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Products Liability

Car's unexpected lurch cost bystander a leg

Verdict:	(P) \$8,753,000.00
Case Type:	Design Defect, Products Liability - Manufacturing Defect, Products Liability - Failure to Warn, Products Liability - Automobiles
Case Name:	Manuel Reis and Sara Reis v. Volvo Cars of North America, Inc., Volvo Cars of North America, LLC, Volvo Car Corp., AB Volvo Corp. and Ford Motor Co., No. 108539/04
Venue:	New York Supreme, NY
Judge:	Marcy S. Friedman
Date:	11-25-2009

Plaintiff(s):

Attorney(s):

Susan A. Friery M.D.; Kreindler & Kreindler LLP; New York, NY, for Manuel Reis, Estate of Sara Reis
Noah H. Kushlefsky; Kreindler & Kreindler LLP; New York, NY, for Manuel Reis, Estate of Sara Reis

Expert(s):

Mona Yudkoff R.N., M.P.H., C.R.R.N.; Life Care Planning; Bala Cynwyd, PA called by: Noah Kushlefsky, Susan Friery

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Mark Kramer M.D.; Orthopedic Surgery; Bronxville, NY called by: Noah Kushlefsky, Susan Friery

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David Asprinio M.D.; Orthopedic Surgery; Hawthorne, NY called by: Noah Kushlefsky, Susan Friery

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Murray Bernstein P.E.; Automotive; Melrose, MA called by: Noah Kushlefsky, Susan Friery

Dorra Blacker C.R.C.; Vocational Rehabilitation; New York, NY called by: Noah Kushlefsky, Susan Friery

Leonard Freifelder Ph.D.; Economics; New York, NY called by: Noah Kushlefsky, Susan Friery

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William Gest P.E.; Automotive; Phoenix, AZ called by: Noah Kushlefsky, Susan Friery

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Nicholas Guarino CPO; Prosthetics; Westbury, NY called by: Noah Kushlefsky, Susan Friery

Karen Pechman M.D.; Physical Medicine; White Plains, NY called by: Noah Kushlefsky, Susan Friery

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Gary Tannenbaum M.D.; Vascular Surgery; Yonkers, NY called by: Noah Kushlefsky, Susan Friery

Defendant(s):

Attorney(s):

Mark S. Kundla; Hardin, Kundla, McKeon & Poletto, P.A.; New York, NY, for Volvo Cars of North America Inc., Volvo Cars of North America, LLC, Volvo Cars Corp., AB Volvo Corp., Ford Motor Co.
Scott M. Karpel; Law Office of James Toomey; New York, NY, for Americo Silva
Stephen J. Donahue; Hardin, Kundla, McKeon & Poletto, P.A.; New York, NY, for Volvo Cars of North America Inc., Volvo Cars of North America, LLC, Volvo Cars Corp., AB Volvo Corp., Ford Motor Co.

Expert(s):

Paul Dohrmann; Automotive Maintenance & Repairs; Hillsdale, NJ called by: Stephen Donahue, Mark Kundla Lee Carr P.E.; Automotive; Houston, TX called by: Mark Kundla, Stephen Donahue

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Lars-Martin Eklow; Electrical Automotive Engineering; Sweden, NY called by: Mark Kundla, Stephen Donahue

Insurers:

Travelers Property Casualty Corp. for Silva

Facts:

On May 24, 2002, plaintiff Manuel Reis, 56, a machinist, visited the home of a friend, Americo Silva. Silva offered to show Reis a used 1987 model Volvo 740 wagon that he had recently purchased. Both men were looking under the vehicle's hood when Silva offered to start the vehicle so that they could listen to the engine. As Silva reached in the driver's window and started the car, the vehicle lurched forward and crushed Reis' left leg between the car and the building.

Reis sued the manufacturers of the vehicle, Volvo Cars of North America Inc.; Volvo Cars of North America, LLC; Volvo Car Corp.; AB Volvo Corp. and Ford Motor Co. He alleged that the vehicle was defectively designed and manufactured.

Volvo Cars of North America Inc., AB Volvo and Ford Motor were let out of the case. The matter proceeded against the remaining defendants.

