SPRING 2014 NEWSLETTER

PRODUCTS LIABILITY UPDATE

By Rocky Little

1. *Kia Motor Corp. v. Ruiz,* No. 11-0709 (Supreme Court of Texas), 57 Tex. Sup. Ct. J. 375, March 20, 2014.

This products liability case against a vehicle manufacturer involved the failure of a driver's side front airbag to deploy during a head-on collision. The Court's opinion primarily dealt with three legal issues:

1. Whether the rebuttable presumption set out in §82.008 of the TEXAS CIVIL PRACTICE & REMEDIES CODE applies to this case. More specifically, there is a rebuttable presumption that a manufacturer is not liable on a design defect theory for a claimant's injuries if the product complies with applicable federal safety standards.

2. Whether the evidence introduced through Plaintiff's airbag expert was sufficient to support the jury's finding that there was a design defect/negligent design.

3. Whether the admission of a spreadsheet that contained evidence of dissimilar incidents, in addition to similar incidents, caused reversible error.

Rebuttable Presumption/CPRC §82.008

In the context of this case, a manufacturer is entitled to a presumption of non-liability for its design if the manufacturer establishes that:

1. The product complied with mandatory federal safety standards or regulations;

2. The standards or regulations were applicable to the product at the time of manufacture; and

3. The standards or regulations governed the product risk that allegedly caused the harm.

The claimant may rebut this presumption by establishing that the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risk of injury or damage.

Mandatory Safety Standard

The standards that allegedly gave rise to the non-liability presumption are contained in the Federal Motor Vehicle Safety Standards (FMVSS), and more particularly FMVSS 208.

FMVSS 208 requires vehicles to have airbags, and compliance is determined by measuring protection provided by the airbags to dummy occupants during crash tests. In this case, the alleged defect was that the wiring harness as designed rendered it prone to open circuits and the airbag's corresponding failure to deploy. The testing pursuant to FMVSS 208 does not test for reliable deployment, and does not measure deployment failure rates, but rather presumes airbag deployment. Therefore, the court held that FMVSS 208 does not govern the product risk that allegedly caused the harm, and the rebuttable presumption does not apply.

Sufficiency of the Evidence/Negligent Design

The trial court instructed the jury, among other things, that:

> For Kia Motors to have been negligent, there must have been a design defect in the 2002 Kia Spectra airbag system at the time it left the possession of Kia Motors.
>
> A "design defect" is a condition of the product that renders it unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in its use. For a design defect to exist, there must have been a safer alternative design.
>
> "Safer alternative design" means a product design other than the one actually used that in reasonable probability—
>
> (1) would have prevented or significantly reduced the risk of the injury in question without substantially impairing the product's utility, and
>
> (2) was economically and technologically feasible at the time the product left the control of Kia Motors by the application of existing or reasonably achievable scientific knowledge.

During trial, Plaintiff offered expert witness testimony by Geoffrey Mahon, an airbag expert. After examining Mahon's testimony, the Supreme Court held that it "does not present a case where there is simply too great an analytical gap between the data and the opinion proffered, or where the expert's testimony amounted to nothing more than a recitation of his credentials and a subjective opinion." The court noted that it has never held that a manufacturing defect must be ruled out in all design defect cases, or vice versa. Rather, the court has held that an expert should exclude "other plausible causes" presented by the evidence. Consequently, the court held that the airbag expert's testimony provided more than a scintilla of evidence to support the jury's finding of negligence against Kia Motors, and therefore was legally sufficient.

Evidence Admitted of Dissimilar Incidents

The trial court admitted into evidence, over Kia's objection, a spreadsheet that listed 432 paid warranty claims, of which only 67 of those claims involved "Code 56" that was at issue in this case. The court noted that the alleged defect in this case involved the design of the connectors of the clock spring and airbag module. In order to be relevant, a particular Code 56 warranty claim must at least implicate one of those connectors as the source of the open circuit.

In order to be relevant, the incident must have occurred under reasonably similar, although not necessarily identical, conditions. To the extent that the spreadsheet descriptions of the Code 56 claims reflect a problem with one of the two connectors, they are sufficiently similar to be probative of the alleged design defect. With respect to the Code 56 claims that reflect an unknown cause, do not address the cause, or reflect a cause unrelated to one of the two pertinent connectors, those incidents are irrelevant and not admissible. Therefore, the court held that it was error to admit the spreadsheet which contained claims not involving a Code 56, along with the Code 56 claims that did not at least implicate the module connector or clock spring connector. The court went on to note that the spreadsheet is an oversized 16-page document which was one of the exhibits requested by the jury during deliberations. The sheer volume of irrelevant yet prejudicial information in that document and the consistent focus on it at trial probably caused the rendition of an improper judgment. Therefore, the Supreme Court reversed and remanded the case for a new trial.