

**XII/43-24 MOTOR VEHICLE REAR END PRODUCT LIABILITY DEFECTIVE SEAT AND SEAT BELT INFANT IN REAR SEAT SUFFERS BRAIN DAMAGE WITH QUADRIPLÉGIA, MENTAL RETARDATION, AND CORTICAL BLINDNESS**

**Thomas Contini, inf. by p/n/g Alexander and Deborah Contini** v. Hyundai Motor Co.; Pickle King, Inc.; and Antonios Kappos 90 Civ 3547 6½-week trial Verdict 3/30/95 Judge John G. Koeltl, Southern District

**VERDICT:** Liability: Hyundai Motor 12½%; Pickle King 50%; Kappos 37 ½% negligent (10/0). The case subsequently settled for \$1,900,000. Jury: 7 male, 3 female.

**Pltf. Atty:** **Richard A. Gurfein of Wiesen, Gurfein & Jenkins, Manhattan**

**Deft. Atty:** Harold L. Schwab of Lester, Schwab, Katz & Dwyer, Manhattan, for Hyundai Motor

**Deft. Atty:** Peter J. Larkin of Drake, Sommers, Loeb, Tarshis & Catania, Newburgh, for Pickle King  
Monte J. Rosenstein of Rosenstein & Helhoski, Middletown, for Kappos

**Facts:** Pltf. Deborah Contini testified that on 12/4/87 at 1:30 PM she was driving westbound on Rte. 17K in Newburgh when her vehicle was struck in the rear by Deft. Pickle King's truck (50% liable), driven by Deft. Kappos (37½% liable). Her car was manufactured by Deft. Hyundai Motor (12½% liable). Pltf. claimed that the rear of the car was crushed, causing the driver's bucket seat to collapse backwards. Pltf.'s expert testified that as the seat collapsed backward, the seat belt became loose and permitted her to slide along the collapsed seat back towards the rear of the car, where she hit her head on her 10-month-old infant, Thomas, in the rear seat. Pltf. argued that the design of the seat was defective because it collapsed as a result of a rear impact, that the seat belt was defective and violated Federal statute requiring that it restrain passengers under all conditions, and that the car was defectively manufactured. Pltf. also argued that Deft. Kappos was driving too closely behind her vehicle. Kappos pleaded guilty to following too closely and paid a fine. Evidence indicated that the difference in speed between the cars was 25-30 mph.

Deft. Kappos testified that he began driving the car at 6 AM that day and was nearly involved in an accident when the brakes allegedly malfunctioned. He claimed that he brought the truck back and told his supervisor that something was wrong with the brakes. Kappos testified that his supervisor told him to take the truck out again. Deft. Pickle King did not appear at trial and its counsel contended that there was nothing wrong with the brakes.

Deft. Hyundai testified that the seat was designed to absorb energy during an impact. It claimed that the seat belt was state-of-the-art, and that there was nothing wrong with the vehicle. The jury found that Hyundai's seat belt was defectively designed.

**Injuries:** (not before the jury settled for an undisclosed amount) Thomas (age 10 months at the time) multiple skull fractures; subarachnoid hemorrhaging; bleeding into the brain; diffuse axonal injury (DAI) resulting in spastic quadriplegia, profound mental retardation, and cortical blindness. Demonstrative evidence: photographs; Deft. produced an exemplar of a car in the courtroom; seats; seat belts; child seats; videotapes. Jury deliberation: 3 days. Settlement apportionment: \$1,500,000 was paid by Deft. Hyundai; \$400,000 was paid by Deft. Pickle King.

**Pltf. Experts:** **Richard Hermance, accident reconstruction, Tillson;** Leon Kazarian, biomechanical engineer, Dayton, Ohio; Karl Puttlitz, metallurgist engineer, Wappingers Falls; Alan Cantor, seat belt expert, Philadelphia, Pennsylvania; Dr. Thomas Polisoto, pediatrician, Buffalo.

**Deft. Experts:** David Mercaldi, accident reconstruction, Concord, Massachusetts; Richard Stalnaker, biomechanical engineer, Mt. Vernon, Ohio; David Blaisdell, seat expert, Manhattan Beach, California; James Somerset, P.E., engineer, Syracuse; Dr. Thomas Gennarelli, neurosurgeon, Philadelphia, Pennsylvania.