



## Pickup's roof wasn't crashworthy, per plaintiffs

**Type:** Verdict-Plaintiff

**Amount:** \$1,724,038,500

**State:** Georgia

**Venue:** Gwinnett County

**Court:** Gwinnett County, State Court, GA

**Injury Type(s):**

- *head*
- *other - death*

**Case Type:**

- *Motor Vehicle - Rollover; Passenger; Single Vehicle*
- *Products Liability - Automobiles; Design Defect; Crashworthiness*
- *Wrongful Death - Survival Damages*

**Case Name:** Kim Hill and Adam Hill, surviving children and Co-Administrators of the Estates of Melvin and Voncile Hill, deceased v. Ford Motor Company, The Pep Boys -- Manny, Moe, & Jack (Inc.), Curtis Clinton Thompson, Jr., Willie Braswell and Donald Taylor, No. 16-C-04179-S2

**Date:** August 19, 2022

**Plaintiff(s):**

- Kim Hill, (Male, 55 Years)
- Adam Hill, (Male, 52 Years)
- Voncile Hill, (Female, 62 Years)
- Estate of Melvin Hill, (Male, 74 Years)

**Plaintiff Attorney(s):**

- James E. Butler Jr.; Butler Prather LLP; Atlanta GA for Kim Hill,, Adam Hill,, Estate of Melvin Hill,, Voncile Hill
- Gerald Davidson Jr.; Mahaffey Pickens Tucker, LLP; Lawrenceville GA for Kim Hill,, Adam Hill,, Estate of Melvin Hill,, Voncile Hill
- Michael B. Terry; Bondurant Mixson & Elmore LLP; Atlanta GA for Kim Hill,, Adam Hill,, Estate of Melvin Hill,, Voncile Hill
- Daniel E. Philyaw; Butler Prather LLP; Atlanta GA for Kim Hill,, Adam Hill,, Estate of Melvin Hill,, Voncile Hill

**Plaintiff Expert  
(s):**

- Sal Caruso; Engineering; Dearborn, MI called by: James E. Butler Jr., Gerald Davidson Jr., Michael B. Terry, Daniel E. Philyaw
- Carl Zaas; Engineering; Dearborn, MI called by: James E. Butler Jr., Gerald Davidson Jr., Michael B. Terry, Daniel E. Philyaw
- Brian Herbst; Auto Safety; Goleta, CA called by: James E. Butler Jr., Gerald Davidson Jr., Michael B. Terry, Daniel E. Philyaw
- Jason Balzer; Engineering; Dearborn, MI called by: James E. Butler Jr., Gerald Davidson Jr., Michael B. Terry, Daniel E. Philyaw
- Bryant Buchner; Accident Reconstruction; Tallahassee, FL called by: James E. Butler Jr., Gerald Davidson Jr., Michael B. Terry, Daniel E. Philyaw
- Joseph Weishaar; Engineering; Dearborn, MI called by: James E. Butler Jr., Gerald Davidson Jr., Michael B. Terry, Daniel E. Philyaw
- Joshua Brooks Ph.D.; Economics; Columbus, GA called by: James E. Butler Jr., Gerald Davidson Jr., Michael B. Terry, Daniel E. Philyaw
- Stephen Kozak; Engineering; Dearborn, MI called by: James E. Butler Jr., Gerald Davidson Jr., Michael B. Terry, Daniel E. Philyaw
- Jonathan Eisenstat M.D.; Pathology; Atlanta, GA called by: James E. Butler Jr., Gerald Davidson Jr., Michael B. Terry, Daniel E. Philyaw
- Lawrence Queener; Engineering; Dearborn, MI called by: James E. Butler Jr., Gerald Davidson Jr., Michael B. Terry, Daniel E. Philyaw

**Defendant(s):**

- Donald Taylor
- Ford Motor Co.
- Willie Braswell
- Curtis Clinton Thompson Jr.
- The Pep Boys -- Manny, Moe, & Jack (Inc.)

**Defense  
Attorney(s):**

- William N. Withrow Jr.; Troutman Pepper; Chicago, IL for Ford Motor Co.
- Paul Malek; Huie, Fernambucq & Stewart, LLP; Birmingham, AL for Ford Motor Co.
- Michael R. Boorman; Watson Spence, LLP; Atlanta, GA for Ford Motor Co.
- Philip A. Henderson; Watson Spence, LLP; Atlanta, GA for Ford Motor Co.
- Michael W. Eady; Thompson Coe; Austin, TX for Ford Motor Co.

**Defendant  
Expert(s):**

- Chris Eikey; Engineering; Dearborn, MI called by: for William N. Withrow Jr., Paul Malek, Michael R. Boorman, Philip A. Henderson, Michael W. Eady
- Thomas L. Bennett M.D.; Pathology; Sheridan, WY called by: for William N. Withrow Jr., Paul Malek, Michael R. Boorman, Philip A. Henderson, Michael W. Eady
- Michael Leigh; Engineering; Dearborn, MI called by: for William N. Withrow Jr., Paul Malek, Michael R. Boorman, Philip A. Henderson, Michael W. Eady
- Geoffrey J. Germane Ph.D.; Accident Reconstruction; Orem, UT called by: for William N. Withrow Jr., Paul Malek, Michael R. Boorman, Philip A. Henderson, Michael W. Eady
- Michelle M. Vogler Ph.D, P.E.; Engineering; Detroit, MI called by: for William N. Withrow Jr., Paul Malek, Michael R. Boorman, Philip A. Henderson, Michael W. Eady

**Facts:**

On April 3, 2014, plaintiffs' decedent Melvin Hill, 74, a farmer, was driving a 2002 Ford F-250 Super Duty pickup truck on a highway in Americus. Hill's wife, plaintiffs' decedent Voncile Hill, 62, a farmer, was a passenger. The pickup's front right tire blew out unexpectedly, and the vehicle rolled over. The Hills suffered fatal injuries.

The Hills' estates and their surviving sons, Kim Hill and Adam Hill, sued Ford Motor Co. The lawsuit alleged that the truck had a design defect and was not crashworthy. The plaintiffs claimed that the pickup's roof was not strong enough and that the Hills' deaths resulted from the roof being crushed into the passenger space.

The plaintiffs also sued The Pep Boys – Manny, Moe, & Jack LLC, which had installed the tire that failed, and Pep Boys employees Curtis Clinton Thompson Jr., Willie Braswell and Donald Taylor. The plaintiffs alleged that Pep Boys caused the accident by negligently installing the wrong load range tire. However, the Pep Boys defendants were no longer in the case at the time of trial. The plaintiffs settled with them for an undisclosed amount.

The court instructed the jury that Ford's roof was defectively designed and that Pep Boys was negligent in installing the tire, which was manufactured by Cooper Tire. The plaintiffs stipulated that Cooper Tire was not negligent in designing or manufacturing the tire, but that issue was still submitted to the jury.

Plaintiffs' counsel argued that Ford was 90 percent at fault and Pep Boys was 10 percent at fault.

