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VERDICT

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Leaving an Impact Long After Verdict Awarded

BY CHRIS GLOVER

THE CASE

The case started much like many automotive product liability cases – a new case with a catastrophic injury or death with the unanswered question of whether the vehicle played a role. This time my client's wife, Penney Bruner, had died in the crash. It never gets easy to hear. Penney was home with her daughter before the crash. Her daughter, Amanda, had recently received her learner's permit to drive. Amanda asked her mom if she could drive to the grocery store. Amanda drove her dad's 2003 Jeep Wrangler, and her mom sat in the passenger's seat. It was a gorgeous day. Then, the vehicle lost control for some unknown reason and ultimately rolled over five times. Amanda blamed herself for the accident and her mother's death. Once I became aware of that fact, it became my driving force in the case. It became my job to prove that Amanda may have caused the crash, but she certainly didn't cause her mother's untimely death.

Amanda stayed in the vehicle throughout all five rolls and was virtually uninjured. Unfortunately, her mother was thrown from the vehicle. Penney survived the ejection. She didn't know that she had severe internal bleeding that would soon cause her death as she lay on the road. A teenage boy saw the accident and tried to assist Penney. The boy testified that she wanted to know if her daughter was OK. When Penney learned that Amanda was fine, she repeatedly stated, "But I was wearing a seatbelt." The boy felt she kept saying that because she couldn't understand how she got out of the vehicle in the roadway.

The police report initially listed Penney as unbelted even though the seatbelt was found still buckled on the scene. The police assumed that Mrs. Bruner had, like many people, just sat on the buckled seatbelt to get the seatbelt chimer to stop ringing. That's what got the case started. Her husband, Tony, knew that Penney would never sit on the seatbelt. She was religious about wearing the seatbelt, and the vehicles in her family didn't move until everyone was buckled.

Even before the experts, I had a pretty good idea that there was a defect the first time I looked at the vehicle. After doing this awhile, you start to develop a feeling for these cases. I could see the seatbelt marks. I knew she was wearing the seatbelt but wasn't yet sure what went wrong. I had a feeling, though, and it caused me some concern. I had handled a case against Chrysler around 2005 for a police officer who was ejected from a Jeep Wrangler while correctly wearing his seatbelt. I had also co-counseled on a case with my friends Darren Penn and Jeff Harris. The defect in both of those cases involved attaching the seatbelt to the "rally-bar" Chrysler installed on the Jeep. The rally bar would be called a roll bar by anyone who wasn't an engineer or executive at Chrysler except for the fact that it can't withstand the forces of a rollover accident and the seatbelt would move throughout the accident. The problem with the movable seatbelt theory was that Chrysler had recently declared bankruptcy when we brought the case and during this limited time frame was immune from liability for this particular crash. Only Chrysler was responsible for the rally bar defect. Fortunately, the rally bar didn't move in this accident. It had to be something else.

Amanda and Penney were both correctly wearing their seatbelts. They couldn't have known they were wearing two different belts. The driver side belt, holding Amanda, held her in the vehicle and, as a result, she was virtually uninjured. Unfortunately, her mother's belt did not lock, and spooled out several inches of webbing resulting in her being ejected from the vehicle. The fact that Amanda wasn't injured was important because her seatbelt had a web-sensor that kept it from unlocking as the vehicle rolled over. Penney's seatbelt would have held had it been equipped with the same safety feature.

It was unbelievable that two different belts would be used in the same vehicle. Why add a safety feature that prevents the seatbelt from failing and then only provide it to the driver? A friend from church asked me that question when I explained the case. I asked him when was the last time someone sat in his driver's seat. He responded this morning. I asked when was the last time someone sat in his passenger seat. Well, you know the answer. There is a virtual certainty that a person will be in the driver's seat if a vehicle crashes, but those chances drop dramatically for the passenger seating positions.

