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‘A ticking time bomb’

Tire failed, man hurt in wreck awarded \$37.8M

BY PETER VIETH

A Richmond federal jury awarded \$37.8 million to a former truck driver injured in a devastating crash of a concrete mixer truck, one of the highest personal injury jury verdicts ever in Virginia. There was no punitive damages component in the award.

The driver – Robert Benedict – claimed the accident was caused by a defective front tire manufactured by Hankook Tire Company Ltd. and an affiliate company.

The case was a pitched battle according to Benedict’s lawyers, led by Jonathan E. Halperin of Richmond and Florida attorney Jay Halpern, a veteran of tire failure cases. The litigation produced five memorandum opinions from U.S. District Judge Robert E. Payne as he ruled on various pretrial motions.

Payne decided the company’s initial contributory negligence defense foundered for lack of an expert witness. His Feb. 16 opinion is *Benedict v. Hankook Tire Co.* (VLW 018-3-040).

Concrete truck

Benedict, the plaintiff, held a commercial driver’s license and drove for Essex Concrete, according to the judge’s summary. On Nov. 14, 2014, he was traveling northbound on Route 288 in Chesterfield County with a full load of 8 yards of concrete when he heard a loud “boom.”

The tread on his truck’s right front tire had separated, causing a loss of all air pressure in the tire. It was an “explosive, concussive force,” Halperin said.

The truck veered to the right and struck an embankment. It rolled once and came to rest upright, per the judge’s account. Benedict’s lawyers described the truck – weighing 64,000 pounds fully loaded – lurching into the embankment, rolling back in the opposite direction, and finally returning to an upright position.

It was a scene of destruction. Photographs show the mixing bowl knocked completely off the truck frame. Both northbound lanes were shut down for hours as Benedict was cut out of the truck cab.

The tire that blew was manufactured by Hankook in South Korea in 2005.



Benedict’s injuries were catastrophic. He was left paralyzed from the chest down with spinal fractures in the neck and thoracic region, a ruptured spleen, collapsed lung and fractures of the collarbone, ribs and forearm. He suffered a stroke from the neck fracture, Halperin said.

Benedict, 53, a veteran of Desert Shield and Desert Storm, has a 28-year marriage and two children, Halperin said. He now has difficulty holding food in his hand. He uses a special device to drink, Halperin said. Despite all his injuries, Benedict remains upbeat and happy to be alive, according to Halperin. “His attitude is just breathtaking,” the lawyer said.

The medical bills totaled \$2.049 million and future care would cost \$6.1 million in 2018 dollars, according to Halperin. There also was a wage loss of \$561,000. Workers’ compensation paid for medical care and some of the lost wages, Halperin said. The comp lien was \$2.1 million.

An expert testified Benedict’s life expectancy was shortened by 11½ years.

Halperin said Benedict’s workers’ comp attorney approached him because of his experience with prod-

ucts cases. Halperin, in turn, looked for a lawyer who handled tire failure cases. He located Halpern.

The name similarity is a mere coincidence, the lawyers said.

“I didn’t choose to be a tire expert,” Halpern said in an interview March 14. He said he had success with a tire failure case in 1992 and then found himself handling similar claims involving tires used on Ford Explorers and similar light trucks about 10 years later.

“Suddenly, it was in vogue to have some experience as a tire lawyer,” Halpern quipped.

Halperin – the Richmond lawyer – said he handled most of the damages evidence. Halpern – the Florida attorney – was in charge of the liability case. A key expert was David Southwell, an Australian with credentials in forensic examination of tire failure.

The outcome was significantly different for Benedict. After a five-day trial, the jury handed down a verdict of \$37,835,259.23.

“We were able to establish the tire had a cancer in it,” Halperin said. “Incomplete component adhesion and a too thin inner liner” made the tire “like a ticking time bomb,” he said.

Hankook contended the tire had

no inherent defect. The company argued Benedict overlooked or ignored cuts on the tire that should have warned of prior damage. The company said he hit a pothole which caused the tread separation and failed to properly handle the truck when the tire blew.

Halperin said the defense before trial focused on Benedict’s actions. “What he did was totally consistent with what the manual said,” Halperin said. “They were unsuccessful in blaming him.”

Southwell was able to establish that there was incomplete adhesion of the tire tread, Halperin said. “You can tell that things weren’t put together right in the first place by the way they came apart,” the lawyer said.

The highest offer was \$4 million, Halperin said. The lowest demand was agreement to a mediator’s suggestion for a settlement of more than \$7 million coupled with a waiver of the comp lien. That proposal was rejected by both the comp carrier and Hankook, Halperin said.

Hankook was represented by Martin A. Conn and Matthew J. Hundley of Richmond and lawyers from DLA Piper. Hundley did not respond to a request for comment.