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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

ROBBIE LAMBERT,

Plaintiff and Respondent,

v.

GENERAL MOTORS CORPORATION,

Defendant and Appellant.

E029264

(Super.Ct.No. RCV 039570)

OPINION

APPEAL from the Superior Court of San Bernardino County. Jeffrey King,  
Judge. Affirmed.

Bowman and Brooke, Vincent Galvin, Mark V. Berry; McCutchen, Doyle, Brown  
& Enersen, David M. Heilbron, Monty Agarwal and Christina M. Wheeler for Defendant  
and Appellant.

Hancock, Rothert & Bunshoft, Paul D. Nelson, Paul J. Killion, Jacqueline G.  
Elliopulos; Law Offices of Michael J. Piuze and Michael J. Piuze for Plaintiff and  
Respondent.

## 1. Introduction

In 1990, plaintiff Robbie Lambert fell asleep at the wheel while driving a 1985 Chevrolet Blazer. The vehicle rolled several times. Plaintiff broke his neck and is now a quadriplegic.

Plaintiff sued General Motors Corporation (GM) for negligence, claiming a defect in the roof and seat belt designs. In a second trial after a previous reversal, a jury found GM was liable on a theory of products liability, awarded damages of \$25,700,000, and assigned 60 percent of the fault to GM for a net judgment of \$15,420,000. GM appeals from the judgment and from the trial court's ruling denying its motion for judgment notwithstanding the verdict. The central issue, as debated by the experts, is whether plaintiff's injuries were caused by the roof crushing on plaintiff's head or by plaintiff's head striking the roof before the roof collapsed. GM challenges plaintiff's expert evidence for the reasons expressed in *Pacific Gas & Electric Co. v. Zuckerman* (*Zuckerman*):<sup>1</sup>

“The value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed. [Citations.] Where an expert bases his conclusion upon assumptions which are not supported by the record, upon matters which are not reasonably relied upon by other experts, or upon factors which are speculative, remote or conjectural, then his conclusion has no evidentiary value. [Citations.] In those

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<sup>1</sup> *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135-1136.

*[footnote continued on next page]*

circumstances the expert’s opinion cannot rise to the dignity of substantial evidence. [Citation.]”

Applying the principles stated in *Zuckerman*, we find substantial evidence supports the judgment and affirm.

## 2. Standard of Review

The standard of review is whether, viewed in the light most favorable to the plaintiff, substantial evidence supports the verdict.<sup>2</sup> Under that standard, we do not conduct a de novo review of the credibility of the expert evidence.<sup>3</sup> Instead, we defer to the jury’s findings in favor of the plaintiff.

## 3. Causation

GM first argues there is not substantial evidence of causation. It cites the accepted rule that a defect is not actionable unless it is the legal cause of an injury, meaning a substantial factor in producing it.<sup>4</sup> If the injury was inevitable even without the defect, the defect is not a legal cause of the injury. Plaintiff counters that he does not have to

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*[footnote continued from previous page]*

<sup>2</sup> *Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68; *Zuckerman, supra*, 189 Cal.App.3d at pages 1134-1135.

<sup>3</sup> *Sours v. General Motors Corp.* (6th Cir. 1983) 717 F.2d 1511, 1516.

<sup>4</sup> *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 572.

prove with complete certainty that a defect caused an injury, only that the defect was a substantial factor in bringing about his injury.<sup>5</sup>

At trial, plaintiff and defendant presented conflicting expert evidence on the issue of causation. Plaintiff's experts tried to minimize the violence of the accident with the aim of showing the Blazer's weak design inadequate. In contrast, defendant's experts characterized the accident as more extreme in order to bolster their theory that plaintiff's injury was inevitable. On appeal, defendant little heeds the standard of review which favors evidence supporting the judgment for plaintiff. Instead, defendant persistently argues its expert evidence was more credible than plaintiff's.

On a vehicle, the vertical "A" pillars support the front windshield on each side. The "B" pillars are located behind the driver's and front passenger's doors; the "C" pillars are located behind the rear passengers' doors. The "front header" connects the two "A" pillars at the roof line across the top of the windshield. The "roof rails" connect the vertical pillars at the roof line above the side windows.

