

10/05
DUTCHESS COUNTY

DRIVER'S HASTY TURN BLAMED FOR FATAL ACCIDENT

SETTLEMENT \$1,025,000

CASE Peter A. Parent and Peter A. Parent, as Administrator of the Estate of Alice M. Parent, Decedent v. Donald A. Daus and the Count yof Dutchess, No. 1004/04

COURT JUDGE Dutchess Supreme
DATE James V. Brands
10/11/2005

PLAINTIFF ATTORNEY(S) Martin P. Rutberg, Rutberg & Associates P.C., Poughkeepsie, NY

DEFENSE ATTORNEY(S) William G. Kelly, Goldberg Segalla L.L.P., White Plains, NY (Donald Daus)
None reported (Dutchess County)

FACTS & ALLEGATIONS On June 12, 2003, plaintiff Peter Parent, 54, a retired custodian who was receiving disability benefits, was driving on Old Route 22, near its Y-shaped intersection with Cricket Hill Road, in Wingdale. Parent's wife, plaintiff's descendant Alice Parent, was a front seat passenger. As the vehicle entered the intersection its front was struck by an oncoming pickup truck that was making a left turn onto Cricket Hill Road, from Old Route 22. Mr. Parent sustained foot, hip, leg and rib injuries. Ms. Parent was killed.

Mr. Parent, acting individually and in behalf of his wife's estate, sued the other vehicle's driver, Donald Daus, and Dutchess County. He alleged that Daus was negligent in the operation of his vehicle. He also alleged that the county was negligent in its maintenance of the intersection and that its negligence created a dangerous condition.

Parent claimed that his view of the intersection was obstructed by overgrown vegetation that the county had not properly maintained. However, Parent subsequently changed counsel and his new attorney determined that the vegetation was not the proximate cause of the accident. The county moved for pretrial summary judgment, and the motion was granted. The matter proceeded to a trial against Daus.

Parent contended that Daus attempted to execute a left turn across a double yellow line.

Using data recovered from the pickup truck's sensor module, Parent's accident-reconstruction expert, Richard Hermance, determined that Daus' vehicle was traveling 39 mph and that Daus did not apply the brakes until two seconds before impact. The expert also determined that the pickup truck was traveling 32 mph at the moment of impact and that it had crossed an unbroken area of Old Route 22's double yellow line. A police-department accident-reconstruction engineer agreed that Daus had executed his turn unsafely.

Defense counsel contended that the Parents were negligent for failing to wear the lap belts with their shoulder harnesses. He also claimed that Mr. Parent, who had lost his right arm in an industrial accident, was negligent for operating a vehicle without a driving knob attached to the steering wheel. He contended Parent was unable to properly control his vehicle and avoid the accident.

Daus' accident-reconstruction expert determined that Parent was traveling 42 mph in a 40 mph zone. He opined that neither driver was visible to the other until three seconds prior to impact.

INJURIES/DAMAGES death; fracture, acetabulum; fracture, falcanus; fracture, fibula; fracture, rib; internal fixation; open reduction; osteomyelitis; zone of danger.

Ms. Parent was killed. She was survived by her husband and five children. Her estate sought recovery of damages for her wrongful death, her pre-death pain and suffering, and her funeral expenses. The plaintiff's expert economist estimated her future loss of household services at \$185,000.

Mr. Parent was placed in an ambulance and transported to Sharon [Conn.] Hospital. Doctors determined that he had sustained a fracture of his right foot's calcaneus, or heel; a fracture of his right leg's fibula; fractures of his left and right ribs; and fractures of his acetabulums—the rounded pelvic cavities that receive the heads of the femurs. His heel fracture was repaired via open reduction and internal fixation.

Parent was subsequently transferred to Hartford [Conn.] Hospital. His hospitalizations totaled 115 days. During the latter hospitalization, he underwent hardware-removal surgery and treatment of residual osteomyelitis.

Parent's treating orthopedic surgeon determined that Parent suffers a permanent 24% loss of use of his right foot. Parent sought recovery of damages for his past and future pain and suffering and his zone of damage injuries.

Defense counsel contended that Parent recovered well. He also claimed that Parent was unconscious after the collision and, as such, he contended that Parent did not prove that he witnessed his wife's death. Thus, he argued that Parent was not entitled to recovery of zone-of-danger damages. He moved to dismiss that claim, but Judge James Brands denied that motion.

