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Lawyer Pioneers 'Sudden Acceleration' Claims

Focuses On Facts, Law, Moral Basis

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PRACTICE PROFILE

In 1971, Thomas J. Murray became the first lawyer to use videotaped depositions and evidence in court. He was the nationally recognized pioneer in what is now accepted in all 50 states.

Today, the Sandusky personal injury practitioner is pioneering something else. He is now perhaps best known for his breakthrough in "sudden acceleration" claims against automobile companies.

Murray's interest in this area began when he was asked by another attorney to look at a sudden-acceleration case. He was intrigued with the subject matter and decided to go for it, knowing that no attorney had yet breached the automobile companies' defenses.

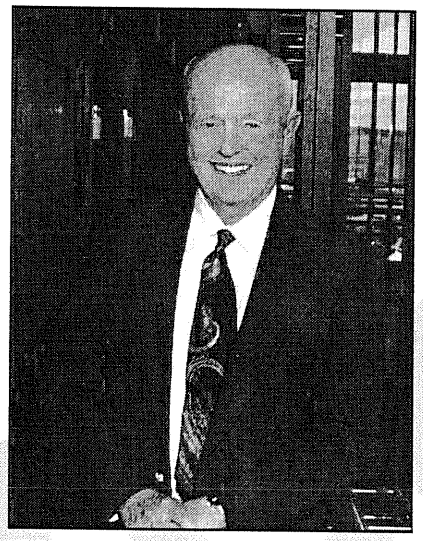
Murray told Lawyers Weekly that while these cases may not compare to the number of people affected in cigarette litigation, sudden acceleration is nevertheless a major story.

"In terms of the horrors and capacity for sudden death and harm, there's been nothing like this," Murray noted. "I would argue that sudden acceleration represents the most deadly and dangerous defect in the design of automobiles."

Murray attributes his success to a strong foundation in critical analysis and logic. The Boston College economics major also graduated with minors in philosophy, theology and literature.

While at the University of Virginia School of Law, Murray sought out more than the standard information, noting, for example, that learning about contract law was the easy part. Courses in legal philosophy were his favorite and have greatly impacted how he practices today.

"I pursue justice in the minute particulars," Murray said, noting that injustice is often the result of generality. "You see it everywhere. Look around, it's your world. I've seen this in many lawyers."



THOMAS J. MURRAY
Nothing like these cases before

Murray said those little particulars are what a case is all about — starting with the facts.

"Once you get it right, once you know what happened and find out what the facts are, it's fairly easy to find the law to support your claim, assuming those facts indicate there was a legal wrong," he explained. "Now you have to think of a simple way of telling the story that arises out of the facts and the law in a way that gives your story a moral foundation that will appeal to the conscience of judges and people sitting on a jury."

Q. *When and where did sudden acceleration cases arise?*

A. The car companies recognized in the 1960s and 70s that the age of electronics offered tremendous advantages. It was going to be an era of great innovation in the design of automobiles. The costs of putting a car on the road could be reduced, various functional and convenient components could be added to cars, and so forth. The companies also understood that the advent of the integrated circuit was absolutely critical.

But they made a fundamental mistake. In the late 70s and 80s when all of the car companies were rushing to get electronic cruise control into the market, they assumed that if they designed a system operated by an integrated circuit, the system they designed would be adequate for the foreseeable future.

In fact, what happened was that the number of components in vehicles began to increase exponentially. That meant there was an exponential increase in the number of electronic components. As the number of these devices increased, so did the interactions in these various components that would cause electromagnetic interference.

With electromagnetic interference came the potential for interference with the functioning of the most potentially dangerous system ever put in an automobile and its automatic throttle control. We call it cruise control, but Ford originally called it speed control. It's really more accurately called automatic throttle control. There had never been anything like automatic throttle control before.

As the number of components kept increasing, Ford and other car companies didn't adapt to what had been a fairly simple system with a definitive number of interactions that could cause failure. These interactions went from a couple thousand up to a billion or more. When that happened with the more complex systems, you had an astonishing increase in the number of cars that were just taking off on their own because of a failure in the automatic throttle control electronics.

"I would argue that sudden acceleration represents the most deadly and dangerous defect in the design of automobiles."