During the rollover, the driver's side A-pillar partially collapsed, buckling the roof rail, displacing the front header, and causing the roof to crush approximately 10 inches. The roof showed two points of contact with plaintiff's head, called "head strike" or "witness marks," one on the roof rail eight inches in front of the B-pillar and one on the roof itself, eleven inches from the windshield and just behind the buckle in the roof. The

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<sup>5</sup> *Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 121-122; *Romo v. Ford Motor Co.* (2002) 99 Cal.App.4th 1115, 1137-1138.

*[footnote continued on next page]*

impact to the right side of plaintiff's head above his ear compressed and fractured his spine, rendering him a quadriplegic.

Both the law and the experts agree a rollover automobile accident is far less violent than a head-on collision because the velocity of the rolling vehicle causes the energy released in an accident to dissipate.<sup>6</sup> Plaintiff sought to prove causation by presenting expert evidence that plaintiff's vertical velocity or falling speed was 3.5 miles per hour or less and that plaintiff should not have been injured at that low rate. Instead, plaintiff was injured by the roof crushing his neck and by the seat belt that permitted too much excursion.

Plaintiff's design expert, Donald Friedman, an automobile safety expert and design engineer, based his opinion on several factors. Friedman analyzed videotaped experimental rollovers and concluded that the center mass of a rolling vehicle and its occupant never fall more than one foot before the vehicle hits the ground so plaintiff's maximum vertical velocity was 3.5 miles per hour. Friedman conducted "drop tests" to show that the Blazer's roof, when dropped on sand bags from a height of five and one-half inches, would strike the surface at 3.5 miles per hour and collapse 10 inches. Friedman analyzed the "Malibu" tests, performed by GM's experts in the 1980s, purportedly showing that roof crush does not contribute to increased injury of a vehicle's

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*[footnote continued from previous page]*

<sup>6</sup> *Douplik v. General Motors Corp.* (1990) 225 Cal.App.3d 849, 869.

occupant. Friedman concluded that the Malibu tests actually prove an inverse correlation between roof strength and injury. A videotape vividly depicted this result for the jury. During a rollover, the dummy's head first touches the roof rail, after which the roof crushes violently down on the dummy's head and upper torso.

Plaintiff's experts said plaintiff's injury was caused by the Blazer's roof striking plaintiff at a vertical velocity between 10 and 20 miles per hour. During the rollover, the roof and rail buckled. The intrusional velocity of the buckle, combined with the vertical falling velocity, provided an impact velocity of more than 10 miles per hour, sufficient to cause Lambert's injury. Friedman asserted that, without the additional velocity from the buckle, plaintiff's neck would not have been broken. Finally, based on tests of a dummy and a live subject (Friedman himself), Friedman declares no injury occurs from a hit to the head at low speed.

GM challenges the expert evidence, primarily that presented by Friedman. GM's main point is that plaintiff's expert evidence consisted largely of speculation and guesswork. GM criticizes the drop test, arguing that it did not duplicate the conditions of plaintiff's accident because the test vehicle was dropped on sandbags, not the same road surface on which the accident occurred. GM performed its own "dolly rollover tests" purporting to show that plaintiff's falling speed was greater than five miles per hour and instead was between 10 and 15 miles per hour. GM also disputes Friedman's conclusion that the roof buckle's speed caused plaintiff's injury. According to GM's experts, the injury occurred when plaintiff's head hit the roof rail before the roof crushed. GM finally

contends that Friedman's evidence disproves rather than proves causation. According to GM, in a statement we struggle to understand: "... a protest contrary to the protester's own disproof of it is no evidence."

Plaintiff responds that the sandbag drop was not an accident re-creation but rather an experiment meant to demonstrate the roof's weakness and the conditions causing a crush. Using GM's same dolly tests, Friedman concluded plaintiff's falling speed was only two miles per hour and that the dolly tests demonstrated the same kind of damage as occurred from the Blazer's rollover.

