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► VERDICTS & SETTLEMENTS

Ford settles as jury considers damages

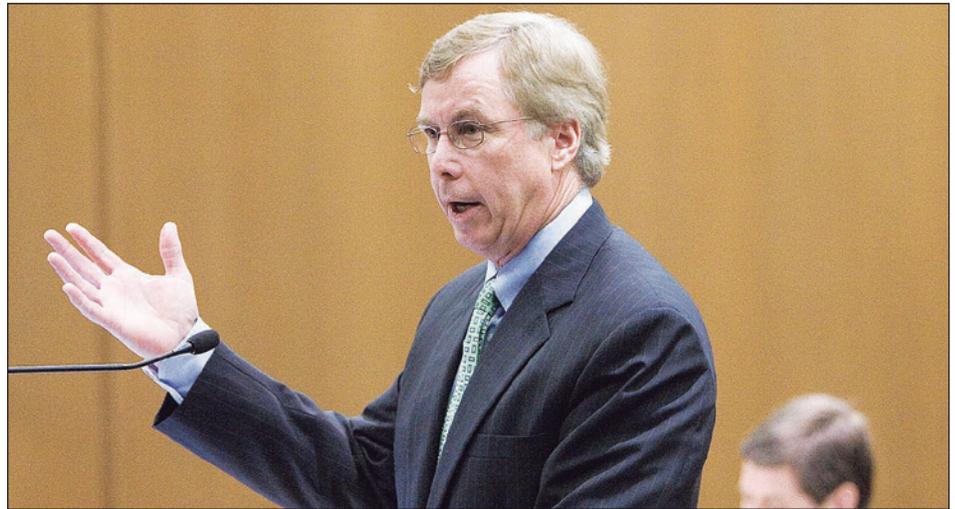
WOMAN PARALYZED in '05 wreck; design flaws blamed

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ALREADY ON THE HOOK for the lion's share of a \$17.7 million judgment and waiting for a decision from a jury that was out considering punitive damages, Ford Motor Co. decided to settle with a couple who sued following a Christmas 2005 wreck that left the woman paralyzed.

The agreement came after a Clayton County jury ordered Ford on Dec. 18 to pay more than \$16 million of the judgment to compensate for what the plaintiffs argued were design defects in the 2002 Explorer sport utility vehicle in which the woman was a passenger.

Lynn Wheeler, then 58, was seated in the back seat between her two grandchildren, who were in booster seats, as her son drove to church that morning along Noah's Ark Road in Clayton



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James E. Butler Jr. of Butler, Wooten & Fryhofer represented plaintiffs Lynn and Douglas Wheeler.

County; his wife was seated in the front passenger seat, according to trial documents and attorney accounts.

A 1995 Eagle Talon, a two-door coupe driven by John C. Stanley, was coming the other way and lost control coming around a curve, slamming head-on into the Explorer.

Stanley suffered a broken leg in the wreck, while the four other passengers in the Explorer "essentially escaped with no significant injury at all," said Butler, Wooten & Fryhofer partner Alan J. Hamilton, one of the plaintiffs' attorneys.

But Wheeler, who was restrained only by a lap belt, slammed forward and down as the rear seat latch failed, and it collapsed on her.

"As a result," says the pre-trial order, "Lynn Wheeler's head and neck



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George Fryhofer, left, and Alan Hamilton also represented the plaintiffs in the Clayton County case.

were driven down and forward into the front seat and/or center console, catastrophically injuring her spinal cord."

"She's on a ventilator and completely paralyzed from the neck down," said Hamilton.

In 2007, Hamilton, firm partners James E. Butler Jr. and George W.

See **Verdicts**, page 8

► VERDICTS & SETTLEMENTS

Ford settles crash case as jury considers punitive damages

Verdicts, from page 1

Fryhofer III, along with Ragland & Jones partner Daniel A. Ragland, filed a negligence suit on behalf of Wheeler and her husband, Douglas Wheeler, against Stanley and Ford.

