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Ford Motor Finds Driving Smooth With Snell As Counsel

By Don Knox
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DENVER — Led by its Denver office, Snell & Wilmer in recent months has won five defense verdicts in product liability cases lodged against its client, Ford Motor Co.

The firm, which acts as national counsel for the Detroit automaker in a variety of product liability matters, reports victories in “unpopular and difficult jurisdictions,” including New York’s Bronx borough and South Texas, says Lee Mickus, Denver partner and litigator.

Litigation is a fact of life, especially in rollover accidents, which typically involve the most serious of automotive injuries and thus spur the most lawsuits, said Tim O’Neill, also a litigator and Snell’s administrative partner in Denver.

“Virtually any time there’s a

rollover, there’s some attorney looking at it to determine whether there’s an actionable claim,” he said.

In most of the rollover suits, the primary plaintiffs’ allegation is the height of the vehicle’s center of gravity, Mickus and O’Neill said. Many plaintiffs’

SNELL’S FORD MOTOR CO. DEFENSES

In the past few months, the regional law firm has prevailed for its client in a series of product-liability cases.

Santos v. Ford Motor Co.	\$25m+	Lee Mickus, Denver partner, was lead trial counsel in Bronx County, N.Y. In a December 2006 verdict, Ford was found not liable for a 2002 Explorer rollover accident that killed a mother and her teenage daughter, the New York jury said. The jury found no defects in the Explorer, rejecting the family’s damage requests of more than \$25 million.
Clayton v. Ford Motor Co.	\$15M+	Tim O’Neill, Denver office administrative partner, was lead counsel in this Salt Lake City trial lasting more than six weeks. In a Feb. 9, 2007 verdict, Ford was found not liable for alleged defects in a 1997 Explorer accident that involved one fatality and one brain injury. Ford successfully proved to the jury that the accident was caused by driver inattention leading to a single vehicle rollover accident, not alleged defects in the suspension system or the handling or stability of the SUV. The plaintiffs sought more than \$15 million in damages, but the jury rendered a verdict in favor of Ford on all claims.
Matey v. Ford Motor Co.	\$31M	O’Neill and Ashley Krause of the Denver office were lead trial counsel in this three-week trial in Blaine County, Idaho. The plaintiffs claimed more than \$31 million in damages arising out of an accident involving a 2001 Ford Sport Trac claiming it had a defective roof resulting in injuries to their 16-year-old son. Ford successfully proved that the roof of the Sport Trac was safe, non-defective and exceeded all federal motor vehicle safety standards. In a March 12, 2007 verdict, the jury agreed, finding that 100% of the fault for the accident and injuries was attributable to the teenage driver.
Pillado v. Ford Motor Co.	\$18M	Following a four-month trial in the Superior Court of California in Barstow, the jury returned a verdict in Ford’s favor. After sustaining injuries from a rollover accident in a Ford Aerostar minivan in 2000, the plaintiff filed four separate claims, ranging from design and manufacturing defect to failure to warn. The plaintiff sued for \$18 million, including \$5 million in punitive damages.
Guerrero v. Ford Motor Co.	\$50M+	Snell & Wilmer obtained a defense verdict in the case of Guerrero v. Ford. This verdict is significant because it is the first Explorer rollover trial in California since Buell-Wilson, where a California jury awarded plaintiffs over \$350 million in compensatory and punitive damages.

Source: Snell & Wilmer

attorneys claim the vehicle should be wider, so the center of gravity is lower.

Ford counters that all vehicles are prone to rollover. It says irresponsible use of the product, including high speed and driver error, typically is the cause.

“We defend primarily on the principle that there are driving standards and lateral accelerations that must be met before the company will agree to produce the vehicle,” O’Neill said. “Those are appropriate and reasonable standards. With any standard, there’s no way to exclude the possibility of a rollover in real-world driving conditions. There are certain kinds of maneuvers and accident situations that cannot be precluded by any technology.”

Mickus said, “On some levels, it comes down to the science of what’s reasonable, what sort of expectations customers should bear in mind when using

these products under high-speed scenarios. Fundamentally, the issue is, ‘Can you reasonably expect the vehicle to go down the road sideways at high speed when they’re meant to go bumper first?’”

Product liability litigation, which often is evidence- and expert-intensive, is ardently pursued because the sums can be huge when juries rule for plaintiffs, which they do about 30 percent of the time in all types of product-liability cases.

“It really is the big gamble,” Mickus said. “If you look at the number of lawsuits nationwide, something like 70 percent end up in defense verdicts or essentially defense verdicts.”

The Snell lawyers improve their odds by relying on the testimony of Ford engineers who are both involved in product design and who also use the vehicles as their preferred form of transportation.

“We try to stay away from being judgmental, making moral judgements, and sticking to the fundamental fact of what that driver may have done, the choices the driver may have made and the things that the jury needs to consider, whether alcohol was involved, whether the driver was going too fast — above the speed limit or at the speed limit but in severe weather — and seat-belt use,” Mickus said. “Fundamentally, one of the things to get to across to the jury is to lay down the tire marks we see in a police photographs and ask, ‘How far did the driver have to turn the wheel to get it sideways?’”

Mickus and O’Neill say they often encounter anti-corporate bias but try to root it out during *voir dire*.

Animation is typical in these cases, as juries have become comfortable with it and have come to expect it, O’Neill said.

But the Snell lawyers steer from computer-generated animation to show videos of “real vehicles on real test tracks, showing the capabilities of what (the vehicle) can do in real life, to get the point across to the jury that what they plaintiffs are asking for is unrealistic and unachievable.”

The trials usually last two to three weeks, but are longer in California, where case management procedures result in shorter court days.

While neither Denver nor Phoenix, Snell’s headquarters, is a center of automobile production, Ford has come to rely on the firm over the past 25 years for product-liability defense.

“Automotive manufacturers will not hire 50 lawyers in 50 states to become experts,” O’Neill said.

They look for specialization and assign cases regionally or nationally.”