The plaintiffs also sought a finding that they were entitled to punitive damages. Plaintiffs' counsel argued in part that Ford knew of the defect for years before this accident, and that it affected the 5.2 million Super Duty trucks made between 1999 and 2016. Counsel further alleged that Ford could have corrected the defect for just \$100 per truck.

Ford denied that the plaintiffs were entitled to punitives. The company denied knowing of the roof defect and contended that it acted in good faith. The defense additionally contended that Ford had invested millions of dollars in safety technology.

Ford also denied that the fatal injuries were caused by the roof defect. The company maintained that, as a result of the rollover, the decedents dived into the roof. In addition, Ford suggested that Mr. Hill was wholly or partly responsible for the wreck. However, the apportionment question did not include any line for Mr. Hill.

**Injury:**

The Hills both suffered fatal injuries. Their adult sons sought \$25 million as the full value of Mr. Hill's life and \$25 million as the full value of Mrs. Hill's life.

Based on Mr. Hill's autopsy report, the plaintiffs claimed that he lived two to three minutes after the roof crushed the passenger space. Mr. Hill's estate sought \$4 million for pain and suffering and \$8,000 for funeral expenses.

Based on Mrs. Hill's autopsy report, the plaintiffs claimed that she lived a few seconds after the roof crushed the passenger space. Mrs. Hill's estate sought \$3 million for pain and suffering and \$8,000 for funeral expenses.

The estates also sought \$22,500 for the value of the truck.

Ford contended that the Hills died instantly and the jury therefore should not award anything for pain and suffering.

The second phase of the trial was on the amount of punitive damages. This phase was contingent on a finding in the first phase that the plaintiffs were entitled to punitives.

In the second phase, the estates asked the jury for not less than \$1 billion in punitive damages. Plaintiffs' counsel highlighted Ford's \$20 billion cash on hand, \$58 billion net worth and \$18 billion annual profits.

**Result:**

The jury attributed 70 percent fault to Ford and 30 percent fault to Pep Boys. It found that Cooper Tire was not negligent in designing or manufacturing the subject tire.

The jury awarded compensatory damages and found that the plaintiffs were entitled to recover punitive damages, as well. The jury determined that damages, including punitives, totaled \$1,724,038,500.

Under Georgia law, in product liability cases, 75 percent of any punitive damages actually collected goes to the state.

Estate of Voncile Hill

\$ 8,000 Funeral/Burial Expenses

\$ 850,000,000 Punitive Damages

\$ 10,000,000 Full Value of Life

\$ 3,500,000 Pain and Suffering

**\$ 863,508,000 Plaintiff's Total Award**

Estate of Melvin Hill

\$ 8,000 Funeral/Burial Expenses

\$ 850,000,000 Punitive Damages

\$ 6,000,000 Full Value of Life

\$ 4,500,000 Pain and Suffering

\$ 22,500 Loss of Vehicle

**\$ 860,530,500 Plaintiff's Total Award**

Adam Hill

Kim Hill

**Trial Information:**

**Judge:** Joseph C. Iannazzone

**Trial Length:** 14 days

**Trial  
Deliberations:** 0

**Post Trial:** Ford intends to appeal.

**Editor's  
Comment:** This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents and an article that was published by law.com. Defense counsel did not respond to the reporter's phone calls.

**Writer** John Schneider

## Defective street sweeper caused operator's death: suit

**Type:** Verdict-Plaintiff

**Amount:** \$4,250,000

**Actual Award:** \$2,167,500

**State:** Georgia

**Venue:** Gwinnett County

**Court:** Gwinnett County, State Court, GA

**Injury Type(s):**

- *chest*
- *other* - death; crush injury

**Case Type:**

- *Products Liability* - Equipment; Design Defect; Manufacturing Defect
- *Wrongful Death* - Survival Damages

**Case Name:** Gabrielle Smith, Administrator for the Estate of Orlando Hall v. Schwarze Industries, Inc., Tractor and Equipment Company and ER Snell Contractor Inc., No. 18-C-05219-S3

**Date:** March 28, 2022

**Plaintiff(s):**

- Estate of Orlando(deceased) Hall, (Male, 47 Years)

**Plaintiff Attorney(s):**

- Lance A. Cooper; The Cooper Firm; Marietta GA for , Estate of Orlando(deceased) Hall
- Patrick A. Dawson; The Cooper Firm; Marietta GA for , Estate of Orlando (deceased) Hall
- Rebekah Cooper; The Cooper Firm; Marietta GA for , Estate of Orlando(deceased) Hall
- Kendall C. Dunson; Beasley Allen; Montgomery AL for , Estate of Orlando (deceased) Hall

**Plaintiff Expert (s):**

- Eric L. Van Iderstine P.E.; Mechanical; Pensacola, FL called by: Lance A. Cooper, Patrick A. Dawson, Rebekah Cooper, Kendall C. Dunson

**Defendant(s):**

- ER Snell Contractor Inc.
- Schwarze Industries, Inc.
- Tractor and Equipment Company

**Defense  
Attorney(s):**

- Frederick Newman Sager Jr.; Weinberg Wheeler Hudgins Gunn & Dial LLC; Atlanta, GA for Schwarze Industries, Inc., Tractor and Equipment Company, ER Snell Contractor Inc.
- Brannon J. Arnold; Weinberg Wheeler Hudgins Gunn & Dial LLC; Atlanta, GA for Schwarze Industries, Inc., Tractor and Equipment Company, ER Snell Contractor Inc.
- Gary J. Toman; Weinberg Wheeler Hudgins Gunn & Dial LLC; Atlanta, GA for Schwarze Industries, Inc., Tractor and Equipment Company, ER Snell Contractor Inc.
- Michael N. Weathington; Weinberg Wheeler Hudgins Gunn & Dial LLC; Atlanta, GA for Schwarze Industries, Inc., Tractor and Equipment Company, ER Snell Contractor Inc.

**Defendant  
Expert(s):**

- Nathan T. Dorris Ph.D.; Ergonomics/Human Factors; Atlanta, GA called by: for Frederick Newman Sager Jr., Brannon J. Arnold, Gary J. Toman, Michael N. Weathington
- Michael Rogers P.E.; Mechanical; Naperville, IL called by: for Frederick Newman Sager Jr., Brannon J. Arnold, Gary J. Toman, Michael N. Weathington



**Facts:**

On Sept. 7, 2017, plaintiff's decedent Orlando Hall, 47, a senior street sweeper, was operating his heavy-duty mechanical broom sweeper, working at Pleasant Hill Road, in Duluth. During the course of his work, he was crushed between the hopper and conveyor. He died at the scene from his injuries.

