

Firm obtains defense verdict in retrial of failure to warn case

Plaintiff, then a 16-year-old high school student, solicited a ride home from school from a friend who was a notoriously unsafe driver. Plaintiff jumped in the cargo bed of the friend's 1988 pickup truck. Careening down Sherman way in Van Nuys at speeds up to 70 mph, the truck swerved off the road, jumped the curb, narrowly missing several customers at a fruit stand, and came to rest just short of striking a brick wall. Plaintiff was thrown forward in the bed and struck the rear of the cab with great force, severely injuring his neck and back. He was rendered an incomplete quadriplegic as a result of the accident, and was confined to a wheelchair.

Plaintiff sued the manufacturer, claiming that he did not realize it was unsafe to ride in the cargo bed of a pickup truck. Plaintiff contended that he had done this many times before, with the blessing of his parents and others. He had never been injured, and therefore thought it was a reasonably safe practice. He contended that the manufacturer was strictly liable for his injuries for having failed to affix a warning label to the truck bed warning people not to ride in the cargo bed because of a very high risk of injury or death.

Plaintiff cited FARS data and other accident statistics in support of this case, as well as an NTSB report which had recommended that manufacturers take action against cargo bed injuries. Plaintiff contended that the manufacturer was aware of these accident statistics, and that it should have placed a warning label on the truck bed to pass on to the public its superior knowledge of the high risk of injury from cargo bed riding.

Dick Cogswell tried the case on behalf of the manufacturer. Dick contended that the notion that a person would be unprotected and therefore risk injury by riding in the bare steel cargo bed, without a seatbelt or any other occupant protection features, was obvious, and that there was no duty to warn under California law of obvious dangers. Evidence was presented showing that warning labels are largely ineffective against this type of behavior (which often involved teenagers), and that NHTSA had considered this very issue and concluded that a warning label would not be effective in deterring this conduct.

There was a huge fight over evidence, with the defense largely prevailing and obtaining exclusion of much of plaintiff's proffered evidence. After a very hard fought six-week trial, the jury found that the pickup truck was defective without a warning label, but were unable to reach a verdict on causation (i.e., whether a warning label would have prevented Plaintiff from riding there), resulting in a hung jury.

Months later, a new jury was impaneled and the case was re-tried. On retrial, the jury returned a defense verdict, voting 11 to 1 in favor of our client, the manufacturer. Plaintiff did not appeal.

Congratulations, Dick.