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Orange County jury awards \$26M to paralyzed plaintiff in Yamaha rollover case

The case involved a Utah man paralyzed when his Yamaha off-road vehicle overturned at Little Sahara Recreation Area.

By Douglas Saunders

Daily Journal Staff Writer

An Orange County jury awarded \$26.3 million to a Utah man left paralyzed after a Yamaha off road vehicle overturned, finding the vehicle's rollover protection system defectively designed and Yamaha negligent in failing to recall the model.

Plaintiff Justin C. Van Tussenbrook sustained spinal cord injuries on Aug. 30, 2020, at Utah's Little Sahara Recreation Area when the YXZ-1000R's rollover protection system collapsed, leaving "the occupant survival space almost completely compromised," according to the jury's special verdict form. *Van Tussenbrook v. Yamaha et al.*, 30-2022-01273750-CU-PL-CJC (Orange Cty. Super. Ct., filed Aug. 3, 2022).

He was represented by Richard H. Schoenberger and Andrew P. McDevitt of Walkup, Melodia, Kelly & Schoenberger, and Larry E. Cook of Casper, Meadows, Schwartz & Cook. Judge Gassia Apkarian presided over the case.

"Our client was the fifth person to file a lawsuit after suffering par-



Andrew P. McDevitt

alyzing injuries during a forward rollover of this machine," McDevitt said. "In each instance, the roll over protective structure failed. A sixth incident occurred after this case. It's only a matter of time before it happens again."

McDevitt traced the litigation back to Yamaha's earlier Rhino model, a side-by-side utility vehicle that drew numerous rollover lawsuits involving amputations and fatal head injuries. The YXZ1000R, marketed as



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a "pure sport" successor, emphasized speed and performance.

Van Tussenbrook and his uncle were traveling 5-8 mph when the accident occurred, testimony showed. The case was originally filed in Los Angeles County before being transferred to Orange County at Yamaha's request. *Van Tussenbrook v. Yamaha et al.*, 21STCV10804 (L.A. Super. Ct., filed Mar. 19, 2021).

Jurors found the 2016 YXZ "failed to perform as safely as an ordinary

consumer would have expected when used or misused in an intended or reasonably foreseeable way." They further concluded the design's risks outweighed its benefits and that Yamaha failed to recall or retrofit the vehicle after learning of defects.

The jury apportioned 75% liability to Yamaha and 25% to co-occupant Layne Holdaway. Compensatory damages included \$9 million for future noneconomic loss, \$2.2 million for future lost earnings, \$2 million for past noneconomic loss, \$1.3 million for future medical expenses, \$652,366 for past medical expenses, and \$190,000 for past lost earnings.

Jurors declined punitive damages, finding Yamaha did not act with malice.

"This is the second client our firm has represented who was paralyzed in this machine under identical circumstances," McDevitt said. "Our client wanted to go to trial to get this information public, hoping to prompt change so fewer people suffer needless paralysis."

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