense of justice. In determining whether a verdict is excessive, the court should look at the severity of the injuries, whether the injuries are manifested by objective physical evidence, whether the injuries are permanent, whether the injured party can continue his or her employment, out-of-pocket expenses incurred by the injured party, and the amount demanded in the original complaint. Based on the fact that the injured driver had been the primary wage earner for his family and was rendered a paraplegic who will no longer be able to work and will need to be cared for by others for the rest of his life, the court did not find the jury award to be excessive.

**Tincher case.** Finally, the manufacturer claimed that a recent state supreme court decision (*Tincher v. Omega Flex, Inc.*, 104 A.3d. 328 (Pa. 2014)) required a new trial. While the court noted that the state supreme court in *Tincher* rejected the Restatement (Third) in products liability cases, it did not believe that *Tincher* mandated a change in the court's rulings in the current case. Further, the court reasoned that *Tincher* did not concern failure-to-warn claims, so even if *Tincher* changed the law pertaining to design defect claims, any error by the court would be harmless because the jury had found an independent basis for liability based upon a failure to warn in the case at hand.

The case is No. [03763](#).

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Companies: American Honda Motor Co.

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