Gabrielle Smith, as administrator for her father's estate, sued Schwarze Industries, Inc., the manufacturer of the M6 Avalanche Street Sweeper that Hall was operating. The estate alleged that the street sweeper was defectively designed and manufactured, and that the defective design of the equipment resulted in Hall's wrongful death. The estate also sued ER Snell Contractor Inc., the subcontractor that Smith was performing sweeping work for on the day of the incident, and Tractor and Equipment Company, the owner of the truck containing the street sweeper, for negligence. Hall's employer, Rhino Services, LLC, owned the subject sweeper, but was not named as a defendant.

Prior to trial, ER Snell and Tractor and Equipment Company were dismissed, leaving only Schwarze as a defendant.

The estate alleged that Hall had noticed a problem with the street sweeper that included smoke emanating from the vehicle. After completing his shift, Hall pulled over into a convenience store parking lot to troubleshoot an unknown issue with the sweeper. Hall left the engine running, climbed the side of the street sweeper, wedged himself into a narrow compartment not meant for access behind a lockable door and was ultimately crushed to death by inadvertent activation of the conveyor when his leg contacted an exterior control. The estate asserted that the control should have been guarded.

The estate alleged that the exterior controls were unguarded and negligently placed in close proximity to a crushing hazard. The estate maintained that the street sweeper was defectively designed and was not in a safe operating condition. The estate also claimed that the design of the sweeper's outside controls created a risk for unintended activation of the controls, and the location of the controls, the toggle switches and the improperly guarded switches for the conveyor/elevator/hopper made the system vulnerable to inadvertent activation. The estate alleged that Schwarze Industries negligently placed faulty equipment in the stream of commerce, which ultimately led to Hall's death.

Schwarze Industries contended that Hall was comparatively negligent for failing to operate his street sweeper in a safe manner, noting that Hall had been trained and had trained others as a lead trainer at Rhino. The defense claimed that Hall left the engine running as he climbed the side of the sweeper truck. The defense further argued that Hall violated company safety protocol by dangerously wedging himself into a narrow compartment of the sweeper between the hopper and conveyor without turning off the engine or otherwise utilizing other safety features incorporated into the design of the machine. The defense maintained that it was not foreseeable that an operator would leave the engine running, fail to utilize safety features such as the conveyor safety pins, climb more than four feet up the side of the sweeper and wedge himself into a 7-inch space between two energized components.

**Injury:** Hall died on the scene. His estate sought to recover \$25 million in compensatory damages, including \$5 million for pain and suffering and \$20 million for the value of Hall's life. The estate also sought punitive damages against Schwarze.

The defense argued that, while it is natural to feel sympathy for Hall's daughter and the loss of her father, the jury, as the trier of fact, has a duty to decide the case based on the facts and the law, not sympathy.

**Result:** The jury attributed 51 percent liability to Schwarze Industries, Inc. and 49 percent liability to Hall. It determined that the estate's damages totaled \$4.25 million. The award was reduced to \$2,167,500 to reflect the jury's apportionment of liability. No punitive damages were awarded.

Estate of Orlando Hall

Gabrielle Smith

**Trial Information:**

**Judge:** Melodie Clayton

**Trial Length:** 5 days

**Trial  
Deliberations:** 1.5 days

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's and defense counsel.

**Writer** Gary Raynaldo

## Family alleged defective tire design resulted in fatal rollover

**Type:** Verdict-Plaintiff

**Amount:** \$2,854,480

**Actual Award:** \$1,855,412

**State:** Georgia

**Venue:** Gwinnett County

**Court:** Gwinnett County, State Court, GA

**Injury Type(s):**

- *neck* - fracture, neck
- *other* - death; dislocated spine; conscious pain and suffering

**Case Type:**

- *Motor Vehicle* - Rollover; Passenger; Single Vehicle
- *Products Liability* - Tires; Design Defect; Strict Liability
- *Wrongful Death* - Survival Damages

**Case Name:** Zaina Ali, Individually, and Bahawa Nimaga, as Surviving Daughter and Special Administrator of the Estate of Asha Nimaga v. General Motors LLC, Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, LTD., Georgia Xpress Lubes, Inc., Sumitomo Rubber USA LLC, and Grease Monkey of Georgia LLC, No. 15 C-00392 5

**Date:** August 17, 2017

**Plaintiff(s):**

- Zaina Ali (Female)
- Asha Nimaga (Female, 58 Years)
- Bahawa Nimaga (Female)

**Plaintiff Attorney(s):**

- Richard A. Griggs; Conley Griggs Partin LLP; Atlanta GA for Asha Nimaga, Zaina Ali, Bahawa Nimaga

**Plaintiff Expert (s):**

- Jeff Kidd; Accident Analysis; Gainesville, GA called by: Richard A. Griggs
- Bruce A. Currie P.E.; Tire Design; Cleveland, OH called by: Richard A. Griggs

**Defendant(s):**

- General Motors, LLC
- Sumitomo Rubber USA, LLC
- Georgia Xpress Lubes Inc.
- Goodyear Tire & Rubber Co.
- Grease Monkey of Georgia, LLC
- Goodyear Dunlop Tires North America, LTD.

**Defense Attorney(s):**

- Michael R. Boorman; Huff, Powell & Bailey, LLC; Atlanta, GA for Sumitomo Rubber USA, LLC, Goodyear Tire & Rubber Co., Goodyear Dunlop Tires North America, LTD.
- Francis M. McDonald Jr.; McDonald Toole Wiggins, P.A.; Orlando, FL for Sumitomo Rubber USA, LLC, Goodyear Tire & Rubber Co., Goodyear Dunlop Tires North America, LTD.
- None reported for Goodyear Dunlop Tires North America, LTD., Georgia Xpress Lubes Inc., Grease Monkey of Georgia, LLC

**Defendant Expert(s):**

- Don Tandy; Engineering; Magnolia, TX called by: for Michael R. Boorman, Francis M. McDonald Jr.
- Glen Follen; Tires; San Antonio, TX called by: for Michael R. Boorman, Francis M. McDonald Jr.
- Kevin Legge; Tire Design; Akron, OH called by: for Michael R. Boorman, Francis M. McDonald Jr.

**Facts:**

On Oct. 20, 2013, plaintiffs' decedent, Asha Nimaga, 58, a nanny, was the front-seat passenger in a 2005 Chevrolet Suburban sport utility vehicle traveling on Interstate 85, near Atlanta.

The SUV was driven by Zaina Ali, who was Nimaga's sister.

While they were traveling on the highway, the vehicle's right rear tire (a Dunlop Grandtrek P265/70R16 AT20) experienced a full belt separation (wherein the exterior tread separated from the tire while in motion). Ali lost control of the Suburban while allegedly traveling the posted speed limit of 70 miles per hour, causing it to flip over repeatedly before coming to a stop upright, on all four wheels. Nimaga was severely injured at the scene and pronounced dead during transportation to a local hospital.

Ali and Bawaha Nimaga, the decedent's adult daughter representing her mother's estate, sued tire designer Goodyear Tire & Rubber Co. and Sumitomo Rubber USA, LLC.

The tire was co-manufactured by both companies.

