

#6 PRODUCTS LIABILITY

\$15,807,875

HOWRY BREEN & HERMAN, LLP

NESTER v. TEXTRON, INC. D/B/A E-Z-GO

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PRODUCTS LIABILITY

Design Defect Motor Vehicle Single Vehicle Motor Vehicle Pedestrian Animals Products Liability
 Marketing Defect Products Liability Failure to Warn Products Liability Strict Liability Products Liability
 Sudden Acceleration

Utility vehicle on ranch ran over woman, resulting in paralysis

Verdict \$15,807,875

Actual \$7,903,938

Case Virginia Nester and Robert Scott Nester, individually and as next friend of C.N. and S.N., minors v. Textron, Inc., d/b/a E-Z-GO, and United Rentals, Inc., f/k/a RSC Holdings Inc., d/b/a RSC Equipment Rental, f/k/a Rental Service Corporation U.S.A., Inc., f/k/a RSC Center, Inc., No. 1:13-cv-00920-RP

Court United States District Court, **Western District**, Austin, TX

Judge Robert Pitman

Date 3/31/2016

Plaintiff

Attorney(s) Sean E. Breen (lead), Howry, Breen & Herman, Austin, TX

James Hatchitt, Howry, Breen & Herman, Austin, TX

Glen M. Wilkerson, Howry, Breen & Herman, Austin, TX

Defense

Attorney(s) Dale G. Markland (lead), Markland Hanley, Dallas, TX (Textron Inc.)

Brittan L. Buchanan, Buchanan DiMasi Dancy & Grabouski, Austin, TX (Textron Inc.)

Michael Choyke, Wright & Close, Houston, TX (Textron Inc.)

Tara Hanley, Markland Hanley, Dallas, TX (Textron Inc.)

Delwin E. Hervey, Markland Hanley, Dallas, TX (Textron Inc.)

Facts & Allegations On Dec. 5, 2011, plaintiff Virginia Nester, 52, a part-time teacher and interpreter at a residential school for deaf children, was at her family's ranch in Buda. She had placed a bag of cattle feed on the floorboard of a 2001 E-Z-GO Workhorse ST350 vehicle and, after setting the parking brake, had stepped out of the vehicle to open a gate. Cattle were attracted to the bag and tipped it over onto the accelerator, which released the parking brake and caused the vehicle to accelerate forward. The vehicle ran over Nester and caused severe injuries, resulting in quadriplegia.

The Workhorse ST350, a gas-powered utility vehicle with a dump bed on the back, built on a golf cart platform, was designed and manufactured by the E-Z-GO division of Textron Inc. It had a maximum speed rating of 15 mph and weighed about 1,050 pounds. Nester and her husband, plaintiff Robert Scott Nester, had purchased the used vehicle in 2005 in San Marcos, from Rental Service Corp. USA Inc., later known as United Rentals Inc.

The vehicle's "kick-off" brake system, which is also found on E-Z-GO golf carts, enabled the parking brake to be released by pressing the accelerator. One could also release it by pressing the main part of the service brake pedal, which was the method recommended in the owner's manual.

Nester and her family sued Textron and United Rentals on theories of products liability, alleging design defect and marketing defect. United Rentals settled for a confidential amount in July 2015.

The plaintiffs alleged that the design too easily permitted the vehicle to start and move unintentionally and without an operator present. In an effort to expand into new markets, Textron took the basic design of a golf cart and, without any analysis of the probable new applications and new users, added a dump bed, knobby tires and a front-mounted brush guard and began selling it, according to the plaintiffs. Whereas a kick-off brake system may be useful for golfers, it had no utility in the new farm-and-ranch segment in which the Workhorse was being sold, the plaintiffs argued.

Further, the farm and ranch users were not nearly as familiar with the kick-off brake system's operation as golfers, so they were not on guard against its potential for problems. Moreover, the plaintiffs argued, Textron was aware of the danger of unintended acceleration posed by the design, since it warned about the danger in the owner's manual. Instead of designing out the danger, Textron chose to warn against it by instructing users to turn the key "off" when leaving the vehicle, the plaintiffs claimed. According to plaintiffs' counsel, E-Z-GO's executives and employees acknowledged they were aware that users, and even they themselves, rarely turned the key "off" when leaving a golf cart or Workhorse. In short, Textron's "solution" to the dangerous design was a warning that Textron knew no one ever followed, plaintiffs' counsel argued. According to defense counsel, the testimony on which plaintiffs' counsel relied was conflicting.