

FOR MORE INFORMATION ON
U.S. PRODUCT LIABILITY LAW,
PLEASE CONTACT:

REMY ZIMMERMANN

+1 203.498.4316
jzimmermann@wigginc.com

SHAUN SULLIVAN

+1 203.498.4315
ssullivan@wigginc.com

ALAN SCHWARTZ

+1 203.498.4332
aschwartz@wigginc.com

The Wiggin and Dana U.S. Product Liability Law E-Newsletter is a periodic newsletter designed to inform clients and others about recent developments in the field of product liability law. Nothing in the E-Newsletter constitutes legal advice, which can only be obtained as a result of personal consultation with an attorney. The information published here is believed to be accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

If you have any requests for topics or other suggestions, please contact Remy Zimmermann 203.498.4316 or jzimmermann@wigginc.com.

© Wiggin and Dana LLP 2006

Jury Generosity, Appellate Intervention and Poor Cross-Examination

A recent California intermediate appellate court decision provides a good example of appellate court intervention to correct extreme jury generosity which may have been prompted by a risky cross-examination question. The case, *Buell-Wilson v. Ford*, arose out of an SUV rollover accident which left the driver with multiple severe injuries including paraplegia due to spinal cord injury. The driver and her husband claimed that their 1997 Ford Explorer was unstable and uncrashworthy.

In closing argument plaintiffs' counsel asked the jury to award \$4.6 million for economic damages (for such items as lost earning capacity and medical care) and to multiply that amount by **three or four** in calculating non-economic damages (for pain and suffering and loss of enjoyment of life) plus loss of consortium damages to the husband and punitive damages. The jury, however, awarded more than was requested—\$4.6 million for economic damages, \$105 million for non-economic damages (**22.8** times the non-economic damages), \$13 million for loss of consortium and \$246 million in punitive damages—a total award of \$368.6 million.

The trial judge agreed with Ford's post-trial motion assertion that the awards (other than the economic damages) were excessive and reduced the non-economic damages to \$65.4 million, loss of consortium to \$5 million and punitive damages to \$75 million—a total of \$150 million. Ford claimed that this was still excessive and appealed.

The appellate court found that even the reduced amount awarded by the trial judge still "shocks the conscience" and

that the jury verdict must have been motivated by emotion rather than the evidence. In particular the appellate court noted that because the jury awarded far more than was sought, it "was not acting as a fair and neutral trier of fact." To justify this conclusion, the appellate court pointed to defense counsel's cross-examination of the husband where he was asked whether there was a "silver lining" to his wife's tragic situation because "it has brought you and her and the family closer together." The court labelled this question "callous" and a possible basis for the jury's excessive awards. It reduced the awards further to \$18 million for non-economic damages and \$55 million for punitive damages—a total of \$82.6 million (adding in the \$4.6 million economic and \$5 million loss of consortium awards which were approved).

Although the jury's generosity to a severely injured plaintiff and the appellate court's reduction to a more reasonable level are not that unusual (see previous Updates 1, 2, 3, 13 and 15), I find this appellate court ruling unusual in attempting to explain the jury's actions by pointing to defense counsel's questioning. Normally, a court reducing a damage award will just use conclusory terms such as "excessive," "shocks the conscience" or "motivated by sympathy or passion" without speculating on why the jury acted improperly. It will be interesting to see whether future appellate decisions attempt to explain their reasoning in a similar fashion.

I hope this is helpful. As always, please let me know if you have questions or comments.