



RUSK COUNTY

PRODUCTS LIABILITY

Design Defect — Wrongful Death — Automobiles

Integrity of sidesaddle tank blamed for fire after rollover

SETTLEMENT

Confidential

CASE

Jo Ann Foster, Individually, And As Administrator of The Estate of Prince Foster, Deceased, Jason Foster, Danielle Foster Arterberry, Vernina Foster Kincade, Lori-Anne Lemons, Metro Carl Gross, and Prennis Williams v. General Motors Corporation, Mathew Benjamin Eastwood, and Simmons Auto, No. 2003-148

COURT

Rusk County District Court, 4th, TX

JUDGE

J. Clay Gossett

DATE

4/1/2004

PLAINTIFF

ATTORNEY(S)

Jeffrey G. Wigington (lead), Wigington Rumley LLP, Corpus Christi, TX
David L. Rumley (co-lead), Wigington Rumley, Corpus Christi, TX
Don R. Reeves, Longview, TX

DEFENSE

ATTORNEY(S)

Jeff J. Cox (co-lead), Hartline, Dacus, Barger, Dreyer & Kern, Dallas, TX (General Motors Corp.)
Kelly M. Heitkamp (co-lead), Merriman, Patterson, Connolly and Hughes, Longview, TX (Mathew Benjamin Eastwood)
James E. Hughes (co-lead), Merriman, Patterson, Connolly and Hughes, Longview, TX (Mathew Benjamin Eastwood)
Kyle H. Dreyer, Hartline, Dacus, Barger, Dreyer & Kern, Dallas, TX (General Motors Corp.)
George Velton Jones, Marshall, TX (Simmons Auto)
Abigail A. Mathews, Hartline, Dacus, Barger, Dreyer & Kern, Dallas, TX (General Motors Corp.)

FACTS & ALLEGATIONS On April 15, 2001, plaintiffs' decedent Prince Foster, 59, a self-employed mechanic in Henderson, was driving his 1981 Chevrolet C2500 pickup on County Road 102 in Rusk County when he was struck by Mathew Eastwood, driving an Oldsmobile Aurora. As he rounded a curve, Eastwood crossed the median and struck Foster nearly head-on. Foster lost control of the pickup, which rolled onto its roof, crushing and trapping him inside. Gasoline was released from the sidesaddle gas tank and the pickup caught on fire.

Foster's wife, estate and six adult children sued General Motors, Eastwood and the seller of the pickup, Simmons Auto of Marshall. They

alleged that the pickup was defectively designed because of inadequate fuel system integrity. Specifically, they alleged that the tank was completely unguarded because it was mounted outside the frame rail. They alleged that, in later models, GM fixed the problem by placing the fuel tank inside the frame rail and employing other guarding techniques.

The defendants denied the allegations. GM's position was that the impact, caused by Eastwood's negligent driving, killed Foster, and that alleged defects in the fuel system had nothing to do with his death.

The parties disputed cause of death.

Foster's family claimed that the autopsy report revealed that the decedent suffered no life-threatening injuries in the initial accident, and thus he died from the fire. The report further showed a carbon monoxide level in Foster's lungs of 12%, indicating that he was alive and breathing as he burned.

Defendants cited the autopsy report by Dr. James Bruce of Lufkin, who listed the cause of death as "traumatic injuries consistent with vehicular mishap," not fire or smoke inhalation. Bruce listed the principal diagnosis as "basilar traumatic subarachnoid hemorrhage." Defense counsel contended that Foster died from a head injury, and that the 12% carboxyhemoglobin level actually indicated that he did not die from the fire. Counsel cited medical literature stating that the average person has a 5% level; smokers and mechanics (such as Foster) can have up to a 10% level; it takes at least a saturation of 20% before a person has symptoms, including headaches, nausea and dizziness. The 12% level indicates he might have taken a few short breaths before dying from the head injury. Also, no witnesses at the scene reported sounds or movement from Foster after the impact.

INJURIES/DAMAGES *death*

Foster died in the accident.

RESULT The parties settled for a confidential amount. The case settled before GM officially designated experts or deposed them.

PLAINTIFF

EXPERT(S)

Wayne McCracken, accident investigation & reconstruction, Raleigh, NC
Joseph L. Burton, M.D., injury biomechanics, Alpharetta, GA
Paul Lewis, Sr., jury & trial consulting, Birmingham, AL

DEFENSE

EXPERT(S)

None reported

—Don Maines