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Strategy of Simplicity Wins $59 Million Against Toyota

Sometimes it's best to keep things simple.
In a product liability case against Toyota, the plaintiff's attorneys argued that the horrific injuries sustained by Prashant Kumar in a head-on collision could have been prevented by a very simple solution: a 9-cent sticker warning that passengers should not recline their seats while the car is in motion.

People routinely ride with their seats tilted back, Kumar's attorneys found, and public ignorance about the danger is widespread.

"The most important thing from the get-go was that this was a warnings issue – which Toyota itself recognized by putting a warning in the owner's manual," says Michael Morgenstern, a personal injury lawyer in a three-lawyer Maryland firm. "We appealed to common sense. How many people read their owner's manual? Ten percent. How many passengers read the manuals of every car they hop into? Nobody."

His team attributes their $59.7 million verdict to the widespread ignorance of the dangers created by reclining seats, the simplicity of the solution and the ability of jurors to identify with the plaintiff. The simplicity of their strategy was echoed in the attorneys' low-tech presentation of evidence – via poster boards and an overhead projector – and their brief, 15-minute cross-examinations.

"I like to keep things basic," says co-counsel Robert Langdon. "Otherwise, it's just lawyers talking to experts. The auto industry has spent billions on developing airbags and seatbelts and tons of money crashing cars trying to get airbags to work and seatbelts to stretch and give. But we haven't spent dork on seats. You don't have to be a rocket scientist. You don't have to redesign every car on the highway. All you need is a simple little sticker."

A Disastrous Nap

The accident happened on the night of June 8, 1997. The plaintiff was a passenger in a 1996 Toyota Tercel traveling on a New Jersey highway. His seat was tilted back, his seatbelt buckled. An on-coming Cadillac crossed the centerline and ran head-on into the Tercel. The resulting collision killed the driver of the Cadillac and his two passengers, none of whom was wearing a seatbelt. The driver of the Toyota walked away with only minor injuries; however, the reclining seat of the plaintiff slid forward on its tracks, pinning him beneath the dashboard. He suffered numerous broken bones and damaged lungs, remained in a coma for six and a half weeks and eventually underwent repeated amputations of both legs.

Defense attorneys argued that the severity of the collision caused the injuries. Morgenstern, however, says that the wildly divergent fates of the plaintiff and the driver of the Toyota indicated that there were other factors at work.

"I'm looking at what happened, and the question that crossed my mind was what was the difference between the two? They're sitting next to one another. Both are using the same restraining systems – double airbags and seatbelts. For the occupant of the passenger side to be in a coma for six and a half weeks and the driver walking away with only soft tissue injuries, well, in my mind, something was not right."

Convinced that it was a product liability case, Morgenstern set about trying to obtain the vehicle. It wasn't an easy task, "but in a product liability case, you gotta get the product. And that was the biggest hurdle," says Morgenstern.

Kumar was in a coma and nobody had done anything to preserve the evidence. The driver's insurance company had taken title of the car and paid him the salvage value. Eventually, Morgenstern obtained the car and had it analyzed to determine what Kumar's injuries might have been had he not "submarined" under the dash. Hundreds of photographs were taken of the car and the accident site. Plaintiff's experts extrapolated that Kumar would have suffered fractures, but not bilateral leg amputations above the knees. Defense attorneys from the 750-member Baltimore-based firm of Piper Marbury Rudick & Wolfe argue otherwise.

"There's a lot of revisionist history going on," says Joel Dewey, a member of the defense team. Prashant Kumar was riding with the "soles of his feet resting on the toeboard (the part of the car from the floor upward to underneath the dash). It would not have mattered if he was wearing a seatbelt or not; or if the seat was reclined or not."

As for the different fates suffered by the Toyota driver and passenger, the defense argued at trial that the oncoming Cadillac crossed the centerline at a slight angle, with the right corner hitting roughly in the center of the Tercel. "The force on the passenger side was much greater than the force on the driver's side because of the way the cars crashed," says Dewey.

Playing the Sympathy Card

Given the tremendous injuries suffered by the plaintiff, Dewey says he knew they were up against a sympathy problem.

"As a tactical matter, we felt we should not attack. There's a risk in front of a jury – if they have some sympathy, you can inflame it." Morgenstern agrees that the plaintiff's testimony was a key factor in the trial. Despite the complexity of the dozen operations Kumar endured – and the bleak prognosis described by his doctor – the plaintiff's team emphasized the logistical difficulties he experienced as a handicapped person.

"We wanted to emphasize the kind of person Prashant is – he's

a very positive guy, but just to get up there to testify in court was a struggle," says Morgenstern. Since the courthouse was undergoing repairs, the only point of entry for Kumar was via a loading dock in the back of the building where garbage was deposited. If it was blocked, so was he.