RESULT During the first day of the trial, the parties agreed to a \$1,025,000 settlement. Parent's insurer agreed to contribute \$50,000 and Daus insurer agreed to contribute the remainder of the settlement.

PETER PARENT \$875,000 future pain and suffering
ALICE PARENT (ESTATE) \$150,000 future lost household services

INSURER(S) One Beacon Insurance Group for Dause
Government Employees Ins. Co. for Alice Parent (estate)

PLAINTIFF EXPERT(S) Rob Frein, photographic analysis, Glen Head, NY
Richard Hermance, accident investigation & reconstruction/failure analysis/products liability, Tillson, NY
Andrew Weintraub, Ph.D., economic analysis, Rhinebeck, NY

DEFENSE EXPERT(S) Donald Eisentraut, P.E., accident reconstruction, Penns Park, PA
Alexander Litwornia, highway/street, Medford, NJ

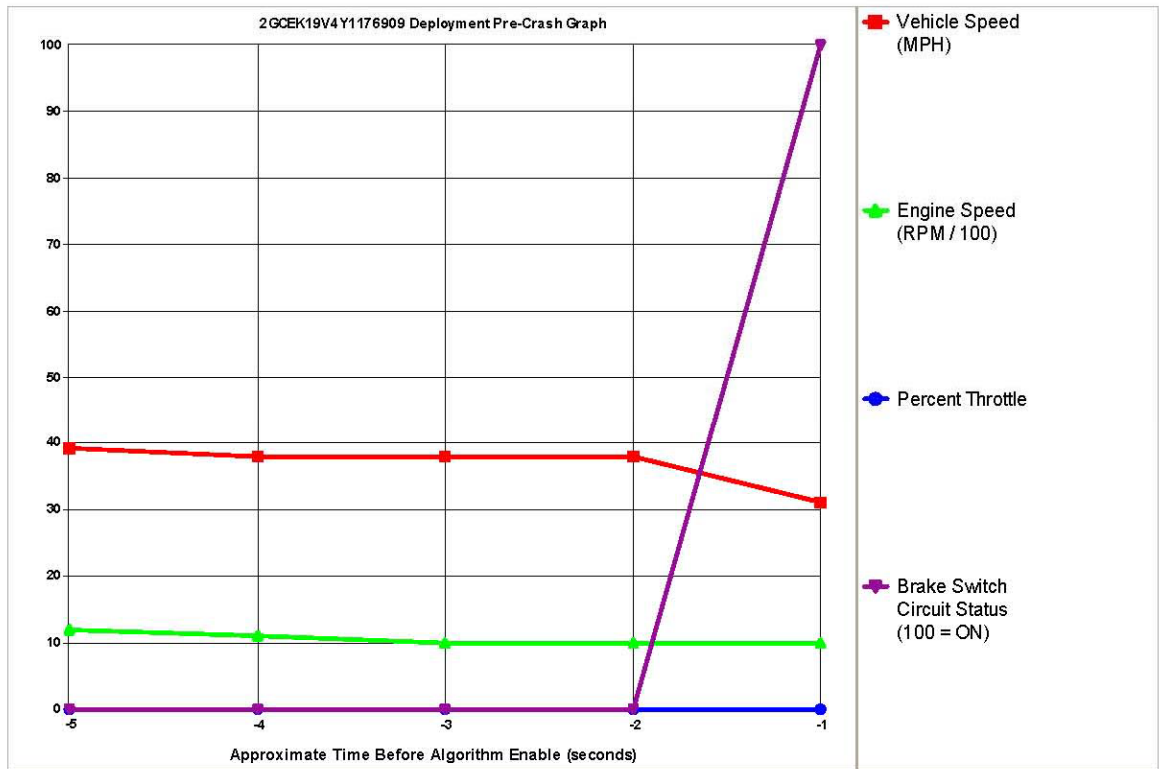
EDITOR'S NOTE Dutchess County's counsel was not asked to contribute to this report

