

VERDICTS & SETTLEMENTS

The Verdict, Wisconsin Academy of Trial Lawyers, Volume 26:1, Winter 2003

Gayle Penley v. Ken Hooks and Pitman, Hooks, Dutton & Hollis, P.C.

Case No. 94274-9TD, 13th Judicial District at Memphis, Tennessee

Plaintiff, Gayle Penley, age 53, suffered incomplete paraplegia on June 8, 1996, when the 1986 200 SX Honda 4-wheeler she attempted to drive up a hill flipped over backwards. On February 10, 1997, plaintiff hired Attorney Ken Hooks of Alabama to prosecute a product liability claim against Honda arising out of her accident. Defendant Hooks filed an action on plaintiff's behalf against Honda on June 6, 1997. That action was dismissed because of defendant's failure to file the case timely within Tennessee's ten-year statute of repose. The defendant admitted negligence, and this legal malpractice action was prosecuted as a case within a case – plaintiff's action against Honda.

Plaintiff sought to prove Honda deviated from reasonable engineering practice in the design of the clutch and transmission of the 1986 200SX, and that Honda's fault exceeded plaintiff's. In Tennessee, plaintiff would only recover damages if Honda's negligence exceeded her own fault. Specifically, she alleged that the clutch and transmission were defective in that engine braking was not available upon engine stalling and there was no backup safety feature. Honda recognized in its ATV owner's manual that an extreme hazard is presented by the potential loss of power while ascending hills. Absent engine braking which most other vehicles have, an ATV will roll backward upon the loss of power. That places an operator in the position of needing to apply enough rear braking to stop the ATV but not sufficient that it flips over backwards. Plaintiff contended that reasonable engineering practice required that hazard be addressed and eliminated by the incorporation of an anti-rollback feature. Among other alternatives, a sprague clutch could have been used. In addition to this specific theory, plaintiff also advanced general stability, Consumer Product Safety Commission and warning issues.

Plaintiff incurred past medical bills of approximately \$140,000. As a result of her incomplete paraplegia which resulted in bowel and bladder incontinence, plaintiff was not able to return to her job as a bank teller. As a result, she has sustained past and future wage loss of approximately \$400,000. The case settled following disclosure of plaintiff's expert witnesses for \$1,050,000.