"The jury also saw that he couldn't use the same bathrooms the lawyers did. The sink wasn't accessible and the towel rack was too high," says Morgenstern. Although these daily humiliations constituted a separate issue from the disputed facts of the case, Kumar's recounting of them "crystallized what he was going through" as a result of the accident, says Morgenstern, and undoubtedly affected the size of the award.

A Defective Seat?

Besides the warning issue, the plaintiffs alleged that the designs of both the passenger seat and seat track were defective, resulting in a reclining seat that did not lock properly into the track but remained perched above it.

"The result is that if you get hit, the seat will slide forward," says Langdon, a member of a small Missouri firm which, along with Paul Bekman of Baltimore, formed part of Morgenstern's team. The defense argued, however, that the seat did lock.

The defense also contested whether the seat was all the way back and whether the plaintiff was wearing his seatbelt, despite testimony from a paramedic and other witnesses on the scene, says Morgenstern. He says their failure to believe the majority of the eyewitnesses cost them credibility. He characterized the defense strategy as "a shotgun approach."

"They disputed everything," he says. "If it was raining outside, they'd say it was sunny. It was a dogfight."

Since the design of the seat was at issue, plaintiff's attorneys were required to submit an alternate design. They demonstrated that a passenger seat found in the 1988 Jeep Cherokee did not recline but rocked. If the back reclines, the seat bottom comes up and keeps the passenger from "submarining," says Langdon.

Failure to Warn

Although the plaintiffs argued the seat design issue, the focus of their case remained the sticker solution. They returned to this theme repeatedly, noting that automakers have included a visor sticker since 1997 that warns against putting children in the front seat because of the danger of suffocation from airbags.

"In the two or three years that that warning's been in effect, awareness has gone from 12 to 88 percent," says Langdon. "It's the only warning allowed on the visor, but some companies have gone further and [also] put it on the dash."

But the defense countered warning stickers are only effective if their numbers are limited.

"How many stickers [are you going to put] on the dash?" asks Dewey. "The manufacturers have to make a decision. There are 83 warnings in the owner's manual that warn against possible injury." So which ones do you put on the dash?

"The answer's simple," says Langdon. "The ones people don't know about. You don't worry about the warning to tighten your hubcaps."

The plaintiffs' attorneys characterized their closing arguments as "brief," highlighting what had been learned during the three-week trial and reminding the jurors of their own pre-trial ignorance.

"In opening, I told them, 'I want you to remember what you knew about reclining seats when you walked in that door,'" says Langdon. "In closing, I asked them, 'What do you know now? And what have the car companies known about, and yet they haven't done anything?'"

After three hours of deliberation, the six-person jury returned a unanimous verdict on May 12 that both the seat track and the seat itself were defectively designed, that Toyota knew it, and that Toyota failed to adequately warn of the danger of reclining the seat while the car was in motion.

The jury found the auto manufacturer 30 percent at fault and assigned 70 percent of the responsibility to the estate of Alfred C. Shumar, the driver of the Cadillac. Toyota has filed post-trial motions for remittitur, judgment notwithstanding the verdict and a new trial.

Dewey attributes the verdict to a combination of sympathy and the "shift in this generation away from personal responsibility. There must be someone to blame" is the prevailing ethos, he says.

He would have done nothing differently, he says. "That's the most frustrating thing about this case. The technical evidence was as strong as I've ever seen it."

A Stunning Post-Trial Offer

The plaintiff and his attorneys have offered to return one half of the verdict and one half of the attorneys' fees if Toyota agrees to fix seats in 1995 and 1996 Toyota Tercels and to place a warning on the dashboard of all new Toyota cars. That offer reflects the plaintiff's belief that a new Toyota seat design, implemented in 1997, established indirectly that the earlier design was defective. (The plaintiff's attorneys say they were barred from presenting this argument in court because Maryland law prohibits submitting a new design as evidence that the previous design was defective.)

However, the defense contends that Toyota changed the seat design because it was more economical and the only testimony at trial – that of a Toyota engineer – was that the new and old designs were equally safe.

Dewey also notes that the offer to return half the verdict and attorneys fees has never been made to Toyota or its lawyers, but has, instead, been made through the press. Based on those press reports he characterized the offer as "a gimmick" that is "potentially misleading" because Toyota is only responsible for paying 30 percent of the verdict in the first place.

Morgenstern, in turn, says the defense is distorting his offer.

"Whatever the recovery is, whatever is decided in appeals, plaintiff's attorneys have agreed to give back half, as long as Toyota meets those conditions of putting in new seats and the sticker on the dashboard," says Morgenstern.

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