-Peter Hayes

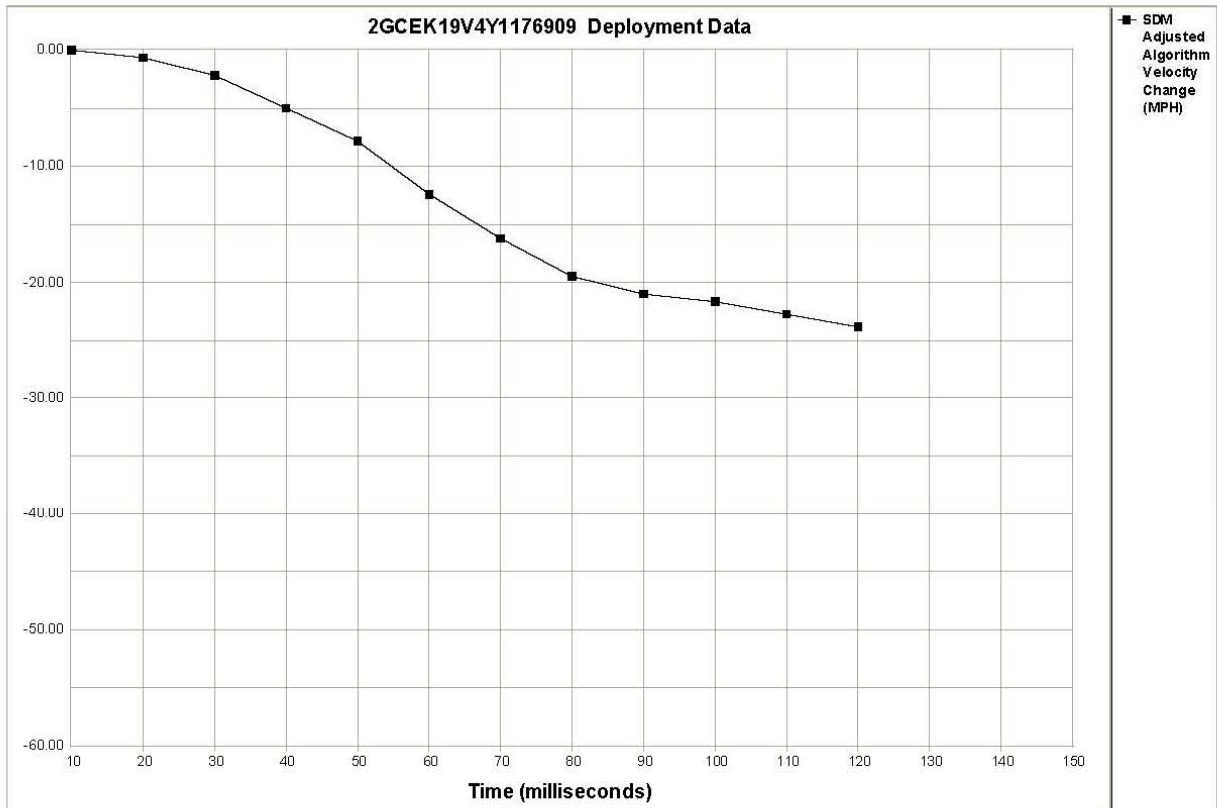


System Status At Deployment

SIR Warning Lamp Status	OFF
Driver's Belt Switch Circuit Status	BUCKLED
Passenger Front Air Bag Suppression Switch Circuit Status	Air Bag Suppressed
Ignition Cycles At Deployment	7821
Time Between Non-Deployment And Deployment Events (sec)	N/A



Seconds Before AE	Vehicle Speed (MPH)	Engine Speed (RPM)	Percent Throttle	Brake Switch Circuit Status
-5	39	1152	0	OFF
-4	38	1088	0	OFF
-3	38	1024	0	OFF
-2	38	1024	0	OFF
-1	31	960	0	ON



Time (milliseconds)	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150
Adjusted Algorithm Velocity Change	0.00	-0.61	-2.15	-5.00	-7.86	-12.46	-16.20	-19.49	-21.02	-21.68	-22.78	-23.88	N/A	N/A	N/A

CDR File Information

Vehicle Identification Number	2GCEK19V4Y1176909
Investigator	R. Hermance & Dr. Rowe
Case Number	Parent
Investigation Date	6/26/03
Crash Date	
Filename	PARENT.CDR
Saved on	6/26/2003 11:05:09 AM
Data check information	92D824AF
Collected with CDR version	Crash Data Retrieval Tool 1.200
Collecting program verification number	948D3C51
Reported with CDR version	Crash Data Retrieval Tool 2.30
Reporting program verification number	55862557
Interface used to collected data	Block number: 00 Interface version: 18 Date: 03-22-01 Checksum: 8700
Event(s) recovered	Deployment