

## And The Defense Wins

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A federal judge in Louisiana found that the plaintiffs' primary liability expert's opinions were unreliable, granting judgment to Ford Motor Company in a design defect case and dismissing the suit on the morning of trial. Ford Motor Company was represented by DRI members [Robert W. Maxwell](#) of **Bernard, Cassisa, Elliott & Davis** in Covington, Louisiana, [Thomas E. Bazemore](#) of **Huie, Fernambucq and Stewart** in Birmingham, Alabama, and [Michael W. Eady](#) of **Thompson Coe Cousins & Irons** in Austin, Texas.

Luis Eveler was driving his family's Ford Explorer with his wife, Kaylee, and two of their children as passengers. When a vehicle encroached on his lane, Eveler swerved to avoid it, then turned sharply a second time sending the vehicle into a yaw and leaving the paved surface. The Explorer rolled over in the median and all four occupants, none of whom were properly seatbelted, were ejected. Kaylee Eveler suffered the most debilitating injuries, including partial paralysis. The family sued Ford Motor Company in the U.S. District Court for the Eastern District of Louisiana, stating a number of claims alleging that the design of the Explorer made it unreasonably prone to rolling over.

Judge Lance Africk earlier dismissed with prejudice all theories other than an alleged design defect under the Louisiana Products Liability Act, R.S. 9:2800.51. To establish that a product is defective in design under the act, a plaintiff must show that there "existed an alternative design for the product that was capable of preventing the claimant's damage."

The Evelers argued that the Explorer's track width was too narrow for its center of gravity. They claimed that the Explorer had a design defect because its "static stability factor," a ratio that compares a vehicle's track with the height of its center of gravity, was below 1.2, a figure arrived at by their forensic engineering expert, Paul Semones of Renfroe Engineering. The Evelers proposed that the Explorer could be modified to have a static stability factor above 1.2, which would require lowering the Explorer body and using rims and spacers to widen the track width. Semones opined that an Explorer so modified would not have rolled over if it was put in the same position as the Evelers' vehicle.

Semones based his opinion that a modified Explorer with a stability static factor above 1.2 would not have rolled over on a series of maneuvers performed by test driver Robert Hooker in both a stock Explorer and a modified Explorer.

The judge rejected Semones' suggestion that the Hooker tests conducted at lower speeds than the subject accident can predict vehicle behavior at higher speeds. He also rejected Semones' suggestion that other, non-standardized tests Hooker conducted may indicate that a modified Explorer would not have rolled over, noting that the expert's new opinions "are too unreliable to be admitted": "This Court finds that Semones' opinion that a modified Ford Explorer would have prevented or materially altered the accident is simply *ipse dixit* masquerading as science."

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