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George W. Fryhofer III, left, and James E. Butler Jr. won a jury verdict against DaimlerChrysler in a wreck, at right, that resulted in the death of an 8-month-old boy.

BUTLER WINS \$105M VERDICT IN CHRYSLER SEAT BACK CASE

SEAT COLLAPSE IN TENNESSEE WRECK BLAMED FOR DEATH OF BABY

R. ROBIN McDONALD
rmcdonald@amlaw.com

A Tennessee jury has socked DaimlerChrysler Corp. for \$105.5 million after finding that a baby's 2001 death was caused by a faulty minivan seat.

The Nov. 23 verdict in the Tennessee case, *Flax v. DaimlerChrysler*, No. 02C1288, (Tenn. 1st Cir., Nov. 23, 2004), is one of four product liability cases that Columbus attorney James E. Butler Jr. has brought against DaimlerChrysler targeting minivan seat backs that collapsed during collisions, injuring or killing passengers.

Butler said DaimlerChrysler previously settled two of those cases confidentially with his clients. Another one is awaiting trial in Orlando, Fla.

The three-week trial in

Nashville, Tenn. featured the testimony of a former DaimlerChrysler manager, who testified that the automaker knew the seats in its minivans were unsafe and colluded with a federal regulatory agency to cover up the information, according to Butler and co-counsel George W. Fryhofer III, both partners at Butler, Wooten, Fryhofer, Daughtery & Crawford in Columbus and Atlanta.

Last week's verdict is one of at least a half-dozen big jury verdicts that Butler and his firm have secured in the past decade, many of them in vehicle product-liability cases. In two actions against General Motors Corp., Butler's firm won \$150 million in a 1996 SUV rollover case, and \$105 million in a 1993 case where a pickup's side fuel tanks caused it to burst into flame after a collision.

In 1998, the firm won a \$454 million verdict against Time Warner—the largest civil verdict

affirmed by the state appellate courts in Georgia's history—on behalf of investors in Six Flags Over Georgia. In the suit, Six Flags investors accused Time Warner of skimping on capital investments, thereby lowering the park's market value and total worth.

DaimlerChrysler has vowed to appeal the Tennessee verdict, which includes \$98 million in punitive damages, claiming that the crash that led to 8-month-old Joshua Flax's death was caused by a reckless driver, not a flaw in the design of the automaker's Dodge Grand Caravan. In a news release distributed in response to calls for comment about the case, DaimlerChrysler labeled the verdict "grossly excessive, unconstitutional, and a miscarriage of justice."

Cleveland, Ohio attorney Lawrence A. Sutter of Sutter, O'Connell, Mannion & Farchione defended DaimlerChrysler. Sutter's

office referred questions about the verdict to DaimlerChrysler's American headquarters in Auburn Hills, Mich.

Chrysler: Driver Also Responsible

DaimlerChrysler spokesman Michael Aberlich said that during the compensatory damages portion of the trial, jurors found that the speeding driver of the car that rear-ended the minivan, Louis A. Stockell Jr., shared equal responsibility for the baby's death. "But when it came to punitives, the company bore the brunt of it," Aberlich said.

The Tennessee case went to trial because the baby's parents, Jeremy Flax and Rachel Sparkman, "were people of very strong convictions," explained Fryhofer.

"Even though they had an opportunity to settle the case,

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Chrysler Knew Seat Back Would Fail, Ex-Executive Testified

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they wanted to get the word out about this defect and realized the only way to do that was through a jury verdict," Fryhofer said. "They wanted to be sure no more parents had to watch their own kids killed or brain-

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...Chrysler was encouraging parents to put children behind the seats they knew would collapse.”
—G. W. Fryhofer III

damaged by these defects.” Fryhofer said he could not disclose the settlement offers Daimler-Chrysler made.

At the end of the trial's first phase, the jury awarded \$5 million in compensatory damages for the baby's wrongful death and \$2.5 million to the child's mother for negligent infliction of emotion distress caused by witnessing the infant's fatal injury and death.

During the punitive damages portion of the trial, the jury deliberated just two hours before awarding \$98 million to the infant's parents. Butler said he had asked for \$100 million in punitives.

