

# Rollover crash case nets plaintiff win

*Parties disputed whether man was wearing seat belt*

A southwest Missouri jury awarded more than \$5 million to a man injured while driving a Nissan Xterra.

In May, a Christian County jury ordered Nissan Motor Co. and Nissan North America Inc. to pay Jason Cohorst \$3,332,428 in compensatory damages and \$2 million in punitive damages. But the jury also found the man 17.5 percent at fault for the crash, reducing the amount he can actually collect.

In December 2002, Cohorst was driving the 2001 Xterra north on U.S. 65 between Branson and Springfield. When he approached the Missouri Route F bridge, there was dense fog, and ice covered the bridge. Cohorst lost control of the vehicle at the edge of the bridge. The vehicle slid off the highway and rolled three to four times, and the impact threw Cohorst from the sport utility vehicle.

Cohorst suffered a severed spinal cord, resulting in paraplegia. He also had a closed-head injury. His expenses for medical bills, household services and a life care plan total more than \$3 million, his attorneys said.

Cohorst pursued negligence and product liability claims against Nissan.

His attorneys, led by Louis C. Accurso with The Accurso Law Firm in Kansas City, alleged the seat belt failed to restrain Cohorst during the rollover. The seat belt came unlatched during the rollover, Cohorst's attorneys alleged. They presented an illustration that sought to con-

nect Cohorst's bruises and abrasions with that of seat belt use. In addition, Cohorst's family members testified that Cohorst was a habitual seat belt user.

The Missouri State Highway Patrol's report said Cohorst was not wearing his seat belt. Nissan's attorneys argued there was no evidence Cohorst had been strapped in.

Cohorst's attorneys also alleged the vehicle should have been equipped with electronic stability control, known as ESC. The feature would have prevented the loss of control that led to the rollover, the attorneys said.

Nissan's attorneys argued that a lack of stability control did not make the vehicle defective. They also emphasized that the feature requires traction to work; because the road was icy, ESC wouldn't have made a difference in the crash, they said.

Cohorst's attorneys presented evidence that Nissan had not tested its seat belts in rollovers. Two individuals other than Cohorst who had been in Xterra rollovers also testified that their seat belts came unlatched.

"The jury was not happy with Nissan on several accounts," Accurso said.

Nissan attorney Mark Berry, with Bowman & Brooke in Gardena, Calif., said that after speaking with jurors, he believed the jury sided with his team on the ESC issue. He said they lost on the seat belt issue.

"I think from a scientific standpoint, it was clear: He was not wearing his seat

## ■ \$5.3 million verdict

### PRODUCT LIABILITY

■ **Court:** Christian County Circuit Court

■ **Case number/Date:** 08AF-CV00300-01/May 26, 2011

■ **Judge:** David Darnold

■ **Plaintiff's Experts:** Jeffrey Ball, Castle Rock, Colo. (accident reconstruction); Larry Ellison, Springfield (economics); Craig Good, Calgary, Alberta (occupant kinematics and seat belts); Dr. Steven Hendler, Overland Park, Kan. (life care planning); Murat Okcuoglu, Santa Barbara, Calif. (electronic stability control); Wilbur Swearingen, Springfield (vocational rehabilitation); Dr. Martin Tyson, Springfield (trauma surgery); Dr. Oren Broughton, Mountain View (emergency room care)

■ **Defendants' Experts:** Michael Carhart, Phoenix (occupant kinematics, mechanism of injury and vehicle restraint systems); Robert Pascarella, Canton, Mich. (electronic stability control, vehicle stability, vehicle design and testing); Donald Tandy, Magnolia, Texas (vehicle design and testing)

■ **Allocation of Fault:** 82.5 percent to Nissan defendants, 17.5 percent to Cohorst

■ **Special Damages:** Present-day value of life care plan, \$2,532,988; past medical expenses, \$336,143; household services, \$374,840; \$2 million in punitive damages

■ **Last Pretrial Demand:** \$3 million

■ **Insurer:** Tokio Marine & Nichido Fire Insurance Co.

■ **Caption:** Jason Cohorst v. Nissan Motor Co. LTD and Nissan North America Inc.



Louis C. Accurso

■ **Plaintiff's Attorneys:** Louis C. Accurso, Ann Wright and Burt Haigh, The Accurso Law Firm, Kansas City; Rusty Gould, Gould, Thompson & Bucher, Kansas City

■ **Defendants' Attorneys:** Mark Berry and Jenny Covington, Bowman & Brooke, Gardena, Calif., and Minneapolis; Adam Suroff, Polsinelli Shughart, Kansas City

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belt. But then you had his family members testifying he was the most reliable seat belt wearer," Berry said. "You had science versus a bunch of very nice people, and that puts a jury in a bind."

Berry said Nissan believes there is nothing defective about the Xterra and plans to appeal.

The Missouri Department of Transportation was originally a defendant in the case. The department settled for \$25,000.

McCarthy Olathe Nissan was also originally a defendant in the case. The Olathe, Kan., automobile dealership was dropped from the suit before trial.

— Nancy Hull Rigdon