Legal Opinion Letter

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STATE COURT FINDS SUVs' DESIGN NOT INHERENTLY DEFECTIVE

by
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A products liability claim that could have delivered SUV-sized headaches for the auto industry was turned back earlier this year by an Illinois appellate court. The case represents a failed attempt to turn a safety issue that has received substantial attention from federal auto safety regulators, as well as other interested parties (including manufacturers), into a potential avalanche of tort suits directed at automakers. The case is *Semprini* v. *General Motors Corp.*, No. 1-04-3452 (Ill. App. 1st Dist., 2006).

As everyone who drives these days knows, "Sport Utility Vehicles" – known as "SUVs" – have become increasingly popular over the past decade; indeed, in recent years they have represented one of the fastest-growing categories of vehicle sales in the United States. Consumers choose them for a variety of reasons, including their off-road and bad weather capabilities, roominess, and cargo-carrying capacity. This case posed the issue of how, and by whom, safety issues related to this expanding category of vehicles should be addressed: by a regulatory body with a national safety mandate assisted by the cooperative efforts of manufacturers, consumers and interested others, or by the trial courts of fifty states ruling on the facts of particular cases. In this instance, fortunately, the court made the right choice.

On an early July morning in 1999 Philip Semprini, driving a Pontiac sedan, was involved in a front-end collision with a Chevy Blazer driven by a drunk off-duty police officer on a curve in Bartlett, Illinois. Semprini suffered serious head injuries and sued both the Blazer's driver and its manufacturer, General Motors. Semprini claimed that his injuries were caused by the drunk driver's larger Blazer riding up onto the front of his sedan and hitting its roof pillar, causing the roof of the car to collapse downward and hit his head as he was thrown forward. Pleading theories of both negligence and strict liability against General Motors, he argued that the Blazer that hit him was defective in design due to some of its most readily apparent features: its greater height, weight and stiffness. The trial court granted summary judgment to General Motors, and Semprini appealed to the Illinois Appellate Court in Chicago.

Semprini's arguments on appeal were not typical claims regarding driver or even manufacturer fault. First, he sued General Motors not as the manufacturer of his own Pontiac (which it was), but as the maker of the Blazer he had collided with. More broadly, though, he claimed no less than that all SUVs are inherently "incompatible" with conventionally sized passenger vehicles like his sedan simply because they are "unnecessarily" taller and weigh more, and that this purported "design defect" in the

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drunk driver's Blazer had been the cause of his head injuries. He cited the growing sales figures for SUVs in recent years and argued that because more SUVs are on the road, there would be more collisions involving them. In something of a leap of logic, Semprini then posited that the physical size disparity between SUVs and cars thus created an increased overall risk of injuries to passengers in cars, which, in his view, demonstrated not only that his collision with the larger Blazer had injured him, but that an overall design problem existed with all SUVs because of their greater size. Semprini went on to claim that evidence that SUV manufacturers, in cooperation with federal regulators, were taking voluntary steps to bring the height of SUV bumpers and energy-absorbing structures more into line with those of passenger cars actually proved that SUVs were in fact "defective" under tort law.

Although Semprini's "compatibility" complaint was somewhat novel in a court of law – only one previous appellate case, an unpublished decision from California , considered (and rejected) such a claim, see *De Veer* v. *Land Rover North America, Inc.*, 2001 WL 34354946 (Cal. App. 2nd Dist, Aug. 14, 2001) – the issue is well known to those concerned with vehicle safety at the national level, including auto manufacturers and regulators. The "compatibility" of all types of vehicles in collisions with one another has received substantial attention from the National Highway Traffic Safety Administration ("NHTSA"), which has conducted crash testing, commissioned studies, and received input from a range of parties involved in vehicle safety, including manufacturers, insurers, consumers and other government agencies. NHTSA's task is formidable; it must balance often conflicting demands, including safety of passengers in vehicles, safety of others (including, but not limited to, those in other vehicles in crashes like Philip Semprini), vehicle affordability, consumer choice, the challenges of developing new technologies, and fuel economy standards, to name just a few. But the agency has made progress on the issue, eliciting a voluntary commitment from manufacturers (including General Motors) that their "light trucks," including SUVs, minivans, and pickup trucks, will include features designed to improve their compatibility with passenger cars in front-end and front-to-side collisions. That same commitment also included a promise of further study of issues like varying weight and stiffness. Clearly these issues are receiving a full airing at a level that promises constructive results across the country, rather than the endless variation promised by the development of judge-made compatibility standards in tort cases in fifty different state court systems.

Fortunately, the Illinois appeals panel saw it just that way. In rejecting Semprini's negligence and strict liability claims it relied on a number of acknowledged factors designed to limit business exposure in design-related products liability cases. The judges observed that the greater height and weight of an SUV when compared to a standard passenger car were "open and obvious" to other drivers, making a tort recovery inappropriate. They held that Semprini had failed to demonstrate that imposing some sort of universal collision compatibility requirement on all vehicles would benefit consumers, including those who choose SUVs based on their off-road and load-carrying capabilities. And in rejecting Semprini's claims of negligent design, the court confirmed the rule in Illinois – like one relied on in the 2001 California case – that an automaker's duty to promote crash safety does not extend to occupants of other vehicles in the event of a collision, or, as Illinois courts put it, that there is no duty "to design a vehicle with which it is safe to collide."

Finally, in addressing Semprini's assertion that the automakers' voluntary commitment to make changes in SUV design proved that they could have designed safer SUVs before, the court declined to hold these efforts against manufacturers. Recognizing where compatibility concerns should properly be addressed, the judges added that it was not the job of an Illinois court "to act as a 'national collision compatibility commission.'" A contrary result would have invited suits in every state in any collision case in which an SUV was involved. If such a tide of suits ever rises, though, it will not, at least for now, originate in Illinois.