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Superior Court Upholds $55M Crashworthiness Award Against Honda

Max Mitchell, The Legal Intelligencer

The state Superior Court has affirmed a more than $55 million verdict against Honda Motors in a much-anticipated ruling that further refines Pennsylvania products liability law in the wake of the game-changing 2014 decision in *Tincher v. Omega Flex*.

A unanimous three-judge panel of the court ruled Wednesday in *Martinez v. American Honda Motor*—a case that pit prominent Pennsylvania appellate lawyer Howard Bashman, creator of the How Appealing blog, against Gibson, Dunn & Crutcher litigator Theodore Boutrous Jr. The nonprecedential ruling, which addressed several issues related to *Tincher,* affirmed the verdict awarded to a man who was paralyzed when his head struck the roof of his 1999 Acura Integra as it rolled after a blowout.

Led by Superior Court Judge Alice Beck Dubow, the panel rejected challenges raised by Honda, including the company's contention that the trial court should have allowed it to introduce evidence of compliance with federal and regulatory standards. The ruling on that issue came down to whether the Pennsylvania Supreme Court's holding in *Tincher* overruled long-standing precedential decisions, including *Gaudio v. Ford Motor* and *Lewis v. Coffing Hoist Division, Duff-Norton*, which barred such information from being introduced.

Dubow said it did not.

"*Tincher* does not, nor did it purport to, affect the applicability of the rulings in *Gaudio* or *Lewis*," Dubow said. "Based upon precedent that remains unchanged, the trial court determined that the proposed evidence was inadmissible. We agree."

Despite making several pronouncements regarding *Tincher*, Dubow also noted that the case was in a "unique and uncommon procedural posture," since *Tincher* came down during the case's post-trial proceedings.

Stewart Eisenberg of Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, who tried the case, said he was "very happy" about the ruling. However, its impact on future cases may be limited, he said, given that it is a nonprecedential decision.

Bashman, who handled the appeal for the plaintiff, also noted that the ruling came in an unpublished, unanimous decision, which, he said, is a category of decisions that are rarely taken up for further appellate review.

"I think that the Supreme Court has not shown itself necessarily to be reaching out to take every single case that presents a *Tincher* issue," he said.

Gibson Dunn's Boutrous, who represented Honda, did not immediately return a call for comment.

Honda's arguments in the appeal focused on whether the jury instructions given at trial had been improper in the wake of *Tincher*. Specifically, Honda contended that the judge did not properly ask the jury to consider whether the seatbelt restraint was "unreasonably dangerous," and whether the trial court should have removed language about the defendant being a "guarantor" of the product from the jury charge.

During oral arguments in August, Boutrous told the Superior Court panel that the trial judge's decision to deny Honda's post-trial motions drastically understated the impacts of *Tincher*.

In her 24-page opinion, Dubow said that, although language in the charge indicating that there was an "alternative, safer, practicable design" for the seatbelt restraint was "not precisely the language required" for the risk-utility analysis, the charge was not flawed.

"The portion of the charge to determine the 'practicability of an alternate design' inherently requires the jury to balance factors such as the cost of implementing the design against relative safety of the alternate design," Dubow said.

Regarding the challenges to the "guarantor" language, Dubow said that, although *Tincher* overruled the foundational 1978 decision in *Azzarello v. Black Brothers*, it doesn't mean trial courts need to remove the "guarantor" language from jury charges.

The jury in *Martinez* heard the case in June 2014, and awarded plaintiff Carlos Martinez $55.3 million, including $14.6 million in future medical expenses and $25 million in past and future noneconomic damages.