

# THE RETROSPECTIVE ROLL BAR

In a sense, owning a collector car involves a tradeoff. On one hand, you are acknowledging and preserving the style, beauty, and nostalgia-inducing nature of a classic automotive design. On the other hand, you are capturing a moment along the technological spectrum, at a point before some innovations (for example, anti-lock brakes) were developed or widely used. This is a choice the collector makes when he or she commits himself/herself to total authenticity and accuracy.

But what happens if one suffers an injury that could likely have been prevented if the vehicle's manufacturer had taken steps to incorporate a later innovation? Is there a duty for manufacturers to "retrofit" or at least warn of such developments — even though given the technology at the time the vehicle was not dangerous or defective when built?

This interesting question was recently raised in the case of *Romero v. International Harvester Company*, which, although it involved a farm tractor, has implications for all older vehicles.

Farm worker Reidecel Romero was killed on June 29, 1988 when the 1963 International Harvester tractor on which he was sitting rolled over. His widow, Doris Romero, sued International Harvester and its current embodiment, Navistar International Transportation Corporation (I will collectively refer to both as "Navistar"), under the Colorado Wrongful Death Statute. Romero claimed (and Navistar did not dispute) that a roll bar or Roll Over Protective Structure ("ROPS") on the vehicle would likely have prevented Reidecel's death. Romero argued that Navistar was negligent and/or strictly liable (that is, regardless of fault) for (1) failing to design the tractor with a roll bar or ROPS; (2) failing to see that the tractor was retrofitted with a ROPS at some point after it was first sold; and (3) failing to warn tractor

users of the dangers of use without a roll bar or ROPS.

It was undisputed that, when the tractor was manufactured and sold in 1963, it met all applicable governmental standards. Navistar and the John Deere Company began developing a ROPS system in the early 1960s. Deere introduced an optional ROPS for farm tractors in 1966, and Navistar did in 1967. Although in the 1970s and '80s industry and governmental organizations began requiring installation of ROPS on new tractors, *no regulation or industry standard ever required that older vehicles be retrofitted* with a roll bar or ROPS.

Navistar therefore made motions for summary judgment and for a directed verdict, which the court denied. The case went to a jury, which found for Navistar on some issues, including that the tractor was not defective when manufactured. However, it found for Romero on the claim of negligent "failure to exercise reasonable care to see that the tractor was retrofitted with a protective roll guard."

Navistar then made a motion for a judgment notwithstanding the verdict or, alternatively, for a new trial. The court denied the motion. Navistar appealed.

On November 18, 1992, the United States Court of Appeals for the Tenth Circuit reversed the trial court and directed judgment for Navistar.

The Court of Appeals began its analysis by noting that, under Colorado law, a manufacturer *does* have a duty to remedy or at least warn about product *defects* which are *known* at the time of manufacture and sale. Moreover, a manufacturer has also a duty to remedy or warn about such existing defects which, although unknown or unappreciated at the time of sale, *are later dis-*

*covered* by the manufacturer.

However, the court found no authority for a duty on manufacturers to retrofit a product which was *not* defective under standards existing at the time of manufacture and sale. This was true even if the product could later have been made safer by a subsequently-developed safety device or design improvement.

Thus, the Court of Appeals ruled that, under Colorado law, a manufacturer has no duty to notify previous purchasers of its products about later-developed safety devices, or to retrofit those products if the products were non-defective under standards existing at the time of manufacture and sale.

The court noted that virtually all jurisdictions which have examined this question have come to the same conclusion. (One Texas helicopter case arguably taking a different view has been criticized and may have turned on the somewhat-unique facts of that case.) Thus, the court concluded that Navistar could only be liable if the tractor had been defective as originally manufactured, under standards applicable at the time. Since the jury had found it had *not* been defective, the court ruled for Navistar.



Francis Bacon nearly 400 years ago wrote that "time is the greatest innovator." But, in a sense, both car collectors and the court in the *Romero* case (in the situation before it) have decided that, for a particular vehicle, time — and innovation — will stand still.

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