Sumitomo was initially named in the caption as Goodyear Dunlop Tires North America LTD., but the caption was amended to reflect its current official name. General Motors LLC, the manufacturer of the Suburban, was initially named as a defendant on a products liability claim related to the failure of the vehicle's roof during the rollover. Georgia Xpress Lubes, initially identified in error as Grease Monkey of Georgia LLC, was named a defendant on a general negligence claim arising from an alleged failure to detect the defective tire condition during a vehicle inspection. The two companies each agreed to confidential settlements with the plaintiffs prior to trial. The matter continued to trial solely against Goodyear and Sumitomo.

The plaintiffs alleged that the companies had been negligent in both the design and manufacture of the Grandtrek tire, specifically asserting that the rubber inner liner was too thin. As a result, the tire became filled with an excessive amount of air, and the failure of the tire was accelerated.

The plaintiffs' tire engineering expert testified that the inner liner was too thin, resulting in tread separation. He said that the inner liner was approximately 1/20,000 of an inch thick, roughly half the thickness needed to meet the tire's specifications.

The plaintiffs' accident reconstruction expert disputed the defense's claim that the Suburban had been traveling at 88 mph, arguing that the data recorder was inaccurate and citing testimony from an eyewitness, whose vehicle was allegedly traveling the same speed as the Suburban while using cruise control set to 70.

The companies denied liability, asserting that the tire's failure was the result of poor maintenance by the owner, Zaina Ali. They insisted that Ali had been traveling at roughly 88 mph, well above the posted speed limit.

The defense counsel's accident reconstruction expert, citing the recorded speed on the Suburban's internal data recorder following the incident, testified that he believed the vehicle was traveling at 88 mph.

The defense experts acknowledged that the area measured by the plaintiffs on the tire was 1/20,000 of an inch, which was less than the specifications, but they claimed that the measurement was unreliable, because it was in the area of the separation and there was no evidence that the inner liner in any other area was that low.

The defense's forensic tire expert testified that there was no defect in the tire and opined that its failure was due to a lack of proper maintenance.

A tire engineer employed by Goodyear testified for the plaintiffs at trial that he believed the tire was properly made. He also said that measuring the thickness at the area of separation was common practice, as a "cut tire analysis," which all tire companies perform randomly to tires in the plant for quality-control purposes.

**Injury:**

Nimaga lost consciousness during the collision and was determined to have sustained an injury to her neck that resulted in separation of the cervical spine. Nimaga, while still unconscious, was transported by emergency personnel from the scene but died en route.

Nimaga's sister and daughter, on behalf of Nimaga's estate, sought wrongful death benefits on behalf of themselves and Nimaga's four other surviving adult children. The plaintiffs' also sought conscious pain and suffering damages under the belief that Nimaga had been conscious when she sustained her fatal injury.

The companies disputed the plaintiffs' claim of conscious pain and suffering, arguing that there was no basis for this allegation.

The parties negotiated a confidential high/low stipulation prior to the conclusion of trial.

**Result:** The jury found that the tire had been defectively designed and that the defect was the proximate cause of the decedent's injury. It placed 65 percent liability on the two defendants, without apportionment, and 35 percent on Ali as the driver of the vehicle. Nimaga's estate was awarded \$2,754,480 in damages and Ali received \$100,000 in non-economic damages. The award was reduced under Ali's comparative negligence to \$1,855,412.

The award was further modified under the confidential high/low agreement.

**Zaina Ali**

\$100,000 Wrongful Death: non-economic damages

**Asha Nimaga**

\$454,480 Wrongful Death: economic damages

\$2,300,000 Wrongful Death: non-economic damages

**Trial Information:**

**Judge:** Pamela D. South

**Trial Length:** 7 days

**Trial Deliberations:** 8 hours

**Jury Vote:** unanimous

**Jury Composition:** unknown

**Editor's Comment:** This report is based on information that was provided by plaintiffs' and defense counsel.

**Writer** Max Robinson

## Defective seat belt caused passenger's death: husband

**Type:** Verdict-Plaintiff

**Amount:** \$4,639,416

**State:** Georgia

**Venue:** Gwinnett County

**Court:** Gwinnett County, State Court, GA

**Injury Type(s):**

- *other* - death; thigh; laceration; spleen, laceration

**Case Type:**

- *Motor Vehicle* - Rollover; Seat Belt
- *Products Liability* - Automobiles; Design Defect
- *Wrongful Death* - Survival Damages

**Case Name:** William Bruner, Personal Representative of the Estate of Penney Bruner v. Key Safety Systems and Amanda Bruner, No. 09-C-16647-S5

**Date:** November 25, 2013

**Plaintiff(s):**

- Estate of Penney Bruner (Female, 47 Years)

**Plaintiff Attorney(s):**

- Christopher Dean Glover; Beasley, Allen, Crow, Methvin, Portis & Miles, PC; Montgomery AL for Estate of Penney Bruner
- Kendall C. Dunson; Beasley, Allen, Crow, Methvin, Portis & Miles, PC; Montgomery AL for Estate of Penney Bruner
- Melody A. Glouton; Webb, Tanner, Powell, Mertz & Wilson, LLP; Lawrenceville GA for Estate of Penney Bruner

**Defendant(s):**

- Amanda Bruner
- Key Safety Systems

**Defense  
Attorney(s):**

- Michael P. Cooney; Dykema Gossett PLLC; Detroit, MI for Key Safety Systems
- Ashley W. Broach; Swift, Currie, McGhee & Hiers, LLP; Atlanta, GA for Key Safety Systems
- C. Bradford Marsh; Swift Currie McGhee & Hiers LLP; Atlanta, GA for Key Safety Systems
- Craig C. Avery; Cowsert & Avery, LLP; Athens, GA for Amanda Bruner

**Facts:**

On Sept. 23, 2007, plaintiff's decedent Penney Bruner, 47, a corporate accounts manager, was a passenger in the front seat of a 2003 Jeep Wrangler driven by her daughter, Amanda Bruner. According to the estate's counsel, eyewitnesses saw that Penney was wearing her seat belt, which was manufactured and supplied by Key Safety Systems. The Bruners were traveling with the normal flow of traffic when their vehicle drifted off the left-hand side of the roadway and into the median. Amanda steered the Wrangler back to the right and then back to the left, when the vehicle began a counter-clockwise yaw. The Wrangler entered the median and rolled over five and a quarter times, ultimately coming to rest on its side in the oncoming lanes of traffic. Penney was ejected from the vehicle and thrown onto the roadway. Her injuries included lacerations to her upper thighs and spleen. She died later that day.

William Bruner, on behalf of the estate of his wife, sued Key Safety Systems, alleging products liability. The estate claimed that Key Safety breached its duty to exercise reasonable care to design, test, market, distribute, integrate into the vehicle and sell seat belts, the failure to do so being the cause of Penney's death.

