

Hart stated that the component parts were not strong enough to withstand the stress and that the suspension system collapsed before the crash and not as a result of the crash.

Horne also presented the state trooper who investigated the accident. The trooper testified as to gauges that he found in the road's surface after the accident, which Horne contended were consistent with Hart's opinion.

To establish that the damage to the suspension occurred during the rollover, Ford called John Habberstad, a mining engineer from Spokane, Wash., who, according to Horne, is a self-taught accident reconstructionist. Habberstad has testified for Ford in similar cases. On cross-examination, Horne concentrated on attacking Habberstad's credentials since Habberstad, who previously worked with nuclear weapons, has never worked in the automotive industry nor done any automotive design work.

Ford's Defense

Ford failed to present any experts who were involved with the design or engineering of the Escort. Although Ford had other experts present at trial, Ford never called these witnesses. Moreover, Ford never produced any records verifying that the suspension system of the Escort was tested. The only test reports that Ford produced during discovery were copies, and someone whited out sections of these documents. Horne introduced these documents. He also asked the jury, "if Ford was proud of the engineering and design of this car, how come no Ford personnel testified or appeared to defend it?"

Ford also presented a seat belt defense. Although comparative negligence was not an issue because Hardison relied on strict liability, Ford based the defense on assumption of risk. Vern Roberts of Duke University testified for Ford that through the use of a seat belt restraint, the plaintiff could have reduced or avoided his injuries.

Horne offered photographs depicting the driver's side of the Escort's roof, which collapsed completely during the rollover. Horne then argued that if the plaintiff had worn his seat belt, all that could be said was that the injuries would be different, but not greater or lesser.

Horne compared Hardison's injuries to a frontal lobotomy, because of the trauma to his brain tissue. Although his physical impairments are slight—he lost some feeling on his right side—his mental abilities reverted to age 9 or 10. Originally, the Navy listed Hardison as 75 percent disabled; however, the Navy later revised its assessment to 100 percent. Hardison has visited several counselors, who concur in this assessment. At trial, his clinical psychologist, Dr. Steven Johnson, and his rehabilitationist, Dr. Edward Rosco of Jacksonville, both indicated that he was virtually unemployable due to his injuries. Hardison has unsuccessfully sought employment.

Another passenger, Chris Toolen, who was not ejected, also received serious head injuries. Horne compared Toolen's injuries to being scalped. Toolen settled with Ford last August for \$100,000.

At the time of trial, the application of Georgia's new wrongful death statute was undecided. The statute allows evidence of recoveries from collateral sources. Hardison's accident preceded the effective date of the statute. Although the parties anticipated a stipulation advising the jury of Hardison's previous settlement with the tire manufacturer for \$192,000, the agreement fell through and the evidence was precluded. Subsequently, the Georgia Supreme Court gave the statute prospective application only.

Asbestos

\$600,000 ASBESTOS AWARD OVERTURNED BY MARYLAND CIRCUIT COURT IN BALTIMORE

A Maryland judge April 8 overturned a jury verdict that awarded \$600,000 in compensatory damages to the estate of a deceased pipe insulator (*Gist v. Raymark Industries*, Md CirCt, Baltimore City, No. 86-309045, 4/8/88).

On March 15, the Maryland Circuit Court jury found Raymark Industries liable to the widow and estate of John Gist for failure to warn about the danger of asbestos in its products. Gist died in 1986 from mesothelioma, a tumor in the lung's lining associated with asbestos dust exposure (16 PSLR 299).

According to Harold M. Walter, attorney for Raymark, the judge issued an oral opinion in court on April 8. In listing her reasons for granting Raymark its motion to overturn the jury's verdict, Judge Elsbeth L. Bothe stated that the relationship between Gist's exposure to Raymark's product and the causation of his tumor were minimal, Walter said.

Bothe accepted Raymark's argument that the type of asbestos used in its product, chrysotile, was highly unlikely to cause mesothelioma, according to Walter. The judge found no rational basis for the jury's verdict, in light of a fiber-burden test conducted on a sample of Gist's lung that showed a normal amount of chrysotile fibers but a high number of amosite fibers: the type of asbestos which all the testifying experts agreed is the leading cause of mesothelioma, Walter said.

Judge Believes Jury Misunderstood

Bothe also stated that she did not believe that the jurors understood the charge they were given, which was whether exposure to Raymark's product alone was a substantial cause of Gist's mesothelioma, Walter said. The judge also stated, according to Walter, that there was no reasonable basis for the jury to find that Raymark was negligent in warning about the dangers of its product, that Raymark was following the state-of-the-art, and that in 1959 when Gist was exposed to its product, there was no evidence available that would have put Raymark on notice that its product was dangerous.

In granting Raymark's judgment, Bothe made moot Raymark's motion to reduce the jury's award by the amount of the settlements Gist's estate made with seven other defendants, which was approximately \$600,000. The judge, however, noted that if she had let the jury's verdict stand, she would have granted the motion, which would have completely set off the jury's award, Walter said.

Walter said he was "delighted" with the judge's decision and believes it puts the case in line with rulings in other Maryland cases involving Raymark. This was the first case Raymark had lost in Maryland, he said.

The plaintiffs have 30 days in which to file an appeal.

Kansas

SENATE PASSES REFORM MEASURES; BILLS READIED FOR CONFERENCE COMMITTEE

The Kansas Senate April 1 approved three tort reform bills to limit non-economic damages, modify the collateral source rule, and cap punitive damages.

The measures, passed earlier by the House in late February (16 PSLR 253), contain Senate amendments that now must be reconciled with the House versions.