

By BLOOMBERG NEWS

September 28, 2004

A federal judge ordered Ford Motor Co. to pay \$41.5 million in punitive damages to the parents of a three-year-old boy who was killed when one of the company's F-350 pickup trucks ran over him.

U.S. District Judge David Warner Hagen in Reno, Nevada, reduced a verdict of \$52 million in punitive damages that a jury awarded in March to Jimmie and Ginny White, who claimed that a defective parking brake caused their son Walter's death. In 1998, a previous jury had awarded the Whites \$151 million in punitive and \$2.3 million in actual damages. Actual damages were upheld on appeal while a new trial was ordered on punitives.

Ford, the second-largest North American automaker, asked Hagen to reverse or reduce the March punitive award, arguing that the judgment exceeded the 9:1 ratio set by the U.S. Supreme Court as the general limit of punitive damages to actual damages. Hagen said the company's failure to warn of a "dangerous product defect" triggered an exception to that Supreme Court rule.

"In light of the extreme reprehensibility of Ford's conduct, the disastrous consequences of its actions, and the difficulty in establishing proper compensation for the Whites' emotional harm, the court finds this is a case where the ratio of punitive to compensatory damages can and should exceed single digits," Hagen said.

Ford never corrected its failure to warn customers of the defect, Hagen said in a decision issued Aug. 31. The Dearborn, Michigan-based carmaker instead "persisted" in "arguing that the defect never existed," Hagen said.

'Unconstitutional, Excessive'

The \$41.5 million punitive award is "unconstitutional and excessive," said Ford attorney Malcolm Wheeler, citing a reduction in an award against State Farm Mutual Automobile Insurance Co. after a 2003 U.S. Supreme Court decision.

"Under this court's interpretation of State Farm, every case with a death or serious injury would warrant a punitive judgment higher than a single digit ratio," Wheeler said. "That's clearly not what the Supreme Court decided." Ford will appeal the decision, Wheeler said.

The State Farm ruling contained a loophole for punitive judgments, Stanford Law School professor Robert L. Rabin said. "The court in State Farm said that in most cases a single-digit award would satisfy the demands of due process, but they did leave an opening for particularly egregious cases," Rabin said.

"In leaving that opening, they created a cloud of uncertainty that might in fact mean that in cases like this, the award would stand," Rabin said.

Exceptions

The court allowed exceptions dependent on the behavior of the defendants and the injury, said [Shanin Specter](#), attorney for the Whites. "White versus Ford is the archetype of that kind of case because it involves the most egregious type of injury, the death of a child," Specter said.

The Whites said a defective parking brake had caused the Ford pickup to move as their son fell out of the truck. The Whites claimed that the F-350 brake had a "skip-out" problem and could spontaneously disengage, Specter said. Ford knew before Walter White's death in October 1994 that the truck could roll even if the parking brake had been engaged, Specter said.

Ford had issued a technical service bulletin to dealers warning of the problem and subsequently recalled its trucks to fix it, he said. "Ford told the government it would recall this in August 1994, but they did it in waves," Specter said.

The Whites didn't receive notice of the recall until March 1995, after their son's death, said Specter, of the Philadelphia law firm, Kline & Specter.

Any punitive award was unjustified because the company had instituted a voluntary recall, Wheeler said. In his decision, Judge Hagen said this was not enough to avoid a punitive judgment. "Ford had known of the problem, however, for well over a year prior to its decision to conduct the recall," he said.

Complaints

In 1992, Ford had begun receiving complaints. In 1993, the National Highway Traffic Safety Administration started investigating incidents of rollaways linked to the brake, Hagen said. "During this same period, the evidence shows that Ford resisted making changes and notifying customers despite the mounting evidence of problems with its parking brake."

"Ford dragged its feet for more than two years before warning customers," Judge Hagen said. "Walter White was killed before any notice whatsoever of the defect was given to customers," he said.

"Ford voluntarily instituted a safety recall before the accident," Wheeler said in an interview. When NHTSA investigated the complaints, the agency tested the trucks and couldn't get the brake to disengage, Wheeler said.

The Recall

"The agency approved the recall notice and they reexamined it in 1999 without changing it," Wheeler said.

Ford had argued at the first trial that the Whites were liable for the child's death for failing to supervise him. Jimmie White, the boy's father, had parked the pickup in his driveway and didn't lock the truck. Walter got into the truck, and soon afterwards the truck began rolling down the driveway. The boy was crushed under the truck's wheels.

The jury in 1998 found the Whites 40 percent responsible for the accident.

The Whites originally won a \$153 million award against Ford in July 1998, including \$151 million in punitive damages. In December 2002, an appeals court ordered a new trial for Ford just on punitive damages.

The appellate court said the trial court judge failed to instruct the jury to limit punishment of Ford on behalf of Nevada customers only, not Ford customers nationwide.

The 1998 verdict was the sixth-largest ever against a car company in a product defect lawsuit, according to Bloomberg data. The \$52 million jury verdict in March is the second-largest against an automaker this year. The highest, also against Ford, was for \$368.5 million in a lawsuit alleging defects in the Ford Explorer.

Ford shares rose 3 cents to \$13.92 in New York Stock Exchange composite trading. Dearborn, Michigan-based Ford is the second-largest North American carmaker after General Motors Corp.

The case is White v. Ford Motor Co., CV-N-95-0279-DWH, U.S. District Court, Reno, Nevada.