The estate's counsel claimed that the design of the Wrangler's seat belt system for the front passenger's seat was defective and unreasonably dangerous because it came unlocked during the rollover and allowed excess webbing into the system, which moved into the lap belt and allowed Penney to be ejected from the vehicle. Counsel claimed that the safety defect would have been prevented if Key Safety Systems had installed a web sensor on the seat-belt retractor. A web sensor is a redundant safety feature that assures that the belt stays locked. The estate's counsel contended that virtually every vehicle in the 2003 model year used a web-sensor seat belt. Amanda's seat belt had a web sensor, which they claimed was why she survived the rollover with minor injuries. According to counsel, evidence revealed that Amanda's safety belt performed as expected without introducing excess webbing slack into the belt system, nor was there an excessive transfer of webbing into the lap belt. They contended that Amanda's belt stayed tight and prevented her ejection.

The estate's counsel contended that Penney's injuries were in the area where seat belt loading would have occurred. They contended that the lacerations to her upper thighs were caused by the belt cutting into her legs as she was ejected. They contended that Penney also had a Grade 3 spleen laceration, which would have been in the area of the belt webbing.

Key Safety Systems contended that Amanda was at fault for causing the accident when she overcorrected, twice, causing the Jeep Wrangler to rotate in a clockwise direction. Key Safety also argued that it was Chrysler, the manufacturer of the 2003 Jeep Wrangler, which determined the requirements for the seat-belt component; including the type of buckle, retractor and latch plate it would use; the belt geometry; the anchor points of the system; and the amount of webbing. The company argued that the components it supplied met or exceeded all of Chrysler's specifications and test requirements, and they also met



the applicable federal motor vehicle safety standards.

Key Safety claimed seat belts could not always restrain occupants in severe crashes like this one. It maintained that there was nothing unsafe or defective about the seat-belt components it supplied to Chrysler. Further, Key Safety contended that the estate's counsel failed to identify any particular warning which the company failed to provide, or evidence that any failure to warn was the proximate cause of Penney's death.

Amanda Bruner contended that she had no recollection of the sequence of events leading up to the accident or the accident itself.

**Injury:** The estate's counsel contended that Penney Bruner was conscious and talking immediately after the accident, and sustained a period of conscious pain and suffering before her death. Bruner was survived by her spouse of 25 years (the accident occurred two days before their 25th wedding anniversary) and two children.

Key Systems denied that the Wrangler's seat-belt design was a proximate cause of Bruner's death.

**Result:** The jury found that Key Safety Systems was 80 percent liable for the accident and Amanda Bruner was 20 percent liable. It determined that the estate's damages totaled \$4,639,416.

### **Estate of Penney Bruner**

\$3,500,000 Personal Injury: conscious pain & suffering

\$1,120,761 Personal Injury: value of life

\$18,655 Personal Injury: medical/funeral expenses

### **Trial Information:**

**Judge:** Pamela D. South

**Trial Length:** 9 days

**Trial  
Deliberations:** 1 days

**Jury Vote:** 12-0

**Editor's  
Comment:**

This report is based on information provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

**Writer**

Margi Banner

## Yamaha utility vehicle rolled over, trapping plaintiff's leg

**Type:** Verdict-Plaintiff

**Amount:** \$317,002

**State:** Georgia

**Venue:** Gwinnett County

**Court:** Gwinnett County, State Court, GA

**Injury Type(s):**

- *leg* - crush injury, leg; scar and/or disfigurement, leg
- *other* - swelling; scar tissue; loss of tissue; loss of consortium
- *neurological* - nerve damage/neuropathy

**Case Type:**

- *Strict Liability*
- *Products Liability* - Design Defect
- *Negligence* - Breach of Duty of Care

**Case Name:** Roger McTaggart and Glenda McTaggart v. Yamaha Motor Corp. U.S.A., Yamaha Motor Manufacturing Corp. of America, a Georgia corporation, and Yamaha Motor Co. Ltd., No. 08C-18950-2

**Date:** May 24, 2010

**Plaintiff(s):**

- Roger McTaggart (Male, 36 Years)
- Glenda McTaggart (Female, 30 Years)

**Plaintiff Attorney(s):**

- C. Andrew Childers; Childers, Schlueter & Smith, LLC; Atlanta GA for Roger McTaggart, Glenda McTaggart
- Robert Blanchard; Levin Papantonio Thomas Mitchell Echsner Rafferty & Proctor, P.A.; Pensacola FL for Roger McTaggart, Glenda McTaggart
- Kimberly R. Lambert; Levin Papantonio Thomas Mitchell Echsner Rafferty & Proctor, P.A.; Pensacola FL for Roger McTaggart, Glenda McTaggart

**Plaintiff Expert(s):**

- Joseph L. Burton M.D.; Biomechanics; Alpharetta, GA called by: C. Andrew Childers, Robert Blanchard, Kimberly R. Lambert
- Robert Kelly M.D.; Orthopedic Surgery; Atlanta, GA called by: C. Andrew Childers, Robert Blanchard, Kimberly R. Lambert
- Michael Kleinberger Ph.D.; Biomechanics; College Station, TX called by: C. Andrew Childers, Robert Blanchard, Kimberly R. Lambert
- William F. Kitzes; Labels & Warnings; Boca Raton, FL called by: C. Andrew Childers, Robert Blanchard, Kimberly R. Lambert

**Defendant(s):**

- Yamaha Motor Co. Ltd.
- Yamaha Motor Corp. U.S.A.
- Yamaha Motor Manufacturing Corp. of America

**Defense Attorney(s):**

- David M. Monde; Jones Day; Atlanta, GA for Yamaha Motor Corp. U.S.A., Yamaha Motor Manufacturing Corp. of America, Yamaha Motor Co. Ltd.
- G. Lee Garrett Jr.; Jones Day; Atlanta, GA for Yamaha Motor Corp. U.S.A., Yamaha Motor Manufacturing Corp. of America, Yamaha Motor Co. Ltd.
- Joseph E. Finley; Jones Day; Atlanta, GA for Yamaha Motor Corp. U.S.A., Yamaha Motor Manufacturing Corp. of America, Yamaha Motor Co. Ltd.

**Defendant Expert(s):**

- Alan L. Dorris Ph.D.; Consumer Products; Atlanta, GA called by: for G. Lee Garrett Jr.
- Kevin C. Breen P.E.; Ergonomics/Human Factors; Fort Myers, FL called by: for G. Lee Garrett Jr.
- Charles Bane M.D.; Biomechanics of Injury; San Antonio, TX called by: for G. Lee Garrett Jr.

**Facts:**

On May 14, 2007, plaintiff Roger McTaggart, 36, a gravedigger, operated a four-wheeled Yamaha Rhino utility-terrain vehicle over an uneven, relatively flat, grassy area in Blue Ridge. McTaggart bought the new vehicle in October 2006 from D&H Cycle in Cullman, Ala.

McTaggart alleged that, after stopping the Rhino, he resumed forward motion with steering to the right, which caused the Rhino to tip onto the driver's side. His leg was trapped under the vehicle, causing severe and permanent injuries.

