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Honda's win in personal injury case shows limits of consumer expectation test

By David Houston
Editor-in-Chief

In what could be a significant victory for vehicle manufacturers in product liability litigation, an Orange County jury rejected personal injury claims totaling \$32.5 million against American Honda Motor Co. Inc. in a case that explored the limits of a consumer expectations test established by a 2014 2nd District Court of Appeal ruling.

James Yukevich, who tried the case along with partner Cristina Ciminelli, said automakers have been reluctant to try these cases following the decision in *Romine v. Johnson Controls Inc.*, which restricted the use of expert testimony in cases where a product's safety could be judged by lay jurors. This precedent had previously handicapped manufacturers in defending against claims that products did not perform as an ordinary consumer would expect, especially concerning the design of vehicle components. *Romine v. Johnson Controls Inc.* (2014) 224 Cal. App.4th 990.

Yukevich, of Yukevich Cavanaugh, said that Honda told him from the outset that it would likely take this case to trial. "Honda is one of those companies that believes in their products and they're willing to defend them in court," he said in an interview Friday. "They make good products. They make safe products."

Darren Aitken of Aitken Aitken & Cohn was the plaintiff's attorney. He dismissed any larger significance of the ruling. "I don't see it that way at all," he said in an interview Friday, noting that the judge



James Yukevich of Yukevich Cavanaugh | Daily Journal photo

had instructed the jury on the consumer expectation test laid out in *Romine*.

"I think the law was properly applied by the judge and the jury made the decision. You have to respect that. That's the beauty of the system," Aitken said.

The plaintiff, James Robert Gardner Jr., was left paraplegic after his Honda CRV was rear-ended by a Chevrolet Camaro traveling at a high speed on the 91 Freeway. Aitken brought a strict product liability claim, arguing that the driver's seat of the CRV was defectively designed and that it exacerbated Gardner's injuries. Under *Romine*, Honda was not allowed to intro-

duce evidence regarding the design of the driver's seat. *Gardner v. American Honda Motor Co. Inc.*, 30-2020-01172206 (O.C. Super. Ct. filed Nov. 30, 2020)

Yukevich said the standard laid out in *Romine* is so restrictive auto manufacturers aren't allowed to tell jurors that the vehicle passed the Federal Motor Vehicle Safety Standard.

Throughout the month-long trial, the defense tried to show that the CRV's seat performance aligned with consumer expectations. They also drew attention to the severity of the crash – the driver of the Camaro testified that he was going 65 mph and didn't see the Honda

– and to the fact that Gardner is an especially large man. "Force times mass equals acceleration," Yukevich said, quoting Isaac Newton.

"The seat did very well," Yukevich said. "There was only about a 13% additional bending of the seat from where it was at the time of the accident."

The jury deliberated just 2.5 hours on Tuesday before returning a complete defense verdict. Yukevich said he didn't know exactly what persuaded the jurors; they left the courthouse without talking to the lawyers. "A lot of what we did was take evidence that we were given and explain why it was favorable to us, rather than being against us," he said.

Honda's lawyers said they believe this is the first successful defense of an auto manufacturer in one of these cases since the Court of Appeal set out the consumer expectations test. A jury hung on causation in a 2016 case with almost identical facts, *Ciminelli* said.

Yukevich, who defends a lot of auto manufacturers, said these cases are always difficult to defend because the plaintiff is usually very sympathetic. "Mr. Gardner was a nice man. A school principal. Good family. Anyone would say that he was an extremely nice man," he said. "And I think that a lot of [jurors] say, 'If it bent, if it broke, that's good enough for me.'"

But he said the defense victory in this case has given him hope that "our clients will let us defend these cases. And we're hoping juries will hear the case fairly and not [reject the defense case] just because something broke."

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