The complaint asserted that the automaker's design for both the rear seat latch and decision to install a lap belt rather than a three-point shoulder belt constituted negligence, and it also said Ford should have warned the Wheelers and the general public "of the dangers in a reasonably foreseeable collision presented by the design of the Ford Explorer rear seat, occupant restraint system and surrounding structures."

Ford was represented by Michael R. Boorman of McKenna, Long & Aldridge; Thomas M. Klein of Phoenix's Bowman & Brooke; and Jill D. Jacobson of that firm's Richmond, Va., office, none of whom had responded to requests for comment by press time.

But according to the defense portion of the pre-trial order, Ford countered that at the time of its manufacture, the Explorer met or exceeded all government safety standards. The lap belt was necessary, it says, because "lap belts were necessary to accommodate some child safety seats, and were, in some situations, safer for children who did not properly fit in the federally-mandated outboard lap/shoulder belts. Additionally, it was not technologically feasible to install a lap/shoulder belt in the rear center seating position of the Explorer's bench seat."

As to the seat latch, it said, "Ford designed and tested that mechanism to

withstand the forces generated by Mrs. Wheeler's loading of the seat in this crash."

Even if the latch did fail, Ford argued, it would have done so "after Mrs. Wheeler already sustained her injuries."

Ford also argued that cargo in the rear of the SUV may have slid forward during the wreck, contributing to the load on the seat that ultimately collapsed.

Stanley, represented by Russell D. Waldon, Hilliard V. Castilla and Kimberly A. McNamara of Harper, Waldon & Craig, admitted to causing the wreck, but denied liability for the injuries Lynn Wheeler suffered, according to the order.

During a three-week trial before Clayton County State Court Judge Morris E. Braswell, the plaintiffs' team—joined by L'Erin F. Barnes of Jonesboro's Fincher Denmark & Williams—presented evidence that Ford had known the dangers of lap-only belts for more than 30 years, said Hamilton, and had delayed plans to install three-point belts to save money.

"The key was that we were able to use Ford's own documents and crash-test memos, going back to the 1960s, to show that they new about it for decades but chose not to make the changes," he said. "Ford's crash tests, that they were required to produce by the judge, showed the seats collapsing just like what we claimed happened to Lynn Wheeler, and the crash-test dummies' head injuries."

They were also able to point to similar wrecks and subsequent injuries to demonstrate "a recurring design flaw in the Explorer," he said.

Ford's arguments that cargo had been a contributing factor never came into play, he said.

"We were able to kill that theory with

the testimony from the police officers and scene witnesses," he said. "The only things in back were some Bibles and a child's toy."

On Dec. 18, the jury awarded a total of \$17,716,000 to the Wheelers, including \$12,716,401 to Lynn Wheeler and \$5 million to Douglas Wheeler for loss of consortium.

Stanley was deemed liable \$1,271,640, and Ford was to account for the rest: \$16,444,761.

But the jury also found that Ford should be held liable for punitive damages and had retired to consider the amount when the automaker agreed to settle the entire case for a confidential sum, said Hamilton. He said he could not say whether the agreed-upon amount was greater than the original jury award.

Waldon, Stanley's attorney, said he and his client were "very pleased" with outcome of the case.

"He caused the accident, no question about it," said Waldon. "It was horrible for plaintiffs—Mr. and Mrs. Wheeler are lovely people—but her injuries also affected him deeply, more than so than any other client I've represented."

The verdict "is a big win for the Wheelers, but also a huge validation for his position that, while he caused the wreck, he did not cause all of her injuries. It's impossible to feel good about anything to do with this case, but he's very satisfied with the outcome."

Ford spokeswoman Marcey Evans said that, given the confidential nature of the settlement, the company would have no comment. The case is *Wheeler v. Ford, No. 2007CV05570E*.[®]