



# Dorel Conceals Dangers of Forward-Facing Car Seats

BY DIANE M. ZHANG

In May 2013, Nicole and Cameron Hinson were driving with their 20-month-old son, Cayden, near Big Sandy, Texas, when another driver crossed the centerline and hit their vehicle head-on.

Nicole and Cameron suffered non-life-threatening injuries, but Cayden, who was in a Dorel Safety 1st Summit forward-facing car seat behind the front-passenger seat, was paralyzed. Doctors do not expect Cayden to walk on his own again.

The Hinsons sued Dorel, alleging that it failed to warn consumers of the dangers associated with placing children under two in forward-facing car seats. Because young children have larger heads in proportion to their bodies and their vertebrae are connected by cartilage, not ossified bone, their spines are more prone to serious injury. Rear-facing seats are designed to counteract this vulnerability during a crash by diffusing the impact along the seat's frame and protecting the child's head and spine.

Young toddlers in forward-facing car seats often suffer the same injuries in a head-on collision that Cayden did: The impact violently jerks a child's head and shoulders forward while the waist and pelvic region are restrained by the car seat—a force that a young toddler's



### Hinson v. Dorel Juvenile Grp., Inc.

No. 2:15-cv-00713  
(E.D. Tex. June 17, 2016)

immature spine cannot withstand.

Although the American Academy of Pediatrics' (AAP) guidelines originally stated that children should be 20 pounds and at least one year old before switching to a forward-facing car seat, recent studies have shown that children under two are still at increased risk of spine injuries. To reflect the new research, the AAP updated its guidelines in 2011: Children should be *at least* two years old before riding in a forward-facing position.

Although Dorel designed its Safety 1st Summit car seat before the guidelines

changed, it continued to sell and market it to children under two (but older than one) after 2011. In 2012, Hinson bought the car seat for Cayden when he was 13 months old.

The plaintiff asserted that Dorel failed to warn consumers that its car seat was associated with a greater risk of spine or brain injury. But Dorel maintained at trial that its car seat was safe for a child Cayden's age, despite the AAP's 2011 guidelines that it categorically was not.

The Hinsons' attorney, Jeff Embry of Dallas, knew that the case presented significant obstacles. He knew that Dorel would attempt to pin fault entirely on the driver who hit the Hinsons' car. And nobody had successfully pursued a failure-to-warn theory against a car seat manufacturer.

Because this was a novel claim, Embry said the company did not take it seriously. "They didn't make an effort to settle the case," Embry recalled. "They didn't think much of it because they'd never lost on the issue."

During trial, Embry focused on the nature of the Hinsons' injuries. Nicole and Cameron left the hospital after a few days. It was Cayden—the most vulnerable occupant—who suffered devastating injuries while sitting in a car seat supposedly designed to protect him.

devastating injuries while sitting in a car seat supposedly designed to protect him.

Embry focused on the fact that Dorel knew the car seat was not safe for toddlers under two, yet purposefully did not warn consumers. He showed the jurors an email that Dorel's vice president of testing had sent to his daughter. The subject line was "Father Knows Best," and the email contained a link to a 2011 *New York Times* article announcing the AAP's revised guideline about children staying in a rear-facing position until at least two. The company's executive warned his daughter about the danger but not the consumers who depended on Dorel to protect their children.

"When somebody's telling something to his own daughter, you know that's what he really believes," Embry said. "He's doing all this while, internally, Dorel is figuring out what to do about its warnings. And the company decided that because it had already made the car seat and was selling it, they weren't going to change the warning on older seats. But they were selling a car seat that was made in March 2012—when, two years earlier, the company was saying internally that children of that age are at risk of serious spinal or brain injury when using that seat."

Dorel knew that those internal communications would surface at trial, so it hired an expert to testify that new research showed forward-facing car seats were just as safe. "This was bizarre because it was totally contradictory to not only what Dorel said, but to what the entire industry said," Embry noted.

The strategy backfired, and Embry was able to debunk that theory. "When we cross-examined her, we asked, 'When did you provide these groundbreaking results to Dorel?' The expert answered, 'Oh, it would have been in February.' Now, the trial's in June. She confirmed that she provided the

research results to the highest level of the company—vice presidents, their lawyers—and that she had an opportunity to explain it to them."

While the expert was still on the stand, Embry's team pulled up the "Frequently Asked Questions" page of Dorel's website on a laptop. They asked her to read aloud one of the questions—*When should I change my child to forward-facing?*—as well as the answer. The answer she read was markedly different from her previous testimony.

"They were still saying you should keep your child rear-facing as long as possible, but at least until age two," Embry said. "They're telling parents what they've always told them. And this is live in the courtroom, not a pdf of something we captured previously. It showed that this expert's testimony was

manufactured to try to win a lawsuit—and that it wasn't what the company really believed. Showing that live while the expert was on the stand was the easiest way to demonstrate this to the jurors."

The jury returned a verdict of \$34 million, including \$10 million in punitive damages. Cayden's injuries will affect him for the rest of his life, and the verdict will help the Hinsons give him the round-the-clock care he needs.

"He's their only child, and they were young when he was born," Embry said. "Nicole had intentions of finishing college and beginning her career, but her life is now catheter treatments every three hours and constant therapy appointments. As a result of the verdict, the parents are going to be able to get some help in caring for Cayden—and the situation will get better." ■

## The Lawyers' Computer Games

# BE AN EVIDENCE EXPERT! Guaranteed!

The Lawyers' Computer Games

## 20 Years & Running! Best Lawyer Videogame: **OBJECTION!**



The Lawyers' Computer Games

All games include the book *Is it Admissible?*  
Hyperlinked on CD-ROM  
By author Ashley S. Lipson,

**"It's addictive and thrilling..."**  
- Steve Irvin, INFO WORLD

**"A wonderful computer videogame for lawyers"**  
- John Tredennick, Jr., Chairman, ABA USER'S GROUP

**"...challenging and fun... Objection! teaches the player to make objections quickly."**  
- Kurt Copenhagen, HARVARD LAW RECORD

**"...cerebral, realistic and intense."**  
- Jasper Sylvester, COMPUTER GAMING WORLD

**"It is rare that one gets to study the rules of evidence and enjoy oneself at the same time"**  
- Joshua Kaufman, WASHINGTON LAWYER MAGAZINE

### Have Fun and Earn CLE Credits!

To order today-call 310-246-9900 ext 202  
Fax: 310-246-9900

Objection!.....	\$129
Civil Objection!! AutoNeg.....	\$129
Civil Objection!! SlipFall.....	\$129
Expert Witness!.....	\$129
SivPro!.....	\$129
Objection!! Audio tapes (3 hours)....	\$49
All 5 games together.....	only \$399

CLE credits vary by state, call for more info.  
Shipping & Handling is \$10.00 per order.



429 N. Oakhurst Dr. Suite 103, Beverly Hills, CA 90210

<http://www.objection.com>

## The Lawyers' Computer Games

Trial || March 2017 57