We summarize the nature of the battle between the parties' experts but, as an appellate court, we do not attempt to resolve the dispute; that is the jury's province.<sup>7</sup> Nevertheless, GM's attack on plaintiff's expert evidence is not persuasive. This is not a case in which plaintiff's experts based their opinions on sheer speculation and guesswork.<sup>8</sup> GM has not convinced us that plaintiff's experts violated any physical or natural laws in reaching their conclusions. Their opinions are not inherently wrong, impossible, or improbable.

Instead, plaintiff's experts based their opinions on extrapolations based on their analyses of the accident and from independent experiments. The drop test was not a

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<sup>7</sup> *Doupnik v. General Motors Corp.*, *supra*, 225 Cal.App.3d at pages 868-871.

<sup>8</sup> *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 487-488; *Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 338-339.

failed attempt to re-create the Blazer accident under the same conditions.<sup>9</sup> The drop test simply demonstrated the kind of damage occurring when vertical velocity is 3.5 miles per hour. That result was consistent with Friedman's conclusion that the center mass traveled 3.5 miles per hour or less during the rollover. If we accept the validity of the expert evidence regarding vertical velocity of 3.5 miles per hour, defendant's other objections cannot stand. Especially, we must uphold the jury's finding that plaintiff's injury was caused by the intrusion of the roof buckle against plaintiff's head.

Both plaintiff and defendant's experts testified extensively, thoroughly depicting for the jury the parties' respective positions regarding causation. The jury accepted plaintiff's experts over defendant's. We perceive no reason to displace the jury's determinations. Our review of the record discloses substantial evidence allowing a jury to find causation based on the expert evidence.

#### 4. Design Defect

GM also argues that there was insufficient evidence of a design defect because plaintiff did not prove a safer alternative design for the roof or the seat belts. Because plaintiff established causation, GM had the burden of proof to show the benefits of the design outweighed its risks.<sup>10</sup>

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<sup>9</sup> *Solis v. Southern Cal. Rapid Transit Dist.* (1980) 105 Cal.App.3d 382, 390; *Andrews v. Barker Brothers Corp.* (1968) 267 Cal.App.2d 530, 537-538.

<sup>10</sup> *Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413, 431-432.

The Blazer's roof was built to withstand 5,500 pounds of pressure. GM argues the Blazer was 99.5 percent effective in preventing injuries to belted occupants and that plaintiff's expert, nevertheless, proposed a roof that could withstand 33,000 pounds of pressure. GM maintains a roof of that strength would present greater danger, outweighing any benefit of the design.<sup>11</sup>

GM mischaracterizes Friedman's testimony. The figure of 99.5 percent was derived from a table used by Friedman which showed that, in rollover accidents occurring in the United States between 1988 and 1992, there were serious or fatal head, face, and neck injuries to fewer than one-half percent (or 9,400) of the restrained occupants. The table offered no specific data about the Blazer's performance in rollovers. About the Blazer, Friedman testified: "General Motors data . . . tells you what is happening with the GM fleet and there the s-pickup is showing what I would suspect it would show, that it's [rollovers] a pretty serious problem."

Nor did Friedman propose a 33,000 pound roof as the only safe alternative design. Instead Friedman testified a strong roof should withstand 12,000 pounds of pressure without crushing more than four inches. But the Blazer had the weakest roof manufactured by GM.

Thus the two premises are wrong upon which GM bases its argument concerning the lack of proof of a roof defect. Instead, the evidence showed that by using closed, not

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<sup>11</sup> *Soule v. General Motors Corp.*, *supra*, 8 Cal.4th at pages 570 and 571, footnote 8.

open, roof rails, at the cost of a few dollars, the Blazer roof could have been sufficiently strengthened to prevent plaintiff's injury.

Because we find substantial evidence to support a jury verdict based on a finding of a defect in the Blazer's roof design we do not need to discuss the seat belt design defect, although we observe there was substantial evidence to support that claim as well.

5. Disposition

The judgment is affirmed and plaintiff shall recover his costs.

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s/Gaut  
J.

We concur:

s/McKinster  
Acting P. J.

s/Richli  
J.