

# PRODUCTS LIABILITY LAW REPORTER

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AMERICAN  
ASSOCIATION *for*  
JUSTICE

Formerly the Association of Trial Lawyers of America (ATLA\*)

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gia. While she was at a rehabilitation facility, she developed decubitus ulcers, which required additional treatment. Perez's past medical bills totaled about \$824,000, and the present value of her future life-care costs is estimated at approximately \$8 million. A college student at the time of the incident, she now uses a wheelchair and requires assistance with most daily living activities.

Baeza was charged with driving under the influence.

Perez sued Sparco Motor Sports, Incorporated, the distributor of the seat, alleging it was defective in that it was not sold with a kit that included a base and means of anchoring it into a car's chassis. Alternatively, the plaintiff claimed that if the seat was sold as an individual component, the defendant should have warned of the need to obtain the anchoring components and properly secure the seat in the car. Suit also alleged failure to supply a seat belt with the passenger seat or warn that one was needed.

Suit against Baeza alleged that he was operating under the influence and driving recklessly.

The plaintiff also sued a bar that had served Baeza alcohol before the incident, alleging liability under the state's dram shop act.

Finally, the plaintiff named the nursing and rehabilitation facility where she was a patient, alleging the staff was negligent in permitting her to develop the ulcers.

The plaintiff did not claim a specified amount for lost future earning capacity.

The distributor argued that Baeza was the sole cause of the incident and that any warnings were the manufacturer's responsibility.

The parties settled for just over \$6.27 million, including \$6 million in policy limits from Sparco, \$195,000 from the rehabilitation facility, \$50,000 in policy limits from Baeza, and \$27,500 from the bar.

The plaintiff's experts included Russell Marhefka, product safety and warnings, Atlanta, Ga.; Leon Kazarian, biomechanical engineering, Bellbrook, Ohio; Henry Brennan Jr., rehabilitation, Westchester, Ill.; and Stan Smith, economics, Chicago, Ill.

*Plaintiff's Counsel*

Robert J. Napleton, Chicago, Ill.

### **SUV roof collapses in rollover, causing fatal head injury**

*Roggensack v. Pendulla*, Okla., Okla. Co. Dist., No. CJ-2009-5893, June 21, 2010.

Kelly Roggensack, 19, was the right front passenger in a 2004 Toyota Sequoia traveling on the highway when

the driver steered to the side to avoid tire retread in her lane. The Sequoia rolled over and left the road, striking a guardrail and going down an embankment before landing on its wheels. The right front passenger window shattered, and Roggensack was partially ejected. Emergency rescue workers found her still in her lap belt but outside her shoulder belt, slumped over toward the driver's seat. She suffered fatal head trauma. Roggensack was a college student at the time of her death and is survived by her parents.

Roggensack's parents sued Toyota Motor Corporation and related manufacturing defendants, arguing that the Sequoia was not crashworthy in that the roof lacked sufficient strength to withstand the rollover forces without deforming. The plaintiffs contended that the roof experienced severe deformation and that the way in which the roof collapsed—bringing the side window frame extremely close to Roggensack's head—was a significant factor in her partial ejection.

The plaintiffs also contended that the vehicle's occupant restraint system was inadequate in that the vehicle had a side-curtain air bag that would deploy in a severe side-impact collision but not in a rollover. The plaintiffs contended that the vehicle should have had a rollover-activated side curtain or "rollover curtain shield" air bag system. The plaintiffs argued that this feature was already available on four other Toyota vehicles manufactured in the same model year as the Sequoia.

Finally, the plaintiffs alleged that the Sequoia was unstable as a result of a high center of gravity and a narrow track width, making it prone to roll over in an emergency steering situation.

Toyota argued that the incident was caused by the improper steering response of a young and inexperienced driver. The defendant also argued that a rollover curtain air bag system would not have prevented Roggensack's head injury because the guardrail the SUV struck during the roll sequence protruded through her window and struck her head. Finally, the defense argued that Roggensack was wearing her seat belt behind her back at the time of the incident.

Suit against the driver alleged negligent handling of the vehicle.

The plaintiffs did not claim lost earnings.

The parties settled during mediation for a confidential amount.

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