

## **BMW Beats \$5M Suit Blaming Airbag Defects For Injuries**

By **Sean McLernon**

*Law360, New York (April 18, 2013, 7:57 PM ET)* -- An Arizona judge on Wednesday issued a directed verdict in favor of BMW of North America LLC in a \$5 million suit blaming allegedly defective airbags for a driver's severe injuries suffered during a high-speed collision.

Plaintiffs Susana H. Sara and Hikmat S. Tammo reached an agreement with the vehicle maker allowing for the directed verdict in order to avoid as much as \$200,000 in costs and experts fees that could have come from a jury verdict against them, according to plaintiffs' attorney G. Lynn Shumway.

Sara suffered major brain trauma and internal cranial bleeding after her 2004 BMW 325i sedan was struck by a Toyota sport utility vehicle traveling 50 miles per hour. The collision, which occurred while Sara was driving the car out of a shopping center parking lot, crushed her door and launched the BMW more than 60 feet, according to court documents.

Accusing BMW of manufacturing defective airbags, Sara and her husband Tammo argued that the vehicle maker should have installed a side curtain airbag rather than the tubular-shaped version installed in the sedan

The auto maker insisted that the airbag was safe, arguing that the vehicle fully complied with federal motor vehicle safety standards.

BMW attorney Paul G. Cereghini of Bowman and Brooke LLP said that on cross-examination, even the plaintiffs' biochemical expert admitted that the vehicle was safe and the side impact head protection saved Sara's life.

“BMW was the first motor vehicle manufacturer to introduce this important side impact head protection technology,” Cereghini said. “The trial established that BMW's vehicle was safe and defect free and that its head protection airbag worked as designed to enable Mrs. Sara to survive a very severe crash.”

The case was an uphill battle all along for Sara and her husband, who sought damages for loss of consortium in addition to his wife's injury claims, because the car had been destroyed and couldn't be used as evidence, according to Shumway.

Although Shumway says that pictures from the crash ultimately convinced him that “there is absolutely a defect in that car,” he admitted that he wasn't able to identify the flaw soon enough during the trial.

The agreement with BMW allowing for the directed verdict prevents Sara and her husband from appealing the decision, according to Shumway.

Shumway said he wasn't sure what percentage chance his clients may have had of winning the case, but said even a 50-50 shot wouldn't have been good enough for them because of the financial risks associated with defeat.

“If my clients had been judgment proof, I could have risked going all the way to a verdict,” Shumway said “But a verdict against them was something they could not bear because they would have lost their home and their cars.”

The plaintiffs are represented by G. Lynn Shumway of Lynn Shumway Law Offices.

BMW is represented by Paul G. Cereghini, Jeffrey C. Warren and Bryan J. Blehm of Bowman and Brooke LLP.

The case is Susana H. Sara et al. v. BMW of North America LLC et al., case number CV2009-025065, in the Superior Court for the State of Arizona, County of Maricopa.

--Editing by John Quinn.

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