McTaggart sued Yamaha Motor Corp. U.S.A. of Cypress, Calif., Yamaha Motor Corp. of Japan, and Yamaha Motor Manufacturing Corp. of America for strict liability, products liability (design defect) and negligence (breach of duty of care). Plaintiffs' counsel argued that Yamaha failed to adequately protect riders in the foreseeable and likely event of a rollover. After Yamaha began producing the Rhino in 2003, it received so many complaints about the vehicle's instability and injuries to riders that the company issued a safety letter in September 2006, including warning labels that owners could place on the vehicle. The letter downplayed the conditions that could cause a rollover and made no mention of possible rollovers at low speeds on flat terrain. According to reports, the vehicle is so prone to tipping that 59 riders had been killed in Rhino accidents as of August of 2009, maintained plaintiffs' counsel. Also, Yamaha instructed riders to stay within the vehicle in the event of a rollover even though it knew a rider's reaction to a split second roll over likely would be involuntary, asserted counsel.

Plaintiffs' counsel asserted that Yamaha knew it would roll over easily and therefore had a duty to adequately protect occupants. Yamaha did not test the adequacy of the "foot guard" it claims was installed to prevent such injuries.

The plaintiffs' biomechanics/human factors expert, discussed the human reflex and how a person reflexively reacts by sticking out his leg when tipping over to the side as McTaggart did. The plaintiffs' occupant containment/biomechanics expert said the vehicle's 1,100-pound weight, the absence of proper restraints and lack of side doors make it easy for occupants to fall from the passenger compartment and sustain crushing injuries. He said that Yamaha failed to put compartment doors on the Yamaha Rhino to prevent riders' legs from becoming entrapped outside the vehicle in a rollover. Starting in August 2007, three months after the plaintiff's accident, Yamaha equipped all Rhinos with half-doors to contain the occupant's leg in the vehicle.

The plaintiffs' human factors/warnings expert said a hierarchy exists with consumer products: "design out" the danger; if a manufacturer can't design against it, then it needs to guard against it; and if it cannot be guarded against, then a manufacturer is finally required to warn of the possible hazard. Since an instance of rollover cannot be eliminated, Yamaha had a duty to first attempt to design against a rollover and/or secondly, guard against; however, in the accident involving the plaintiff, the defendant instead warned first and years later guarded against it.

Yamaha denied the allegations. Defense counsel argued that the Rhino is a safe off-road vehicle when driven responsibly and according to the instructions and warnings in its on-product labels, owner's manuals and other safety materials. According to defense counsel, the plaintiff's own experts conceded during the trial that the accident could not happen as the plaintiff testified. All the experts agreed that the accident occurred due to the driver's speed and steering.

Defense counsel noted that the plaintiff abandoned his claim that the Rhino has a stability defect and announced an intention to proceed solely on the theory that the Rhino was not crashworthy because it lacked doors. In so doing, the plaintiffs effectively conceded that the Rhino is not defectively unstable and that the injury was caused by the plaintiff's reckless and aggressive misuse of the Rhino in contravention of clear warnings - not by any latent stability defect.

**Injury:** The plaintiff's wife drove him to the hospital where he was sutured and given medication for muscle, nerve and vasculature damage to his left calf muscle. He was released that day. McTaggart's wife, a wound-care nurse, treated her husband for the next two weeks until his condition worsened, which prompted him to see an orthopedics surgeon. The plaintiff was fitted with a wound VAC for a several months and regularly followed up with his physician.

McTaggart sought \$13,690 for past medical expenses and a \$20,000 to \$30,000 for lost wages. The plaintiff returned to his job as a gravedigger, but claimed that he could no longer dig graves manually, rather, only by machine.

The laintiff, who described his wound as appearing as if he were bitten by a shark, testified that his condition is better in the morning. But throughout the day he experiences swelling which causes him to limp and must endure a great deal of pain. He sought damages for past and future pain and suffering. His wife claimed loss of consortium.

**Result:** The jury found that Yamaha's Rhino design was defective and that the company was negligent. But it also found that the warnings on the Rhino were not inadequate. It awarded \$317,002.

### **Glenda McTaggart**

\$25,000 Personal Injury: loss of consortium

### **Trial Information:**

**Judge:** Randolph G. Rich

**Trial Length:** 2 weeks

**Trial Deliberations:** 10 hours

**Editor's Comment:** This report is based on information that was provided by plaintiffs' counsel and defense counsel.

**Writer** Aaron Jenkins

## Hazmat suit co. blamed for not warning pltf to wear boots

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Georgia

**Venue:** Gwinnett County

**Court:** Gwinnett County, State Court, GA

**Injury Type(s):**

- *burns*
- *other - arthritis*
- *mental/psychological - cognition, impairment*

**Case Type:**

- *Products Liability - Warnings; Failure to Warn*

**Case Name:** Tommy Murray v. Lakeland Industries, Inc., No. 04C04014-2

**Date:** June 22, 2006

**Plaintiff(s):**

- Tommy Murray (Male, 49 Years)

**Plaintiff Attorney(s):**

- John C. Bell Jr.; Bell & James; Augusta GA for Tommy Murray
- Leroy Brigham; Bell & James; Augusta GA for Tommy Murray
- Timothy J. Santelli; ; Atlanta GA for Tommy Murray

**Plaintiff Expert (s):**

- Alan Harben M.D; Physical Rehabilitation; Roswell, GA called by: John C. Bell Jr., Leroy Brigham, Timothy J. Santelli

**Defendant(s):**

- Lakeland Industries Inc.

**Defense Attorney(s):**

- Lynn M. Roberson; Swift, Curie, McGhee & Hiers, LLP; Atlanta, GA for Lakeland Industries Inc.

**Insurers:**

- Kemper Group

**Facts:** On April 15, 2002, plaintiff Tommy Murray, 49, a worker at Ajay North America, was exposed to methyl iodide in the production facility while manufacturing it. Murray was wearing a Tychem SL chemical suit manufactured by Lakeland Industries, Ronkonkoma, N.Y. The suit covers the entire body with an opening at the face. The user covers the face with an attachable face respirator. Murray, who wasn't wearing boots, walked on gravel and wore holes in the feet of the suit, allowing the chemical vapors to enter.

Claiming injuries, Murray sued Lakeland for products liability, alleging failure to warn. He claimed that the company didn't warn him that boots should be worn over the feet of the suit. His attorney argued that Murray's employer never received any warnings from Lakeland about the suits. Counsel further claimed that the shipment of suits from the distributor didn't contain any warning manuals.

Defense counsel argued that Murray should have been on notice that the suit worn without boots was prone to holes. Defense counsel called Murray's supervisor who testified that he noticed the holes in the suit and advised Murray to change his suit.

Lakewood claimed that they provided ample notice about the proper usage of their suits. Their website lists numerous warnings and advisories. Lakewood also stated that it is their corporate policy to include a warning pamphlet with each shipment of suits.

