



VERDICTSEARCH

TEXAS

DUVAL COUNTY

PRODUCTS LIABILITY

Seatbelt — Motor Vehicle — Wrongful Death

Mom blamed Fun-Kart maker for crash that killed son

MEDIATED SETTLEMENT

\$3,505,000

CASE

Rosa Garcia, Individually and as Personal Representative of the Estate of Kevin Garcia, Deceased v. Manco Products, Inc., All Best Industries, Inc., R.A.M.E., Inc., AMSAFE Commercial Products, Inc., and Javier F. Garcia, Sr. and Maricela S. Garcia, Individually, and d/b/a Will Furniture, No. DC-02-232

COURT JUDGE NEUTRAL(S) DATE

Duval County District Court, 229th, TX
Alex W. Gabert
Andy Lehrman
2/3/2004

PLAINTIFF ATTORNEY(S)

David L. Rumley, Wigington Rumley, Corpus Christi, TX
David A. Gonzalez, Law Offices of Baldemar Gutierrez, Alice, TX
Baldemar F. Gutierrez, Law Offices of Baldemar Gutierrez, Corpus Christi, TX
Jeffrey G. Wigington, Wigington Rumley, Corpus Christi, TX

DEFENSE ATTORNEY(S)

Charles Lee Barrera, Barrera, Barrera & Barrera Law Firm, San Diego, TX (Javier F. Garcia Sr., Maricela S. Garcia, Will Furniture)
James F. McKibben, Hermansen, McKibben, Woolsey & Villareal, Corpus Christi, TX (AMSAFE Commercial Products Inc.)
Jeff Murphrey, Tekell, Book, Matthews & Limmer, Houston, TX (R.A.M.E. Inc.)
James J. Ormiston, Looper, Reed & McGraw, Houston, TX (All Best Industries Inc.)
Chris C. Pappas, Dunn, Kacal, Adams, Pappas & Law, Houston, TX (Manco Products Inc.)
Jaime L. Saenz, Brownsville, TX (Manco Products Inc.)

FACTS & ALLEGATIONS On Sept. 16, 2000, plaintiff's decedent Kevin Garcia, 11, was operating a Fun-Kart on a public street in Benavides when he collided with a Ford F-250 pickup driven by an unlicensed 15-year-old girl.

Individually and as personal representative of her son's estate, Garcia's mother, Rosa, 30s, sued Fun-Kart's maker, Manco Products Inc., Fort Wayne, Ind.; R.A.M.E. Inc. of Fort Wayne, Ind., All Best Industries Inc. of Flushing, N.Y., and AMSAFE Commercial Products Inc. of Phoenix, Ariz., three companies which supplied seatbelts for Fun-Karts; and Javier F. Garcia and Maricela S. Garcia, individually and operating as Will Furniture, San Diego, where the Fun-Kart was purchased, alleging that the Fun-Kart was defectively designed.

The Fun-Kart's three-point seatbelt had a non-locking retractor which provided no occupant restraint, the plaintiffs alleged. Instead, it allowed the belt to spool out when forward force was applied to the belt. The plaintiffs claimed that the Fun-Kart should have been equipped with a locking retractor.

The defendants denied the allegations, contending that Garcia was negligent for (1) not wearing a seatbelt; (2) operating the Fun-Kart on public roads despite a warning that the Fun-Kart is for off-road use only; (3) operating the Fun-Kart without a helmet; and (4) failing to operate the Fun-Kart as a prudent child of the same age. The police officer who investigated the accident found Garcia to be at fault. Garcia reportedly failed to yield the right of way, made an unsafe turn and failed to control his speed.

Further, the defendants contended that Garcia's mother was negligent for (1) not supervising him in the operation of the Fun-Kart; (2) not requiring him to wear a helmet; (3) allowing him to operate the Fun-Kart despite warnings that it was to be operated by children ages 12 and up; (4) failing to show him how to adjust the seatbelt; (5) failing to show him the safety video that came with the Fun-Kart; and (6) allowing the Fun-Kart to be operated without a safety flag.

Once it was determined that R.A.M.E. supplied the seatbelt for the Fun-Kart in this case, the claims against All Best Industries and AMSAFE were dismissed.

INJURIES/DAMAGES *death; loss of consortium*

Garcia died instantly. Rose Garcia sought damages for loss of consortium.

RESULT The case settled during mediation for \$3,505,000. Manco paid \$3.5 million and R.A.M.E. paid \$5,000.

EXPERT(S) None reported

EDITOR'S NOTE Counsel for the settling defendants did not respond to a faxed draft of this report and a phone call.

—Don Maines