

Kia Asks Texas Justices For Redo On Airbag Defect Opinion

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By **Andrew Scurria**

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Law360, New York (April 15, 2014, 3:28 PM ET) -- [Kia Motors Corp.](#) on Monday called on the Texas Supreme Court to retract a ruling that erased a nearly \$1 million award for the family of a woman who died when a Kia Spectra airbag failed to deploy, saying the family is not entitled to a new trial and should take nothing.

The automaker asked the state high court to rehear a [March 28 ruling](#) that evidence of warranty claims involving airbags in similar vehicles was wrongly admitted in a trial that yielded a \$4.4 million wrongful death verdict, \$887,400 of which fell to Kia.

Andrea Ruiz died while driving with her daughter following a head-on collision with a pickup truck. Her daughter's airbag worked and hers didn't.

In remanding for a new trial, the Supreme Court also found that Kia's alleged failure to comply with federal safety standards took away its presumption of nonliability and further held that there was sufficient evidence for the jury's finding of negligence.

Kia took issue with the latter determination on Monday, arguing that the justices should have instead concluded that the family's expert witness Geoffrey Mahon failed to eliminate another plausible source of the open electrical circuit that caused the airbag not to deploy.

As the automaker said, the expert did not properly test the connector between the airbag diagnostic unit and its wiring harness. While he tested the connecting wires, he did not test the ADU connector itself, although the Supreme Court erroneously inferred that he did, according to the petition for rehearing.

"It is not accurate to conclude that Mahon found nothing wrong with the ADU connector," the petition said. "He never tested it. The failure to eliminate that connector as a possible cause for the open circuit dooms the Ruizes' design defect claim."

Lee Brown of the [Brown Law Firm](#), who represents the Ruizes, called the motion an effort to delay the forthcoming retrial.

"The Ruiz family is disappointed that the Texas Supreme Court did not affirm the judgment in their favor, although the court did unanimously reject Kia's top two legal arguments," Brown told Law360. "Kia's petition for rehearing does nothing more than reargue an issue that the court already considered and rejected."

A representative for Kia could not immediately be reached for comment.

A Dallas County District Court jury awarded the family \$1.9 million in actual damages — \$887,400 of which were to come from Kia, plus interest — and \$2.5 million in exemplary

damages, after finding that a defective wiring harness in the airbag module created an open circuit that kept the car's computer from properly communicating with the driver's side airbag upon collision.

In 2011, the Fifth District Court of Appeals [upheld Kia's portion of the verdict](#), finding because the airbag didn't deploy, the federal safety standards applicable to airbags that properly functioned didn't govern the product risk at issue.

Upon further review, the Supreme Court declined to endorse [Kia's government standards defense](#), which argued that because the design of the car has been tested and meets regulatory standards, trial courts shouldn't be able to impose their own findings of defective design.

Instead, the high court held that the plain language of a state law that gives manufacturers an immunity defense for products that comply with federal guidelines requires that a safety regulation govern product risk, not a particular product defect.

While the opinion noted that the applicable safety regulation contemplates what occupant-restraint systems are required, it "does not contemplate the likelihood of their failure to deploy and thus does not address that risk."

Coupled with its conclusion that the Ruizes presented enough evidence to back up the jury's negligence finding, the Supreme Court said that Kia was not entitled to a take-nothing judgment.

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 Katherine Rautenberg.