

Verdicts and settlements

Car manufacturer settles claim for wrongful death of child

by James S. Rogers

On March 28, 1992, a 5-year-old boy, whose family lived across the driveway from plaintiffs, climbed into the defendant auto maker's 1988 pickup truck which was parked in the driveway of the boy's parents' home in Seattle. The car was unlocked and unattended, and the key was out of the ignition. The boy apparently moved the gear shift lever on the floor console automatic transmission out of park and into gear, probably neutral. The parking brake had not been set, and the pickup rolled backwards down the driveway, across an alley and into plaintiffs' driveway. Three of plaintiffs' children were playing in the driveway; 3-year-old Dawie Pan, 6-year-old Danie Pan, and 12-year-old Dan Pan. The pickup ran over (only slightly striking) Dawie Pan, lightly brushed Dan Pan, and then struck Danie Pan, killing her instantly.

Plaintiffs brought suit against the auto maker, claiming that the auto maker should have had an interlock on the floor console automatic transmission, which would have prevented inadvertent shifting by children when the transmission was in park. Plaintiffs alleged it was technically and economically feasible in 1988 to have interlocks in vehicles with floor console automatic transmissions. GM, for example, had had interlocks in nearly all of its floor console automatic transmissions since the 1970s. Ford incorporated shift interlocks in its automatic transmission floor console vehicles in the 1970s. However, it later stopped for a period of years, beginning again to include floor console automatic transmission interlocks in the early 1980s.

Some shift interlock patents from the 1950s and 1960s recognized a hazard involving children in rollaway vehicles. Chrysler, in a 1980 owner's manual for the Volare, warned of the hazard. Ford discussed the hazard in a 1978 document sent to the National Highway Traffic Safety Administration (NHTSA).

Defendant auto maker implemented the floor console automatic transmission interlock in 1989. The auto maker's defense included the fact that there were no light trucks manufactured anywhere in the world with shift interlock mechanisms for floor console mounted automatic transmission levers in

1988, and that most passenger vehicles did not have interlocks for their console mounted shift levers in 1988. Defendant further contended that, until 1988, NHTSA did not issue a Notice of Proposed Rulemaking for Federal Motor Vehicle Safety Standard (FMVSS) 114 requiring any vehicle equipped with an automatic transmission to have an ignition shift interlock regardless of where the shift lever was located. The FMVSS rule change was adopted in 1991, and did not become effective until the model year 1993, four years after defendant auto maker began utilizing the shift interlock in its own vehicles.

Defendant auto maker further contended that the pickup was equipped with two features, either of which, if used responsibly, would have prevented the accident: a parking brake and a door lock. It also argued that the incidence of rollaway accidents involving children inadvertently shifting gears was extremely rare.

Plaintiff contended that the auto maker made it difficult to discover what it really knew about the "rollaway" hazard because the auto maker destroyed its design, development, testing and production documents. The memoranda, correspondence, durability and other test results and documents presumably containing reasons for implementing the interlock in the 1989 no longer exist.

Before the accident, the Pan family consisted of the father, Da Nous Pan (Pan); the mother, Pan Chan (Chan); the mother's son by a prior marriage, Sokha; their son, Dan; their daughter, who was killed in the accident, Danie; and their youngest daughter, Dawie.

Pan and Chan were Cambodian refugees, who escaped the ravages of the Cambodian Khmer Rouge campaign in 1978 and came to this country. Chan worked two full-time jobs (assembly-line food processor and hotel housekeeper). Pan worked full-time as a chef at the University Village Burgermaster from 5:00 a.m. to 2:00 p.m. He was off work in time to pick up the children at school and arrange the evening meal.

Pan was born in Cambodia and as a young man in 1975 lost almost all his family members to the Khmer Rouge. He witnessed many

atrocities. He fled Cambodia in 1976 on foot and arrived in a refugee camp in Thailand after days in a jungle. Dr. Wendy Freed, a psychiatrist with extensive experience working with Cambodian refugees, evaluated Pan. After two years in a refugee camp, Pan made his way to America. Along the way, he met Chan, who was a young widowed Cambodian refugee with a small child and similar history of fleeing Cambodia. With the permission of Chan's parents, they eventually married in Seattle and started a family. However, the Pan marriage underwent severe stresses and strains. While the lawsuit was pending, they were divorced.

Special damages were \$6,654 for Danie's medical and funeral expenses, and \$4,741 for Dawie's medical expenses (she sustained minor injuries, but was hospitalized for several days at Harborview Medical Center and Children's Hospital for observation and testing). Dan had a contusion on his ankle (\$609 medical expenses).

Defendant auto maker claimed Danie's parents had other stressors in their lives (e.g., infidelity, divorce, effect of Khmer Rouge atrocities) which not only contributed to their mental anguish, but would have a negative impact on the jury.

Plaintiffs' expert witnesses were Steve Syson, accident reconstruction, Goleta, CA; Simon Tammy, transmission design, Canton, OH; Lowell Bassett, economist, Seattle; Wendy Freed, M.D., psychiatrist, Seattle.

Defendant's primary liability expert witness was Richard Keefer, transmission design, Birmingham, Michigan.

Plaintiffs were represented by James S. Rogers of The Law Offices of James S. Rogers, and Douglas Engel of Dubar, Lirhus & Engel.

The case is *Pan Da Nous; Pan Danie, et al. v. Confidential*. The case settled prior to trial for \$475,000 (auto maker paid \$425,000; defendant parents paid the \$50,000 policy limits under their Allstate policy). Richard Sindell was the mediator.

James S. Rogers of the Law Offices of James S. Rogers in Seattle limits his practice to claims on behalf of injured persons.

Hanging all the lawyers

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The doctor hesitated, and in that moment the hospital had lost the case.

The point of these stories is quite simple: To paraphrase the bumper sticker, stuff happens. When it does, most people aren't content to grin and bear it. They don't find radio talk show hosts or Republican governors at their doorstep, offering to bail them out. So they go looking for a lawyer like Harney, who believes that, under law, "for every wrong, there is a remedy. I am supposed to be the remedy. It is that simple."

Unfortunately, since the anti-Harney legislation, he turns away roughly 99 of every 100 victims who come his way. For most, the damage caps make any lawsuit a waste of Harney's time and their own. Even those few who eventually win big awards later see them reduced severely, and with little public notice, by the courts.

And now a final point. On occasion doctors have come to Harney, seeking to file malpractice claims against their own physicians. "When doctors themselves are victims," he says, "they tend to develop a different attitude toward tort reform." Which is interesting.

EDITOR'S NOTE -- This article appeared in the March 22, 1995 issue of *The Los Angeles Times*. It is a copyrighted article that is reprinted with permission. The subject of the article -- trial lawyer David M. Harney of Los Angeles -- is a friend of WSTLA member Leonard W. Schroeter of Seattle, who provided the article to *Trial News*.

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