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Delayed Recall of Seatbelt Leads to \$40 Million Jury Verdict

By Sylvia Hsieh
Staff writer

A jury in Alabama has awarded \$40 million to the family of a teenage girl who died while driving a 1999 Kia her father had given her two months earlier on her 16th birthday.

Winning attorney Skip Finkbohner argued that the seatbelt was defective and that Kia delayed recalling it even though they recalled other cars due to the same seatbelt.

Among the evidence he introduced at trial was a letter the teenager's mother received over a year after her daughter's death informing her of the recall.

Finkbohner said he has won large jury verdicts before, including a \$192 million verdict in 2008, but the facts of this case stood out.

"You think about buying something for your child and here [the father] is trying to figure out, 'What can I afford to buy that is safe?' Then he does everything in his power to make sure everything safety-related is taken care of. But nobody told him that the exact same seatbelt buckle he was giving to his child had been recalled for a safety defect in 190,000 cars," said Finkbohner, an attorney at Cunningham Bounds in Mobile, Ala.

During the two-week trial, Finkbohner focused on Kia's conduct, using a series of graph-

ics that laid out the company's decisions in delaying the recall of the seatbelt.

1999 Kia Sephia

On July 4, 2004, Tiffany Stabler was driving to a family holiday get-together after picking up a friend when she lost control of the 1999 Kia Sephia she was driving, and was ejected and killed.

The car was a birthday gift from her father, Randy Vise, a diesel mechanic who had the used vehicle checked out by a Kia dealership before purchasing it.

"He had all the warranty work done, changed the tires and belts and got a tune-up. What he didn't know was that the seatbelt buckle was the exact same design as [the ones] recalled in the 1995, '96, '97 and '98 models," said Finkbohner.

Defendants Kia Motors and the seatbelt maker, Celltrion\DBI Inc., argued that the seatbelt wasn't defective and that Tiffany wasn't wearing it at the time of the accident.

The seatbelt manufacturer's attorney, Craig Hamilton of McDowell, Knight, Roedder & Sledge in Mobile, Ala., said that defense experts testified that marks on Tiffany's body were caused by contact with the roof rail as she was ejected from the vehicle.

But that evidence was contradicted by the state coroner's



Toby D. Brown



George W. (Skip) Finkbohner III

testimony that the marks were consistent with Tiffany wearing a seatbelt. Passenger Crystal Sticher testified that both she and Tiffany were wearing their seatbelts and they were both ejected from the car.

According to Finkbohner, the defense argued that the odds were too slim that both belts would come loose, but Finkbohner said he found six other cases where two seatbelts failed in the same vehicle.

Kia's defense attorney at trial, Elizabeth Kinland Shoenfeld, declined to comment for this article. In an e-mailed statement, Scott McKee, a spokesperson for Kia Motors America, said that "the evidence at trial clearly demonstrated that the vehicle's occupants were not wearing seat belts at the time of the accident" and that the company "will petition the court to set

aside the verdict and if necessary, file an appeal with the Alabama Supreme Court."

Delayed recall

In 2002, Kia recalled 190,000 cars for a false latching defect in seatbelts in models from 1995 through 1998.

According to Finkbohner, the company told the National Highway Traffic Safety Administration that it did not need to recall vehicles with model years 1999 and 2000 because those seatbelts had been fixed with an upgrade.

But Finkbohner contended that the recalled cars included seatbelts with the same upgrade, and that the company should have recalled an additional 250,000 cars.

In April 2004, NHTSA asked Kia to send buckles for testing. Instead, the company told the

government in June that the buckles were defective and would be recalled in August 2004, according to Finkbohner.

Around Christmas 2005, a year and a half after Tiffany's death, her mother, Tonya Leytham, received a recall notice citing a defective seatbelt.

The defendants argued at trial that the seatbelts were not defective.

Knight, the manufacturer's attorney, said that there was no defect when the seatbelt was put to "normal use." He claimed the false latching occurred when a person depressed the release button while engaging the buckle.

"Our position is that is not normal use. You don't depress the release button when inserting the latch, you press it when you want to release it," he said.

But Finkbohner showed a video of the false latching problem. He also purchased seatbelts with the same design and showed the jury that the seatbelt clicked when latched.

"It sounds like it's latched but it might be, and it might not be," said Finkbohner.

He argued to the jury that the only reason the company didn't recall the additional cars was to save money.

"Nobody got on the witness stand and said it was motivated by money, [but] the first recall cost 2.5 million bucks, so if you don't recall another 251,000 cars, you're not having to pay for it," said Finkbohner.

According to Finkbohner, a corporate representative from Korea, where the recall decision was made, denied that the seatbelt was defective and testified that although the stated reason for the recall was the seatbelts, the recall was done for "social reasons" stemming from the Ford Firestone recall.

The case took five years to get to trial, with two trips to the state supreme court over the issue of whether Celltrion was subject to jurisdiction.

At the start of the lawsuit, Kia asked Finkbohner to send a demand for settlement.

He thought he was being modest in requesting \$3 million, but he said the company never responded.

At trial, he asked the jury to start from a base number of \$18 million to \$25 million.



Under state law, none of the damages in a wrongful death case are compensatory; they are all punitive and the amount depends on the level of reprehensibility.

The jury, which Finkbohner characterized as "conservative" and including mid-level managers, two nurses, a truck driver and an accountant from the FBI, awarded \$40 million.

Plaintiff's attorney: George W. (Skip) Finkbohner III, Toby D. Brown, David Wirtes and Robert Mitchell of Cunningham Bounds in Mobile, Ala.

Defense attorney: Christopher Spencer and Elizabeth Kinland Shoenfeld of O'Hagan Spencer in Richmond, Va. for Kia Motors America; Craig Hamilton and Michael Knight of McDowell, Knight, Roedder & Sledge in Mobile, Ala. for Celltrion\DBI Inc.

The case: *Leytham v. Kia Motors America Inc.*; June 23, 2011; Alabama Circuit Court, Mobile County; Judge Charles Graddick.

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