Lakewood also stated that the Tychem SL suit was not rated for use with liquid or vapor methyl iodine. Lakewood said they manufacture a variety of suits made for different hazardous exposures and the company provides clear information regarding which is suitable for which hazards.

**Injury:** Murray suffered burns on the lower half of his body as a result of exposure to methyl iodide. He was in the hospital for over three weeks and incurred \$119,000 in medical bills and estimated \$200,000 in future medical costs. Murray has not returned to work and sought \$532,000 in past and future lost wages.

Murray's psychiatrist testified that Murray suffered from depression after the accident. Based on the psychiatrist's examination of Murray's medical records, he believed that Murray suffers from memory loss and cognitive impairments.

Plaintiff's psychiatry expert, Alan Harben, testified that he gave Murray cognitive tests that revealed Murray's problems with memory and higher level reasoning. Harben also testified that based on nerve conduction studies, Murray suffered from arthritis in the neck and back.

**Result:** The jury found that Lakeland was not negligent in providing their warnings for the chemical suit.

**Trial Information:**



**Judge:** Randolph G. Rich

**Demand:** \$1 million policy limit

**Trial Length:** 4 days

**Trial  
Deliberations:** 25 hours

**Jury Vote:** 12-0

**Jury  
Composition:** 9 female, 3 male

**Editor's  
Comment:** Plaintiff's attorneys did not respond to a phone call or a faxed draft of this report.

**Writer** Stephen DiPerte

## Billboard collapse blamed on faulty welds, substandard steel

**Type:** Settlement

**Amount:** \$12,000,000

**State:** Georgia

**Venue:** Gwinnett County

**Court:** Gwinnett County, State Court, GA

**Injury Type(s):**

- *other - death*

**Case Type:**

- *Negligence*
- *Wrongful Death*
- *Products Liability - Manufacturing Defect*
- *Worker/Workplace Negligence - Negligent Assembly or Installation*

**Case Name:** Richard and Juanita Fowler as guardians of Leah and Nathaniel Fowler, minor children of decedent Joshua Fowler; Richard and Juanita Fowler, administrators for the estate of Joshua Fowler; Richard and Juanita Fowler as parents of decedent Anthony Fowler; Richard and Juanita Fowler, Administrators for the estate of Anthony Fowler v. Trinity Outdoor LLC; Phoenix Structures and Services Inc.; Sun Capital Partners Inc.; Sun Outdoor Holdings Inc.; Sun Outdoor Advertising Partners L.P.; Sun Outdoor Advertising Advisors Inc.; Sun Outdoor Advertising LLC; Thompson Engineering Group; Thompson Engineering Group LLC; and Carl E. Thompson Jr., No. 04-C03310-3

**Date:** October 11, 2005

**Plaintiff(s):**

- Juanita Fowler (Male)
- Richard Fowler (Male)
- Estate of Joshua Fowler (Male, 23 Years)
- Estate of Anthony Fowler (Male, 21 Years)

- Plaintiff Attorney(s):**
- Gerald Davidson Jr.; Davidson and Tucker; Duluth GA for Estate of Joshua Fowler, Estate of Anthony Fowler, Richard Fowler, Juanita Fowler
  - James E. Butler Jr.; Butler, Wooten, Fryhofer, Daughtery & Crawford, LLP; Columbus GA for Estate of Joshua Fowler, Estate of Anthony Fowler, Richard Fowler, Juanita Fowler
  - Leigh Martin May; Butler, Wooten, Fryhofer, Daughtery & Crawford, LLP; Atlanta GA for Estate of Joshua Fowler, Estate of Anthony Fowler, Richard Fowler, Juanita Fowler
  - Lee Tucker Jr.; Davidson and Tucker; Duluth GA for Estate of Joshua Fowler, Estate of Anthony Fowler, Richard Fowler, Juanita Fowler
- Plaintiff Expert(s):**
- Don Raulerson; Corporate Governance; Atlanta, GA called by: Gerald Davidson Jr., James E. Butler Jr., Leigh Martin May, Lee Tucker Jr.
  - Leroy Emkin; Structural; Atlanta, GA called by: Gerald Davidson Jr., James E. Butler Jr., Leigh Martin May, Lee Tucker Jr.
  - Edward Cox; Welding; Dallas, TX called by: Gerald Davidson Jr., James E. Butler Jr., Leigh Martin May, Lee Tucker Jr.
  - Robert Coston Ph.D.; Economics; Statesboro, GA called by: Gerald Davidson Jr., James E. Butler Jr., Leigh Martin May, Lee Tucker Jr.
- Defendant(s):**
- Trinity Outdoor
  - Carl E. Thompson Jr.
  - Sun Capital Partners Inc.
  - Sun Outdoor Holdings Inc.
  - Thompson Engineering Group
  - Sun Outdoor Advertising LLC
  - Thompson Engineering Group LLC
  - Phoenix Structures and Services Inc.
  - Sun Outdoor Advertising Advisors Inc.
  - Sun Outdoor Advertising Partners L.P.
- Defense Attorney(s):**
- William T. Mitchell; Davidson and Tucker; Norcross, GA for Phoenix Structures and Services Inc.
  - Linda A. Klein; Atlanta, GA for Trinity Outdoor
  - Michael J. Bowers; Balch and Bingham; Atlanta, GA for Sun Capital Partners Inc.
  - J. Kenneth Moorman; Weinberg Wheeler Hudgins Gunn & Dial for Trinity Outdoor
- Defendant Expert(s):**
- John Watson; Welding; Atlanta, GA called by: for Linda A. Klein, J. Kenneth Moorman
  - Paul Dopp; Corporate Governance; Atlanta, GA called by: for Michael J. Bowers
  - Michael Rosenzweig; Corporate Governance; Atlanta, GA called by: for Michael J. Bowers
  - Clifford Leverenz; Industrial Design; New Lenox, IL called by: for Linda A. Klein, J. Kenneth Moorman
- Insurers:**
- Great American Alliance Insurance
  - Central Mutual Insurance Co.

**Facts:** On Aug. 1, 2002, plaintiff's decedents Joshua Fowler, 23, who owned a company that did work on billboards: his brother. Anthonv. 21. who worked for him: and two other (non-

party) employees were installing facing and graphics on a billboard in Snelville. While working, the billboard collapsed, causing the brothers and one of the employees to fall 40 feet. Then the billboard, which weighed 35,000 pounds, fell on all four of them, killing the Fowlers and one of the employees, and injuring the other employee.

The city launched an investigation and concluded that the billboard collapsed due to faulty welds and substandard steel.

The Fowlers' parents, Rick and Juanita, as guardians of Jason Fowler's minor children and on behalf of Jason and Anthony's estates, sued Trinity Outdoor LLC, Buford, which, they claimed, owned the billboard and had had hired Fowler's company to install the panels, claiming negligent inspection. Also sued was the billboard's manufacturer, Phoenix Structures and Services, Athens, Tenn., for negligent manufacturing and strict products liability (manufacturing defect); the billboard's designer, Thompson Engineering Group LLC, and its principal for products liability (design defect); and Sun Capital partners, Boca Raton, and four of its subsidiaries, claiming that it owned Phoenix Structures, on theories of corporate liability, alter ego, agency and joint venture.

