

Newsletter - Spring 2006

GM Pickup Truck Fires: Two Severe Burn Injury Claims Settle

Millions of GM/Chevrolet pickups with side-saddle gas tanks remain on our roads and streets. The unreasonably dangerous design of their fuel systems continues to produce, even in minor collisions, terrible burn injuries and even death to innocent victims. Recently we prosecuted two cases that demonstrate the continuing hazard.

In the first case, a Portland woman was a passenger in a 2002 Volvo station wagon when a 1977 Chevrolet C/K pickup missed a stop sign and rolled across its path. The impact did not even cause the Volvo air bags to inflate, but the Chevrolet pickup's left fuel tank, located outside rather than between the frame rails, ruptured, and gasoline spewed onto the Volvo and flowed across the intersection.

Our client smelled the gas and quickly got out of the Volvo, but she slipped and fell in the growing pool of gas, drenching her clothing. The gasoline suddenly ignited with a loud "whoomp," and she was in flames. She rolled on the ground, trying to smother the fire. The first witnesses could not help her without getting burned themselves. Finally she managed to pull off her pants and stand up. In the heat and pain, she thought for a moment that her pants were still on and burning. Then she realized it was her own skin, blackened by fire, that was falling from her legs.

Fortunately, the courageous woman survived her ordeal, but she was hospitalized for weeks. She endured multiple, painful debridements and skin grafts. Her treatment continued for over a year. She will have lifelong scarring and related disabilities.

This tragedy is made worse by how frequently such injuries occur. Because of GM's defectively dangerous design and the company's obstinate refusal to issue a recall, millions of these pickups remain in daily use on public roads. The side-saddle design of these 1973-1987 Chevrolet/GM C/K pickup trucks violated GM's own fuel system standards, as well as the recommendations of its own engineers. Repeatedly, over the 14 years they were in production, these trucks consistently failed GM's own crash-worthiness tests.

We filed her case in the U.S. District Court in Eugene. As in any major automobile crashworthiness litigation, this case required extensive discovery and consultation with experts. Ultimately, a Court-approved mediation led to a confidential settlement.

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In another side-saddle gas tank claim, an 18 year old man from Klamath Falls was driving a 1978 Chevrolet pickup truck on Hwy. 101 to work. He momentarily dozed. The sound of his tires on the gravel awakened him in time to see a guard rail ahead. He turned his truck left back into his lane, but the end of the guard rail caught the exposed right side-saddle fuel tank. It exploded into fire. Our client was immediately covered in flames. As he stopped the vehicle, he unbuckled his seat belt and stumbled out from the truck. He fell on the pavement, attempting to smother the fire with his hands. The first witnesses, an Oregon State patrolman and EMTs, found him conscious and in excruciating pain. Over 80% of his body was badly burned. The burns were deep, and produced deep and complex scarring of his head, face, body, arms, legs, and feet. He lost all five fingers on one hand and all fingers and part of his thumb on the other.

The collision was another textbook side-saddle gas tank failure. The impact was minor, and the young man would have suffered no injuries but for the devastating fire that resulted from the unsafe location of the gasoline tank.

We filed the claim in U.S. District Court in Eugene. Ultimately the case was resolved with a confidential settlement arrived at during a mediation.

Discovery in these cases has disclosed that GM located the gas tanks outside the frame rails to achieve marketing goals, despite the advice of engineers and the corporation's written safety policies. Both Ford and Chrysler considered and rejected the idea of locating fuel tanks outside the frame rails, and instead, placed the fuel tanks within the protected area between the frame rails. In crash tests performed before and during the long production run, the side-saddle tanks regularly failed.

In 1974, the first year of production, GM learned that the defective design was causing severe post-collision fires, yet the company did not issue a recall. The federal government subsequently investigated and sought a recall, but GM obtained a compromise with the National Highway Safety Commission. Instead of a recall, GM paid \$50-million to the United States (for public safety programs), and continued to sell millions more of these extremely hazardous pickup trucks.

Hundreds of similar injuries have occurred. In the case of Phillips, Personal Representative, et al. vs. General Motors, in the U.S. District Court for the District of Montana, Missoula Division, CV98168-M, it was disclosed that by the year 2000, GM had paid \$495-million in settlement of side-saddle claims. Such tragedies will continue to occur as long as these vehicles remain on the road.

POSTSCRIPT: Our firm has now been associated to help prosecute two more cases involving GM's dangerously defective side-saddle fuel tanks. These cases arise from a collision that occurred just this past year. In spite of the growing number of devastating injuries, GM refuses to recall these defective vehicles, shirking its responsibility to the public.

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STATUTE OF REPOSE

ORS 12.278 is critical to the litigation of these side-saddle gas tank claims. That statute provides an exception to the Oregon Statute of Repose, ORS 30.905, which generally bars product liability claims more than eight years old. There are other exceptions to the statute of repose, including breast implants; extendable equipment (cranes, booms, aerial lifts, etc.); and asbestos.