This case was unique because the unfathomable had happened for those of us in the automotive product liability world with the bankruptcy of Chrysler and GM. We all had sued component part manufacturers in the past, but they were almost never the target defendant. Component part manufacturers had always relied on the auto manufacturers to carry the heavy load. These defendants relied on the fact that they only sold what the auto manufacturer requested.

The various component part manufacturers had hidden behind the car companies for years, including Defendant Key Safety Systems. In response to a media request post trial, an attorney for Key Safety Systems stated, "The seat belt components supplied by KSS to DaimlerChrysler for incorporation into the 2003 Jeep Wrangler were state-of-the-art, met and exceeded all applicable DaimlerChrysler specifications ..." They hadn't learned that you can't put a defective product on the market even if another company asks you to. If you do, you are just as responsible.

THE VERDICT

It was inexcusable that Key Safety Systems denied Penney Bruner the state-of-the-art safety devices that most everyone else in the industry was using by 2003. Amanda Bruner, only a few feet away, had the state-of-the-art safety device and was fine. The jury verdict stood for the fact that if there is a safer way to design a product, then you must choose the safer way even if you are a component manufacturer.

There were numerous post-trial motions, as there almost always are following a plaintiff's verdict. At the trial level, Key Safety Systems attempted to overturn the jury's verdict for multiple reasons, most of which would necessitate a change in Georgia law. Those motions were denied, and we proceeded to the Georgia Court of Appeals.

Up to this point, I had handled the case with my partner Kendall Dunson and Gwinnett County attorneys Tony Powell and Melody Glouton. We wisely associated Robin Clark to help with the appellate issues and argue the case before the Court of Appeals. Key Safety Systems narrowed its focus to two areas at the Court of Appeals. The first was an evidentiary issue dealing with an expert's use of the seatbelt during rollover crash simulations. The Court of Appeals recognized that the simulation was not trying to recreate the exact accident. It was a cardboard vehicle spinning in a circle. The Court of Appeals recognized what everyone in the courtroom knew, that a cardboard vehicle spinning in a circle was simply a demonstration.

The second dealt with Key Safety Systems' argument that the plaintiff's warning claim lacked sufficient basis for proximate cause. Specifically, that the plaintiff's proximate cause evidence was deficient because we did not identify another vehicle that did contain that specific warning. That leap did not previously exist in Georgia warnings law and

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would have been a dangerous precedent. Here is why: Key Safety Systems' argument assumed proximate cause required proof that a plaintiff who received a warning about a product would not use or purchase that product and would, instead, use or purchase another similar product with the warning. This couldn't become the law. What if a person saw a warning and decided that they didn't want a product at all? One justice raised the issue during oral argument, asking the defense what if a person saw a warning about a car, did not purchase that car and then decided to just use MARTA going forward. This justice wisely got the point.

THE RESULTS

There were some important results of this case. One was the trial verdict message that component part manufacturers could no longer hide behind the car companies who purchased their products. Another byproduct of the verdict was a warning for the entire automotive community that safety can't be selectively provided to some customers and not others. The unanimous appellate decision held firm longstanding Georgia warnings law emphasizing the importance of res judicata. I was proud when the Court of Appeals opinion in *Chrysler Group, LLC v. Walden* cited Key Safety Systems in its rejection of a similar proximate cause argument.

I was honored to represent the Bruner family for all those reasons, but none more than the impact the case had on Amanda. She was a teenager with a driver's permit learning to drive with her mom. My daughter has one now and, like Penney, I find myself with my daughter learning to drive. Amanda blamed herself for what happened to her mom.

After the wreck, but before trial, Amanda had graduated from high school, gone off to college, met a nice young man, and experienced many other things her mom missed. She did all that with the thought in the back of her head that she caused the wreck. The verdict said something very different. We all know that verdict means to speak the truth. Amanda may have walked into the courtroom believing one thing. She walked out knowing the truth. ●

ABOUT THE AUTHOR

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