

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 31, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3696

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CORY A. EMMERICH,

PLAINTIFF-APPELLANT,

V.

**AMERICAN HONDA MOTOR COMPANY, INC. AND HONDA
MOTOR COMPANY, LTD.,**

DEFENDANTS-RESPONDENTS,

**HONDA RESEARCH AND DEVELOPMENT CO., LTD.,
HONDA RESEARCH OF AMERICA, INC. AND EMPLOYERS
HEALTH INSURANCE COMPANY,**

DEFENDANTS.

APPEAL from a judgment of the circuit court for Taylor County:
DOUGLAS T. FOX, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Cory Emmerich appeals a judgment dismissing his product liability and negligence action against American Honda Motor Company, Inc. and Honda Motor Company, Ltd. The jury found that Honda was negligent in the design of the Honda Civic but that its negligence did not cause or enhance Emmerich's injuries when Emmerich's car was struck broadside by a Chevrolet Blazer. Emmerich argues that the evidence does not support the jury's finding on causation. He also argues that the trial court improperly exercised its discretion when it allowed the jury to see a videotape of a side impact accident between a GMC pickup truck and a Nissan Sentra and when it allowed Honda's expert witnesses to demonstrate their account of the accident by use of a computer animation. We reject these arguments and affirm the judgment.

Honda presented sufficient evidence to support the jury's finding that its negligence did not cause or enhance Emmerich's injuries. This court must sustain the jury's finding if there is any credible evidence to support the verdict. *See Fehring v. Republic Inc. Co.*, 118 Wis.2d 299, 305, 347 N.W.2d 595, 598 (1984), *overruled on other grounds*, 200 Wis.2d 559, 547 N.W.2d 592 (1996). Honda's expert witnesses testified that Emmerich would have sustained the same injuries even if the Civic's side structure had been more sturdy, the roof rail had been padded, the seat belt allowed less slack and the driver's side window had been made of laminated glass. The Blazer's hood stands about the same height as the Civic's windowsill. Honda's witnesses testified that the Blazer struck the Civic's door above the center of gravity causing the Blazer's hood to ride even higher on the Civic's window region. The Blazer's hood filled the Civic's window opening. As a result, Emmerich's head struck the Blazer's hood causing his head injury. Relying on Honda's experts' testimony, the jury could reasonably find that Emmerich's injuries would have occurred when any small car was struck

broadside by a much larger vehicle, regardless of whether the smaller car was negligently constructed.

The trial court properly exercised its discretion when it allowed Honda to show the jury a videotape demonstrating the effects of a side impact collision between a pickup truck and a Nissan Sentra. This court must sustain the trial court's discretionary decisions if there is a reasonable basis for the trial court's rulings. See *Ritt v. Dental Care Assoc.*, 199 Wis.2d 48, 72, 543 N.W.2d 852, 861 (Ct. App. 1995). Emmerich argues that the videotape was inadmissible under *Maskrey v. Volkswagenwerk Aktiengesellschaft*, 125 Wis.2d 145, 165, 370 N.W.2d 815, 825 (Ct. App. 1985). *Maskrey* holds that a videotape used to replicate the conditions of a case must be substantially similar to the facts of the case. In this case, however, the videotape does not purport to simulate the circumstances of the accident. It was merely used to demonstrate the general principles of side impact collisions and the jury was repeatedly reminded of its limited use. Although the pickup truck was somewhat larger than the Blazer, the Nissan was larger than the Civic, the crash dummy was not Emmerich's size and the angle of impact may not have been identical, the crash test appropriately demonstrated the effects of a broadside collision between a larger and a smaller vehicle. In light of the videotape's restricted use at trial, the court properly concluded that it did not violate the *Maskrey* rule and posed no danger of confusing or misleading the jury.

The trial court also properly allowed Honda's expert witnesses to demonstrate their conclusions by use of a computer animation. Emmerich contends that the animation was prejudicial and misleading to the jury. Evidence is unfairly prejudicial if it has a tendency to influence the outcome of a jury trial by improper means or otherwise causes a jury to base its decision on something

other than the established propositions of the case. *Lease Am. Corp. v. Insurance Co. of N. Am.*, 88 Wis.2d 395, 401, 276 N.W.2d 767, 770 (1979). On direct and cross-examination, Honda's experts made it clear that the animation was nothing more than a visual depiction of their opinions. The trial court limited the number of times Honda could show the animation to avoid highlighting this exhibit. It precluded Honda from characterizing the animation in such a way that the opinions it illustrated would have been given an aura of scientific reliability. Honda never suggested that the animation was anything other than what it purported to be, "a depiction in animated form of various of the experts' opinions."

Finally, Emmerich contends that the computer simulation should not have been admitted because his counsel received it less than a week before trial. Emmerich cites no statute, rule or order that required Honda to disclose its exhibits before trial. Emmerich was informed a month before trial that Honda intended to prepare a computer animation. Emmerich used the animation during his case-in-chief and thoroughly cross-examined Honda's experts regarding their opinions that led to the animation and vigorously attacked the reliability and accuracy of the exhibit. The trial court properly exercised its discretion when it found no unfair prejudice and no basis for excluding the animation.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

