

## **MANUFACTURER AND SELLER OF GARAGE DOOR OPENER SETTLE WITH FAMILY OF CHILD CRUSHED BY GARAGE DOOR.**

*Martin v. Automatic Doorman, Inc.*, Ill., Cook County Cir. Ct., No. 91 L 19225, May 5, 1994.

On September 15, 1991, 4-year-old Martin went into the garage of his home to get his bicycle. He was later found by a family member underneath the garage door, which was pushing down on him. Although paramedics found no initial signs of life, Martin was resuscitated. He suffered oxygen deprivation resulting in brain damage. He lives in a permanent vegetative state and requires 24-hour care.

Martin's parents contacted ATLA members Neal C. Zazove and Jeffrey W. Brend, of Chicago, Illinois, to represent the family in a suit against the manufacturer of the Model 455 door operator, Automatic Doorman, Inc., and the seller, Door Systems, Inc.

Shortly after the accident and before filing suit, Zazove and Brend hired Michael Dillich, an engineering expert from Lincolnwood, Illinois, to inspect the operator. Counsel conducted the inspection to prevent defendants from later raising the defense that the product had been tampered with after the accident. Counsel requested that Automatic Doorman and Door Systems attend. Counsel also invited representatives of the Consumer Product Safety Commission (CPSC) to alert them to the danger. The inspection revealed that the operator traveler, a device that raises and lowers the garage door by sliding along a T-rail, had been installed backward. As a result, the operator sensed the door was going up when it was actually going down, and the reversing safety device was inoperative.

CPSC representatives conducted a simulation by placing a child's rag doll under the garage door. It failed to reverse, and the doll was crushed. Dillich measured the amount of pressure exerted by the operator at approximately 310 lbs. He found that for less than a penny, the operator could have been made to prevent backward installation of the traveler.

Plaintiffs filed suit under a strict liability theory. Suit alleged the operator was defective in that it lacked (1) a device that reversed 30 seconds after activation if the garage door did not fully close and (2) a redundant safety device to back up the primary one in violation of Underwriters Laboratories (UL) Standard 325. Moreover, plaintiffs claimed the operator should have been manufactured to

prevent the traveler from being installed backward.

Suit against the seller alleged strict liability and that it had negligently installed the operator traveler backward.

Among other claims, plaintiffs sought damages for loss of their son's society and companionship. Defendants moved to dismiss based on *Dralle v. Ruder*, 529 N.E.2d 209 (Ill. 1988), which held a parent could not recover loss of society for a child's nonfatal injury. In response, Zazove and Brend argued plaintiffs had lost their relationship with Martin because he was in a permanent vegetative state similar to death. The court denied the motion.

During discovery, Zazove and Brend learned that in 1981, UL revised its safety standard for garage door operators to require a 30-second reversing device and a redundant safety device. That same year, UL notified Automatic Doorman that its Model 455 operator did not comply with the revised standard. The company requested the model be de-listed with UL and submitted a new one. However, defendant allegedly continued to sell Model 455 in states not requiring UL approval.

Counsel also discovered that in 1983, Automatic Doorman had been named in a New Jersey lawsuit involving the death of a young boy due to a Model 455 operator. That case resulted in a substantial settlement.

Armed with this information, counsel felt well-equipped for trial. Shortly after, the parties structured a settlement with a present value of \$6 million. Automatic Doorman contributed \$1.8 million, and Door Systems, \$4.2 million. Martin received about \$4.1 million; his parents, about \$1.4 million; and his brother, about \$478,200.

As part of the settlement, a special needs trust was set up for constructing a family home designed for the needs of the profoundly handicapped child; a van for transportation; and nursing care, training programs, therapy, and counseling.

The case is significant, Zazove said, because an Illinois court finally recognized the loss of society by family members where injuries are so devastatingly severe as to permanently alter the familial relationship.

[*Comment.* In 1990, ATLA urged the CPSC to upgrade the standards for automated garage-door-opening devices. The agency later changed the standards to require that the devices (1) reverse within two seconds of contacting a one-inch-high object and (2) open if the bottom limit switch is not activated within 30 seconds after the control is pressed.]

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