The plaintiff voluntarily dismissed the Thompson defendants after determining that his design was not the cause of the accident.

Plaintiff counsel contended that Trinity Outdoor purchased, delivered and erected the billboard and therefore had a duty to inspect and ensure its safety. On the permit application Trinity Outdoor filed with to the city of Snelville, Trinity Outdoor was specified as the owner, and the language in the permit stated that Trinity Outdoor agreed to inspect the sign and was responsible for its safety.

Counsel for Trinity Outdoor denied that it owned the billboard or had a duty to inspect it, arguing that, according to the wording of the contract between Phoenix Structures and Trinity Outdoor, its client would not have ownership of the sign until it had been paid for in full and, at the time of the accident, it hadn't been.

With respect to Phoenix Structures, plaintiff counsel contended that due a conscious lack of quality control at the company, the billboard was manufactured at levels far below the industry standard. A plant superintendent and two welders who worked at Phoenix Outdoor testified that when Sun Capital purchased the plant it forced the layoff of experienced welders and stopped quality control, plaintiff noted. The witnesses also testified that the billboard was not inspected after it was built.

Phoenix Structures admitted liability, but argued damages.

Sun Capital denied that it exerted any control over Phoenix Structures and that it was not liable. It contended that one of its subsidiaries--one that it did not control--owned and controlled Phoenix Structures.

Plaintiff expert Don Raulerson testified that after reviewing documents, produced in discovery, it was clear that Sun Capital wholly owned and controlled Phoenix Outdoor. Plaintiff counsel also argued that the prior settlements, which were public documents, should be allowed into evidence to show that Sun Capital consented to liability for Phoenix on previous occasions. Plaintiff counsel contended that this settlement was an admission of liability on Sun Capital's part.

Lawsuits brought by or on behalf of the other accident victims were settled separately.

**Injury:**

The brothers were thrown from the billboard and then it collapsed on them. They were not killed instantly, but did die at the scene. Joshua Fowler died from compression asphyxia and Anthony Fowler died from blunt force trauma to the chest.

Plaintiff counsel was also seeking punitive damages against all defendants.

Phoenix Structures claimed the plaintiffs should not be awarded punitive damages, contending that this was just an accident and did not warrant punitive damages. It also contended that in an earlier settlement with one of the workers who is not party to this suit, it had paid punitive damages and, under Georgia law, a defendant only has to pay punitive damages once per incident.

The Fowlers' attorneys argued that the consent judgment did not preclude recovery of punitive damages in another case. A defendant can not self-select the amount of punitive damages and avoid real punitive damages imposed by a jury, counsel argued.

**Result:**

A settlement was reached for \$12 million. Phoenix Structures and Sun Capital agreed to pay \$11,075,457 by and through their liability insurer Great American Alliance Insurance Company. Trinity Outdoor contributed \$724,543 and its liability carrier, Central Mutual Insurance Co., contributed an additional \$200,000.

**Trial Information:**

**Judge:**

Carla E. Brown, James B. Hiers

**Editor's  
Comment:**

Defense counsel for Trinity Outdoor, Sun Capital and Phoenix Structures did not reply to two phone calls.

**Writer**

Michael Hill

## Teen shot in eye by paintball gun claimed defective safety

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Georgia

**Venue:** Gwinnett County

**Court:** Gwinnett County, State Court, GA

**Injury Type(s):**

- *sensory/speech* - vision, partial loss of

**Case Type:**

- *Torts* - Firearms
- *Products Liability* - Design Defect; Sports Equipment

**Case Name:** Cody Pearson v. Tippmann Pneumatics, Inc. and Ashton Ballesteros, No. 02-C-08859-S1

**Date:** August 13, 2004

**Plaintiff(s):**

- Cody Pearson (Male, 15 Years)

**Plaintiff Attorney(s):**

- Michael J. Warshauer; Warshauer Thomas Thornton & Rogers; Atlanta GA for Cody Pearson
- Steven R. Tornton; Warshauer Thomas Thornton & Rogers; Atlanta GA for Cody Pearson

**Plaintiff Expert (s):**

- Joseph Smith; Engineering; Atlanta, GA called by: Michael J. Warshauer, Steven R. Tornton

**Defendant(s):**

- Ashton Ballesteros
- Tippmann Pneumatics Inc.

**Defense Attorney(s):**

- John E. Stell Jr.; Russell, Stell, Smith & McLocklin; Lawrenceville, GA for Ashton Ballesteros
- Mark J. Hill; Mark J. Hill & Associates; Philadelphia, PA for Tippmann Pneumatics Inc.
- Jonathan R. Friedman; McKenna Long & Aldridge; Atlanta, GA for Tippmann Pneumatics Inc.

**Defendant Expert(s):**

- William Dworzan; Design; Orange County, FL called by: for Mark J. Hill, Jonathan R. Friedman
- William Dworzin; Design; Orange County, FL called by: for Mark J. Hill, Jonathan R. Friedman

**Facts:**

In March 2001, plaintiff Cody Pearson, 15, was using a paintball gun in Gwinnett County with Ashton Ballesteros. Ballesteros picked up the paintball gun, which had been out of his possession for more than 10 minutes. Without checking if the safety had been disengaged, Ballesteros pointed the gun at Pearson, called him by name and squeezed the trigger. Pearson was shot in the right eye and lost all vision in it. Ballesteros said he thought the safety was engaged.

Pearson sued Ballesteros and Tippman Pneumatics Inc., the manufacturer of the gun. Ballesteros settled during trial for a confidential amount.

Pearson alleged that the brass-colored safety device (manual crossbolt trigger block) on the black gun was defective because it did not have a red ring around it to show when the safety was engaged.

Tippman argued that Ballesteros was entirely at fault. It produced evidence showing that Ballesteros, a current West Point cadet, was an experienced firearms handler and paintball player.

**Injury:**

Pearson sustained total vision loss in his right eye. His medical expenses were about \$45,000 and he did not claim past or future wage loss. He sought damages for pain and suffering, disfigurement and emotional distress.

**Result:**

The jury found that Tippman was negligent in designing the paintball gun but that its negligence was not the proximate cause of the plaintiff's injury.

**Trial Information:**

**Judge:**

Robert W. Mock

**Demand:**

\$1.5 million

**Offer:**

\$25,000

**Trial Length:** 1 weeks

**Trial  
Deliberations:** 7 hours

**Jury Vote:** 12-0

**Jury  
Composition:** 4 male, 8 female

**Post Trial:** The plaintiffs filed an appeal.

**Editor's  
Comment:** Counsel for Ballesteros did not respond to a faxed draft of this report or a phone call.

**Writer** Dave Venino