

Problem 8A.

Complaint: Susan Romano v. Caterpillar Inc., and Hart Construction, Inc.
Negligent design and product liability

Complaint: Susan Romano is a Bedford, Indiana, bulldozer operator hired by Hart Construction Company of Detroit to work on the construction of I-69. On June 22, 2015, she was injured while operating a 2009 CAT D6T Dozer manufactured by Caterpillar Inc. of Peoria, IL and owned by Hart. She has sued Caterpillar and Hart in the U.S. District Court for the Southern District of Indiana for \$1.5 million dollars for personal injury and lost income based on diversity of citizenship, on the theories of negligently design, strict products liability, and negligent maintenance. On June 22, 2015, while working on the construction of a new bridge for I-69, the bulldozer's blade hit a concrete footer that had been recently poured to support the steel frame of the new bridge, causing the bulldozer to slide sideways down a hill. The Bulldozer overturned, the protective frame collapsed, and Romano was seriously injured. She claims that the design of the bulldozer placed the operator's cabin too far back and too low for an woman of average height to see what was directly in front of the blade, and that this defect is responsible for her not seeing the bridge footing, which projected only a few inches above grade. Romano is 5 feet 6 inches tall.

Romano's Answer: Caterpillar denies liability and asserts that either Romano's own negligent operation or Hart's negligent maintenance of the bulldozer was the cause of her injuries.

Hart Constructions' Answer: Hart denies responsibility for maintenance and says that the Detroit Caterpillar dealer handles all maintenance and repairs.

PART ONE:

At trial, Romano offers evidence that the bulldozer had originally been supplied with outside mirrors that helped the operator see the ground in front of the machine. At some point, those mirrors had been knocked off, and they were not in place at the time of the accident. A former employee of Hart Construction is available to testify that shortly after Romano's accident, at the request of a field supervisor, he repaired or replaced the mirrors on all the company's bulldozers.

Think about the arguments for and against the admissibility of this evidence.

PART TWO:

Romano hired an expert in heavy equipment design and manufacture who said in his report (see Fed. R. Civ. P. 26) that he was familiar with all Caterpillar heavy equipment and that this line of bulldozers had a serious design flaw because the cab was placed low and toward the back of the bulldozer, making it difficult for a anyone under 5'8" to see the ground directly in front. He said that this was an old design based on the assumption that bulldozer operators were male and that

heavy equipment manufacturers had been redesigning their heavy equipment over the past 15 years to move the cab higher and more forward, and to give the operator greater visibility, to better accommodate female operators. Indeed, Caterpillar itself in 2011 had redesigned its CAT M-series loaders, which are similar to bulldozers, to move the cab location.

Think about the arguments for and against the admissibility of the expert's testimony.

PART THREE

Assume the judge excluded the testimony. At trial, Caterpillar calls its own expert, the head of its design engineering department. He testifies that:

- 1 Because of the kinds of loads bulldozers push and the weight of material that it can carry in its blade, it needed a low center of gravity, and it was not scientifically feasible to move the cab higher and forward without making the bulldozer unstable.
- 2 The engineering required to move the cab forward and higher would make the cost of the bulldozer prohibitively expensive so that it would be priced at least \$10,000 more than comparative models from Komatsu and Liebherr.

Romano wants to call his design expert in rebuttal. Think about the arguments for and against the admissibility of the evidence.

PART FOUR

Romano will testify that shortly after the accident, Hart Construction's project leader for the Arlington Road bridge came to see Romano in the hospital. He said he was really sorry and assured her that Hart Construction would pay all her medical bills and would keep her on the payroll while she was in the hospital, and he'd talk to their insurers about getting her some extra compensation as well. He said he used to operate a bulldozer and never liked the Caterpillars because the cab was so far back.

Think about the arguments for and against the admissibility of this testimony.

PART FIVE

At trial, Caterpillar calls a product design expert, who testifies that the CAT D6T was well designed, well balanced, and had a seat adjustment that would have enabled Romano to see just fine if she had used it to raise the seat. On cross-examination, Romano's attorney asks only one question:

Q: Isn't it true that you are being paid by the Allstate Commercial Liability Insurance Co., which will have to foot the bill for damages if Caterpillar is found liable?

Think about the arguments for and against the admissibility of the answer.