

The Virginia Supreme Court Rejects Plaintiffs' Expert Witness Testimony in Vehicle Design Defect Case

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In a recent opinion, the Virginia Supreme Court reversed a trial court's decision to admit plaintiffs' expert witness testimony in a vehicle design defect case. Without expert testimony in support of plaintiffs' claim, the Supreme Court thereafter entered judgment in favor of Hyundai as a matter of law.

The case *Duncan v. Hyundai Motor Co., Ltd.*, arose from a single-vehicle crash of a 2008 Hyundai Tiburon. A 16-year old driver was speeding on a winding, two-lane country road when he lost control of the vehicle moments after passing another vehicle in a no-passing zone on a blind curve. The Tiburon left the road, struck two snow banks and a large bale of hay, and traveled some distance before ultimately colliding with a tree on the driver's side of the vehicle. Although the Tiburon was equipped with a side airbag system, the airbag did not deploy. The driver struck his head on the roof of the vehicle and sustained a closed head injury.

At trial, plaintiffs contended that the Tiburon was defective and unreasonably dangerous. The plaintiffs asserted that if the sensor for the side airbag system had been placed in a different location, the airbag would have deployed and prevented the teen driver's injury. Hyundai argued that the primary impact was to the roof rail and the speed of impact was below the must-deploy threshold for the airbag. The first trial resulted in a hung jury while, at the conclusion of the second trial, the jury awarded the plaintiffs over \$14 million.

On appeal, Hyundai argued that there was an insufficient foundation for plaintiffs' expert's opinion that the location of the sensor for the side airbag system rendered the 2008 Tiburon unreasonably dangerous. The expert's opinion was premised on his assumption that the side airbag would have deployed if the sensor had been located on the vehicle's B-pillar. Yet, as the expert readily conceded, he did not perform any analysis or calculations to support this assumption. In fact, the expert admitted that the crash sensing system depended upon a combination of the structure of the vehicle and the sensors themselves, but he did not perform any tests to determine whether a different sensor location or structure would have caused the side airbag to deploy in the crash. Furthermore, despite his testimony that inches or less matter when choosing the sensor location, his proposed location was more than four inches from any location studied by Hyundai.

As a result, the Virginia Supreme Court concluded that the plaintiffs' expert's opinion that the 2008 Tiburon was unreasonably dangerous was without sufficient evidentiary support. The opinion was premised upon an assumption that the side airbag would have deployed if the sensor had been at the expert's suggested location—an assumption that lacked a sufficient factual basis and disregarded the same variables that the expert acknowledged as bearing upon the sensor location determination. The Virginia Supreme Court noted that “although experts may extrapolate opinions from existing data, a circuit court should not admit expert opinion which is connected to existing data only by the *ipse dixit* of the expert.” Indeed, the “analytical gap” between the data the expert relied on from Hyundai's location study and the opinion he proffered

was “simply too great.” In effect, the Virginia Supreme Court confirmed that speculative testimony is insufficient as a matter of law to prove that the vehicle was unreasonably dangerous under the risk-utility test and that the “unreasonably dangerous” standard cannot be met based solely on the subjective claims of an expert witness that he could have designed a better product for a particular crash scenario.

As such, plaintiffs’ expert’s opinion was inadmissible, and the circuit court abused its discretion in admitting it. Because this expert testimony was the plaintiffs’ only support for their claim that the vehicle was unreasonably dangerous, its inadmissibility was fatal to the plaintiffs’ claim as a matter of law and required judgment in favor of Hyundai.