Volvo Car and Volvo Cars of North America, LLC impleaded Silva. They alleged that Silva was negligent in his operation of the vehicle.

Reis and Silva negotiated a pretrial settlement. Silva's insurer tendered its policy of \$25,000, though the money could not be accepted until the trial had concluded. The matter proceeded to a trial against Volvo Car and Volvo Cars of North America, LLC.

Reis' counsel claimed that the accident could have been prevented by a simple, \$5 starter safety switch, which prevents a manual-transmission car from being started unless the clutch is depressed. They contended that most United States and Japanese manufacturers began using the starter safety switch in the mid-1980s, but that Volvo did not start using them until much later.

Silva contended that he had no knowledge that his vehicle could lurch forward when started. He claimed that he was not familiar with the vehicle because he had only purchased it the day before the accident. He also contended that the vehicle's owner's manual did not specifically indicate that the vehicle could lurch forward.

The remaining defendants' counsel contended that the starter safety switch was not necessary and that the vehicle was safer without the switch. They also contended that the switch's use was less widespread than Reis' counsel claimed and that Volvo had never received any prior complaints from dealers, customers or others about the lack of the device causing accidents. They argued that any risk of injury was remote and "inconsequential."

Counsel of Volvo Car and Volvo Cars of North America, LLC also contended that it was not foreseeable that Reis would stand in front of the vehicle as it was started. They argued that any claim of negligence should be against Silva for negligently starting the vehicle while in gear and with someone standing in front of it.

Injury:

Reis' left leg was crushed between the Volvo and the building. He was taken to a hospital, where he underwent an operation in an attempt to save his leg, but when that proved unsuccessful a below-the-knee amputation was performed on his left leg. A few days later, physicians determined that the amputation did not resolve all of Reis' problems, and Reis ultimately underwent an above-the-knee amputation.

Reis followed up with about four weeks of physical therapy and was taught how to ambulate with crutches. About four months after the accident, he was fitted with a prosthetic leg and underwent another four weeks of physical therapy to learn how to use the prosthesis.

Over the next year, Reis complained of pain as a result of the use of the prosthetic leg. He was examined by physicians and found to be suffering a bone infection at the left leg's stump. Reis required an additional procedure to remove more bone from his left leg. He had not been refitted for a prosthetic leg.

Reis claimed that he continues to suffer phantom pain and a tremendous amount of pain in the stump of his left leg. He also claimed that, as a result of his last surgery, he can no longer wear a prosthetic leg and that, as such, he has difficulty ambulating. He further claimed that his injury affects his daily activities and that he had not been able to return to work since the accident.

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Reis sought recovery of his past and future medical expenses, his past and future lost earnings, and damages for his past and future pain and suffering. His wife presented a derivative claim. She died prior to the trial, and her claim was continued by her estate.

Defense counsel acknowledged Mr. Reis' injuries and agreed that he would be unable to return to work. However, defense counsel disputed the extent of Reis' alleged daily pain and contended that Reis should be able to be fitted with a new prosthetic leg.

Verdict Information:

The jury found that all of the defendants were liable for the accident. Volvo Car and Volvo Cars of North America, LLC were assigned a total of 85-percent liability, and Silva was assigned 15-percent liability. The jury determined that Reis' damages totaled \$8,753,000. Reis recovered the 85 percent that was the responsibility of Volvo Car and Volvo Cars of North America, LLC, and he also recovered the \$25,000 from the pretrial settlement with Silva. Thus, his recovery totaled \$7,465,050.

Manuel Reis

\$143,000 Personal Injury: Past Medical Cost

\$570,000 Personal Injury: Past Lost Earnings Capability

\$640,000 Personal Injury: FutureLostEarningsCapability

\$2,000,000 Personal Injury: Past Pain And Suffering

\$4,000,000 Personal Injury: Future Pain And Suffering

\$1,400,000 Personal Injury: future medical and life-care expenses

Post Trial:

Defense counsel has moved to set aside the verdict. Plaintiffs' counsel has moved to confirm the verdict. They are also seeking an award for Ms. Reis' loss of services.

Editor's Comments:

This report is based on information that was provided by plaintiffs' counsel and Silva's counsel. The remaining defendants' counsel did not respond to the reporter's phone calls.