



MIKE GRACE/DAILY REPORT

Jeff Harris argued that a safety defect in a Lincoln LS caused the back seat to lurch forward, paralyzing a child.

Ford Can't Shake \$47M Liability

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Special to the Daily Report

The Georgia Court of Appeals has upheld a \$47.7 million jury verdict against Ford Motor Co. in the case of a child who was paralyzed after a car accident.

Ford's appeal argued, among other things, that a new trial should have been granted because the plaintiff's explanation of how the injury occurred wasn't credible. Attorneys for the plaintiff told jurors that a safety defect caused a back seat to collapse and lurch forward

during a collision, permanently injuring 6-year-old Kelsey Sasser, who was sitting in the back seat and wearing her safety belt.

Both sides acknowledge that when rescue workers arrived at the

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Ford's Claim Was Question for Jury, Not Appeals Court

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scene, the girl was lying in the front seat of her mother's 2000 Lincoln LS. But while Sasser's mother and sister testified that she crawled from the back seat to the front after the accident, attorneys for Ford contended that Sasser actually had been riding in the front seat when the vehicle collided with a pickup truck.

Ford presented testimony from bystanders to raise doubt that Sasser had been seated in the back at the time of the accident. Ford also proffered statements from the girl's mother and sister—later recanted—that Sasser rode in the front seat.

Testifying for the plaintiff, at least two of Sasser's doctors told the jury that the girl did not become paralyzed until after she was taken to the hospital. The appeals court also noted that emergency personnel who treated her at the scene described her as moving and "combative."



Andrew Scherffius represented at trial a 6-year-old girl who was paralyzed.

A Question for the Jury

The appeals court ruled on July 1, saying it would not second-guess the jury's conclusions about the facts. *Ford*

Motor Co. v. Sasser, No. A05A1152.

"This contradictory evidence presented a classic question for the jury to resolve," wrote Presiding Judge G. Alan Blackburn. Judges Debra H. Bernes and John J. Billington concurred.

The appeals court also noted that a history of safety problems plagued the Lincoln LS's back-seat latching sys-

she was sitting in front and improperly wearing her seat belt. The expert said Sasser wore her lap belt but not her shoulder belt.

Ford's medical expert subsequently sought treatment for cancer and could not testify at trial. The company's second expert offered a different explanation for the injury: During the collision, as the girl leaned forward, a side airbag deployed and struck her in the back.

The automaker's appeal said that, during closing arguments, the plaintiff's attorneys claimed that Ford changed medical experts because the first expert's theory wouldn't satisfy a jury. Ford claimed that, by allowing this argument, Fulton County Superior Court Judge Jerry W. Baxter failed to enforce an in limine ruling prohibiting references to Ford's first expert and his theories.

The appeals court disagreed, citing the broader context of the plaintiff's arguments. The plaintiff's attorneys didn't refer to the first expert, but to crash tests conducted for analysis by the first expert as "Ford's theory of the case." Additionally, Ford's second

The appeals court also noted that a history of safety problems plagued the Lincoln LS's back-seat latching system, according to the automaker's internal documents and the testimony of Ford engineers.

Ford is considering an appeal to the Georgia Supreme Court, spokeswoman Kathleen Vokes said Thursday.

Ford's attorneys, Donald H. Dawson Jr. and Kathleen A. Clark of Dawson & Clark in Detroit, and Philippa V. Ellis of Owen, Gleaton, Egan, Jones & Sweeney in Atlanta, did not return calls seeking comment. Ford released a statement saying it was "disappointed" in the appeals ruling.

"As the court itself recognizes," the statement said, "there was evidence showing that this tragedy occurred not because of any defect in the vehicle but because the child was improperly restrained in the front seat."

One of the attorneys representing Sasser, Jeffrey R. Harris of Scherffius, Ballard, Seill & Ayres, said Ford already had raised those points during trial. Harris, who represented Sasser at trial with Andrew M. Scherffius III and Tamar M. Ayres, said the appeals court was exhaustive in citing facts from the case to buttress its ruling.

"They said those arguments are great in front of a jury, but they have no place in front of an appellate court," Harris said.

Two Experts, Two Theories

Initially, Ford's medical expert said the girl's injuries were caused because

crash tests conducted for analysis by the first expert as "Ford's theory of the case." Additionally, Ford's second expert relied on portions of the crash tests to reach his conclusions, the opinion says.

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—Judge G. Alan
Blackburn

The plaintiff's closing argument claimed that when those crash tests showed Sasser couldn't have been paralyzed even if she was improperly belted into the front seat, Ford knew "the ox is in the ditch" and hired the medical expert who testified at trial.

Blackburn wrote that the court did not order, nor did Ford request, that the plaintiff refrain from mentioning the crash tests. Also, the court noted, the plaintiff's attorney never referred to the first expert or his deposition or theories. □