— Sandusky attorney Thomas J. Murray

Q. *Why did you start handling these cases?*

A. When I looked into a sudden acceleration file for the first time, I looked at the facts of this terrible occurrence. I was intrigued, and it was obviously a great mystery that had enshrouded this whole subject of sudden acceleration for about 15 years.

What I found from the newspaper and other media coverage was that all of the car companies had big problems with sudden acceleration in which hundreds of people had been killed or injured by these occurrences.

The car industry had claimed it had no idea what was causing this. They couldn't find any defect or fault. The government had failed to find a defect. Everybody had concluded it was driver error. That struck me as highly implausible.

I decided that I was at a stage in life where I would like to have a run at this mystery.

Q. *What are the biggest obstacles in these cases?*

A. Facing a defendant manufacturer who will not concede an inch on any fact regarding the safety of its product. Hence, facing a formidable opponent.

Car companies are known to approach the defense of these cases in a systematic way. They will bring their expert witnesses to a central location and they will work through every single facet of the case with these experts that they intend to use at trial. They bring the lawyers together with the experts. They do multiple focus juries. They refine their defense in a way that is quite similar to politicians, as in the presidential race. You have the two presidential candidates attempting to define each other in the media.

That's what a company like Ford does. It comes with a case in a box with no issue left unaddressed and with an answer to every single proposition you will present to the judge or to the jury. You're faced with an almost overwhelming defense.

Any lawyer who expects to succeed in these cases must be prepared to spend, at a minimum on an automotive product liability case, a quarter of a million dollars. I would consider that the absolute minimum amount necessary to properly prepare a case such as this and see it through trial.

Q. *What is your litigation philosophy?*

A. I have talked for years about what it takes to be successful in litigation. I've said this publicly many times — you need to be right on the facts, right on the law and right about the moral basis for everything you ask a judge or a jury to do.

The only way to be right on the facts, which is the beginning of everything, is to be willing to work as hard and long as necessary to get to the bottom of the problem. Ninety-nine percent of successful trial practice is a matter of perspiration — hard, hard work.

You have to have some imagination to your approach of the facts. Many lawyers in the modern era have fallen into the trap of becoming litigators rather than trial lawyers. They get involved in an endless and an expensive and time-consuming battle in the discovery phase of trial, when in fact, the best way to get to the bottom of any case is to do your own peripheral, extra legal discovery. There's no substitute for that.

Q. *What is your strategy in jury selection?*

A. My approach to jury selection has always been clear. I want to know simple things — "Have you heard of sudden acceleration? Do you know anybody who has ever had sudden acceleration in his or her vehicle?"

These are very simple questions, but I want to make them as open-ended as possible so the jurors can express themselves. That's the best way to get a sense of the person. Are they open-minded? Are they well-focused? Do they seem to be clear thinking?

Assuming the judge will allow a fair amount of latitude, get jurors to open up and talk about not just themselves and their background and experiences, but talk about their ideas and concepts of the court and justice system.

THOMAS J. MURRAY
SANDUSKY

Education:
University of Virginia School of Law (1965); Boston College (1959)

Experience:
Murray & Murray (1965 — present)

Professional Affiliations:
Erie County Bar Association; Ohio State Bar Association; American Bar Association; Fellow of the International Society of Barristers; International Academy of Trial Lawyers; The Association of Trial Lawyers of America; Ohio Academy of Trial Lawyers; Trial Lawyers Association of British Columbia.

MURRAY'S TOP PRACTICE TIPS

Focus On Particulars
"Once you get it right, once you know what happened and find out what the facts are, it's fairly easy to find the law to support your claim, assuming those facts indicate there was a legal wrong. Now you have to think of a simple way of telling the story that arises out of the facts and the law in a way that gives your story a moral foundation that will appeal to the conscience of judges and people sitting on a jury."

Don't Be A Litigator
"Many lawyers in the modern era have fallen into the trap of becoming litigators rather than trial lawyers. They get involved in an endless and expensive and time-consuming battle in the discovery phase of trial when, in fact, the best way to get to the bottom of any case is to do your own peripheral, extra legal discovery. There's no substitute for that."

Tell Me Everything
"Assuming the judge will allow a fair amount of latitude, get jurors to open up and talk about not just themselves and their background and experiences, but to talk about their ideas and concepts of the court and justice system. Know the simple things."