For years we have advocated for the Legislature to revise this arbitrary eight-year limit. A better approach would be to allow a case to be brought within the useful life of the product. We will be pushing for that change again in 2007. If you would like to join this effort, please let us know: jclc@www.jclc.com or 1-800-783-2434.

CASE NOTES

TRUCK REGS VIOLATED: WRONGFUL DEATH

In association with Klamath Falls attorney, Richard Fairclo, we prosecuted the wrongful death case of a 51 year old mechanical engineer who was killed by a drunk truck driver. The decedent was driving south on snowy Highway 97 to visit his elderly parents and to help around the family home. Defendants' truck was heading North when it drifted across the centerline into the oncoming lane. Although reconstruction studies showed that the decedent turned as far to the right as he could, actually into the snow bank, his Subaru was crushed, and he was instantly killed.

In an interesting twist, Defendant's Answer alleged that its truck driver was not acting within the course and scope of his employment because he was drinking during working hours. After extensive research of Oregon case law, we established that drinking does not take an employee outside the scope of his employment. We also successfully argued that the trucking company was liable for punitive damages for the reprehensible behavior of its employee. The case settled in the course of a mediation in the U.S. District Court.

HELICOPTER CRASH: WRONGFUL DEATH

A fire suppression specialist with the Oregon Department of Forestry was riding in a Weyerhaeuser Company helicopter on October 14, 2003. As he searched for water holes suitable for the next fire season's work, the Weyerhaeuser pilot flew directly into power lines suspended across the Siuslaw River near Swisshome, Oregon. The helicopter plummeted out of control and crashed on bedrock along the river, crushing the passenger compartment and killing the pilot and his passenger.

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In representing the passenger's widow, four children and parents in the wrongful death claim against Weyerhaeuser Company, we consulted with five different experts in helicopter operations and accident reconstruction. They examined the scene and the wreckage of the helicopter, and some of the experts flew the route. They completed a detailed crash analysis, establishing that Weyerhaeuser's operation of its helicopter was negligent, and the sole cause of the crash. After completion of the investigation and exchange of data, a settlement was achieved between the parties.

DEFECTIVE PHARMACEUTICAL DEVICES

Our firm handles a number of pharmaceutical and pharmaceutical device cases. We have resolved two claims against Abbott Laboratories for its "Perclose" percutaneous closure devices, which are used to close femoral arteries after diagnostic and other procedures. In one of these cases we were associated by Utah counsel.

The complaints alleged that the defective design of the device, and the failure of Abbott Labs to warn and adequately train physicians how to use the device, caused our clients to suffer serious femoral artery infections. After extensive discovery, we settled both actions prior to trial.

One interesting aspect of these cases is that our firm had developed a "public service website" to educate consumers and physicians about the device. As part of the settlement, however, our firm agreed to take the website off the internet.

CLOSING REMARKS & REFERRALS

We intend this newsletter to be informative and helpful to our colleagues and friends.

We'd like our colleagues and clients to remember that our firm litigates a wide range of complex personal injury and wrongful death cases involving motor vehicle accidents and defects, construction accidents, medical malpractice, and defective products and medical devices.

We enjoy working with other counsel. A substantial number of our cases are done in association with attorneys throughout Oregon and adjoining states. Referral arrangements vary from case to case. Most commonly, our firm guides strategy and advances necessary costs and resources for prosecution of the case. Attorney fees are based on agreement between counsel.

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STAFF NOTES

ARTHUR JOHNSON

At the annual conference of the Litigation Section of the Oregon State Bar Association at Skamania Lodge, March 10, founding partner Arthur C. Johnson received the Owen M. Panner Professionalism Award. The award, named after the Honorable Owen M. Panner, U. S. District Judge (retired), honors a member of the bench or bar who has throughout his or her career exemplified the highest personal and professional standards. The dinner event was presided over by Dennis Rawlinson, current President of the Bar. Those speaking at the presentation described working with Art and his many achievements. Speakers included: the Honorable Alfred T. Goodwin, Ninth Circuit Court of Appeals Presiding Judge (retired) of Pasadena, California; Martha Lee Walters of the firm of Walters, Chanti & Zennache, Eugene, Oregon; Elden M. Rosenthal of Rosenthal & Greene, Portland, Oregon; the Honorable Ann Aiken, U.S. District Court Judge, Eugene, Oregon; and, Lawrence Wobbrock, of Lawrence Wobbrock Trial Lawyers, Portland, Oregon.

SARA SIEGLER

The firm's newest employee comes to the firm with over 15 years of legal experience in contested case hearings, litigation support, antitrust and communications proceedings, and business and intellectual property transactions for mass media, telecommunications, and utility industries. She will also be assisting in business development.