

Ford Ducks Major Punitive Damages in Explorer Rollover Suit

Driver's failure to buckle up is factor in damages assessment

By Charles Toutant

Ford Motor Co. may have been spared a monster punitive damages verdict in an SUV rollover case because its lawyer was allowed to tell jurors about the carmaker's dire financial straits and mass layoffs.

The Middlesex County, N.J., jury on Wednesday awarded only \$42,500 in punitives, despite having found Ford liable for \$10.6 million in compensatory damages to a paralyzed driver.

Rebutting the plaintiff's evidence of Ford's financial condition, Ford lawyer Thomas Hinchey of Campbell, Campbell, Edwards & Conroy in Woodbury, referred to the automaker's recent mass layoffs and losses. Ford reported a 2006 full-year net loss of \$12.7 billion, and in January the automaker announced plans to eliminate 25,000 to 30,000 jobs in North America and close 14 plants by 2012.

Superior Court Judge Jamie Happas overruled objections by the plaintiff's lawyer, Barry Eichen, of Eichen Levinson in Edison.

The suit claimed that the 2000 accident was caused by a defective throttle design in the 1997 Ford Explorer that made its accelerator stick in the closed position. When plaintiff Rebekah

Zakrocki, then 21, pressed hard on the gas while driving on the Garden State Parkway, the vehicle lurched forward. Panicked, she turned the wheel to the left, causing the vehicle to roll onto its roof.

The suit also charged that the design of the vehicle's suspension, brakes and geometry gave it a heightened propensity to tip over.

Zakrocki's right hand was nearly severed in the crash, but doctors reattached it in surgery. She also suffered torn nerves in her brachial plexus, leaving her with only 10 percent use of her right arm, and she can no longer work as a cosmetics salesperson.

The jury awarded \$8.5 million for pain and suffering, \$1.5 million for medical expenses and \$1 million for lost wages after a four-week trial.

However, the jury reduced the award by 28 percent, the proportion by which it found Zakrocki responsible for the crash. Ford's experts said she was driving at 83 mph at the time of the crash. Her lawyers said she was going no faster than 73 mph.

The jury deducted another \$2 million because Zakrocki was not wearing a seatbelt. Happas instructed the panel to apply Model Jury Charge 6.11J, "Damages as Affected by Nonuse of

Seat Belt Including Ultimate Outcome," which lays out a formula for reducing damages when a litigant's failure to buckle up made injuries more severe.

Factoring in both those deductions, Zakrocki will receive about \$7 million in compensatory damages.

Hinchey and his co-counsel, James Dobis of Dobis, Russell & Peterson in Livingston, did not return calls.

Hinchey and Dobis also represent Freehold Ford, the dealership that sold the vehicle, under an indemnification agreement with Ford Motor Co. The suit charged Freehold Ford knew or should have known of the Explorer's throttle defects but failed to notify Zakrocki.

Eichen says he sought to present evidence to the jury about Ford's recall of Explorers for throttle plate problems, but Happas would not allow it. Zakrocki received notice of the recall a few months after the crash.

Eichen was assisted by associate John Sanders II and by Steve Lowry of Harris Penn Lowry in Atlanta, Ga. Eichen says he is weighing an appeal of the punitive verdict.

Ford spokeswoman Kristen Kinley said the company plans to appeal the verdict.