Carmaker Accused of Cover-Up

Throughout the trial, the plaintiffs' attorneys accused DaimlerChrysler of a cover-up of "hundreds of other similar incidents" of seat back collapses resulting in passenger injury or death while it continued to market its Chrysler Town and Country minivan, Plymouth Voyager, and Dodge Caravan as safe, family friendly vehicles. The automaker has sold more than seven million minivans.

The backward collapse of front seat backs in the minivans during rear-end collisions would propel the drivers and front-seat passengers backward in a rear-end collision, often causing their heads to collide with children riding in the middle seats, Butler said. That is what happened to 8-month-old Joshua Flax when a driver slammed into the

back of the baby's grandparents' minivan at 70 mph in 2001 in Nashville, he said.

Five other passengers walked away from the accident with only minor injuries. But the front-seat passenger's seat back collapsed, throwing a family friend backward. He was not injured, but his head collided with the baby's skull, fracturing it, said Fryhofer. Joshua Flax died the following day.

The baby was injured "only because the seat back collapsed on him," Fryhofer said. "This has been a defect that has been brain-damaging and killing children in the family minivans for years."

"The horrible thing about these cases," said Butler, "is that in almost every case, it's a parent whose head kills or maims his or her own child."

Records Sealed

Testimony during the Tennessee trial revealed that the automaker has sealed court records of an undisclosed number of suits involving failed minivan seat backs. A former Chrysler employee who testified at trial said he is aware of eight other cases, in addition to Butler's, that DaimlerChrysler has settled confidentially.

Butler said the automaker was compelled in the Flax case to inform Tennessee Circuit Judge Hamilton Gaden of the total number of seat back failure cases the company has settled and the sums paid to plaintiffs in each case. But Fryhofer said, over his and Butler's objections, the judge allowed DaimlerChrysler to file that information under seal. The attorneys also said they were barred by the court from informing the jury or releasing that information to the public.

"I guess they don't want the public to know," Butler said.

But Chrysler spokesman Aberlich argued that the manner in which the Flax baby's skull was fractured was "a freak occurrence."

"This was a high-speed accident," he said. "Many things can happen in a high-speed accident. My understanding is that five people walked away. The irony, the real sad irony, is that one did not."

Butler argued during the trial that DaimlerChrysler "has known for over 20 years" that its minivan seats were "deadly dangerous" because of their tendency to collapse backward during a collision.

Testimony from experts at the trial, among them former Chrysler manager Paul V. Sheridan, showed that minivan seats collapsed in every rear impact test the

automaker conducted.

"Notwithstanding the knowledge that the seat was collapsing in all of its internal rear crash tests, Chrysler was encouraging parents to put children behind the seats they knew would collapse," Fryhofer said.

In 1992, Sheridan was appointed to chair Chrysler's "Minivan Safety Leadership Team" to investigate minivan safety concerns. The leadership team concluded that the collapsing seatbacks needed to be redesigned, but Chrysler disbanded the team and destroyed the minutes of its meetings, according to Sheridan's testimony.

Manager Later Fired

Sheridan said he was fired a month later. By then, he said, he had informed his superiors that he intended to go to federal regulators with his safety concerns. Sheridan said Chrysler then sued him to prevent him from speaking about the company. Chrysler later withdrew the suit.

Sheridan said the committee also reviewed other safety complaints against minivans, which prompted an agreement involving Chrysler, the National Highway Traffic Safety Administration and the Justice Department. As part of that deal, Sheridan testified, NHTSA agreed that it would reject requests for information about minivan safety defects made under the federal Freedom of Information Act and Justice Department attorneys would defend NHTSA's refusal to release the requested material.

NHTSA's current general counsel, Jacqueline Glassman, formerly worked in the general counsel's office at Chrysler, Sheridan testified. According to Butler, NHTSA's former rulemaking chief, Barry Felrice, is now working at DaimlerChrysler.

Company spokesman Aberlich said he could not verify information about the employment of Glassman or Felrice.

But the Chrysler spokesman argued that the company's minivan seat standards "far exceed" NHTSA standards. The seats, he said, are designed to absorb the impact of a crash. In minivan seats, the impact of a crash is reduced by the seat back collapse, he argued. While the plaintiffs' lawyers argued that a stronger seat was safer, Aberlich continued, "There is not a universal agreement as to which is better" among auto industry engineers." □