

## Texas Court To Eye Kia's Compliance Claim In Airbag Case

By **Linda Chiem**

*Law360, New York (February 19, 2013, 9:04 PM ET)* -- The Texas Supreme Court agreed Friday to take up the question of whether Kia Motors Corp. escapes liability under Texas law for having allegedly defective airbags that failed to deploy in a car crash but complied with federal standards.

The state's high court granted Kia Motors Corp.'s petition for review in a case alleging defective airbags in its Kia Spectra vehicle failed to deploy and led to the death of Andrea Ruiz in a 2006 head-on collision. The high court will hear whether the Fifth District Court of Appeals in Dallas erred in August 2011 when it affirmed a jury award of \$887,400 in actual damages plus \$95,000 in prejudgment interest against Kia, which was found to be 45 percent responsible for the crash.

Kia claims that by affirming the jury award in favor of Ruiz's family, the appeals court eviscerated the government-standards defense in the Texas Civil Practice & Remedies Code, which holds that a manufacturer is not liable on a design-defect theory if the product complies with an applicable federal safety standard, according to Kia's November 2011 brief to the state's high court.

"Even though the Kia Spectra complied with the federal crashworthiness standard, the court of appeals denied Kia the protection of the government-standards defense in this crashworthiness case," Kia said in its brief. "The court did so in a way that neuters the government-standards defense for virtually all regulatory-compliant products. This court should grant review to prevent the government-standards defense from becoming irrelevant."

Kia argued that its Spectra vehicle complied with Federal Motor Vehicle Safety Standard 208, which specifies crashworthiness requirements, including requirements for airbags, so it did not negligently design the car nor was it liable for the crash.

"The court of appeals' holding takes the law in the opposite direction, by ensuring that manufacturers will never or almost never be protected in crashworthiness cases," Kia argued. "Indeed, the court of appeals' holding will preclude auto manufacturers from ever relying on the FMVSS to trigger the government-standards defense — in any kind of case. This court should step in to ensure that the

government-standards defense remains viable.”

Additionally, the plaintiffs’ design-defect claim fails for lack of proof and warranty claims on electrical problems with airbags were improperly admitted during the trial because they were not reasonably similar to the alleged defect, Kia argued.

The Ruiz family asserted in its reply brief that the appeals court correctly held that Kia was not entitled to invoke the rebuttable presumption of no liability under the Texas law, arguing that Kia’s sweeping interpretation of § 82.008 not only ignores the plain statutory language but leads to absurd consequences.

“If an auto manufacturer need only identify a federal regulation that ‘covers the risk of occupant injury during a crash,’ then the presumption of no liability would apply in every crashworthiness case, even when the product did not perform as the regulation requires,” the reply brief said.

Also, they argued that there was legally sufficient evidence of a design defect in the airbag circuitry where, contrary to Kia’s argument, poorly designed, flimsy plastic connectors with insufficient locking features and metal surface area caused an open circuit and prevented Andrea Ruiz’s driver’s frontal airbag from deploying in the head-on collision.

Kia Motors is represented by Scott P. Stolley and Richard B. Phillips Jr. of Thompson & Knight LLP, and Kurt C. Kern and Cary A. Slobin of Bowman and Brooke LLP.

The Ruiz family is represented by Jeffrey S. Levinger of Levinger PC, Lee Brown and Eric Porterfield of The Brown Law Firm, and Mary Alice McLarty of The McLarty Firm PC.

The case is Kia Motors Corp. et al. v. Lawrence Ruiz et al., case number 11-0709, in the Supreme Court of Texas.

--Editing by Jeremy Barker.

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