

DAILY REPORT

A SMART READ FOR SMART READERS

Kia defends against wrongful death suit

PLAINTIFFS CLAIM 69-year-old woman was killed from overpowered airbag; car maker says Sportage was safe

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A POTENTIALLY BIG PAYOUT and broad-reaching liability exposure for an automaker are at stake in a trial that began in Cobb County State Court this week to determine who is responsible for a death caused by a car's air bag.

Evelyn LaFleur first appeared to have minor injuries from a low-speed crash, then died soon after from a lacerated aorta where the air bag of her 1999 Kia Sportage hit her chest, according to court records and opening statements. Her daughters—Brenda Godbee and Carol Chick—are suing the South Korean automaker Kia Motors Corp. and its affiliates as well as the driver of the other vehicle in the collision, Joseph Leverette. The case was filed in Cobb County because of the location of Kia's corporate office. The drivers lived outside Augusta, where the crash took place

in 2006.

Plaintiff's attorney Lance A. Cooper of the Cooper Firm in Marietta told the jury in his opening statement, "We've spent three-and-a-half years investigating why this happened. Now we're here to tell you." Albert M. Pearson III of Moraitakis, Kushel, Pearson & Gardner is working with Cooper.

Jury selection took two days, with extensive questioning about biases regarding cars as well as liability and lawyers in general. Potential jurors were asked if they had any experience with Kia, what kind of car they drove, as well as their view on lawyers in general and lawsuits. Opening statements began Wednesday morning and took half a day. Three attorneys had to speak, representing the plaintiffs and the two defendants—Kia and Leverette. The trial before Cobb County State Court Judge Irma B. Glover is expected to take two weeks.

The most succinct summary came from Leverette's attorney, Matthew

G. Moffett of Gray, Rust, St. Amand, Moffett & Brieske, who is being assisted by W. Jason Pettus. Moffett told the jury that the two weeks of testimony will boil down to one question: "What killed Mrs. LaFleur?"

Moffett said his client, eastbound and blinded by the morning sun, made a left turn in front of LaFleur, who had just dropped off her grandson at work. Neither driver appeared to be seriously injured after the crash. He showed photographs of both vehicles, which sustained minor damage. Both drivers were conscious, alert and taken to the hospital in ambulances for what seemed to be a precaution for small cuts and bruises.

"She would not have died in this low-speed accident if she'd had no air bag," Moffett told the jury. "Mr. Leverette didn't die. He had no air bag. Mr. Leverette did not kill Mrs. LaFleur. He did not kill her."

Cooper, for the plaintiffs, told the

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jury that the 1999 Sportage air bag was overpowered for a small SUV and that Kia knew it but failed to spend the money to “depower” or make it safer. Cooper also told the jury that Kia failed to adequately test the bag for small female drivers, relying on standard tests of the time for average-sized males, even though the car was marketed and sold primarily to women. LaFleur was 5-foot-2 and weighed 250 pounds, which would have required her to sit closer to the steering wheel. He listed engineering and safety experts who will testify—in person and on video—to support his case that “Kia’s testing was inadequate” and that “Kia acted willfully and recklessly.” He also said Kia failed to provide clear warnings about the dangers of sitting too close to the air bag, which he said “comes out like a boxing glove.”

“They knew it was defective. They knew this type of accident was possible. They did not warn her adequately,” Cooper said.

The plaintiffs sat on the front row weeping as Cooper detailed their mother’s suffering in the final moments of her life as she bled to death from the internal wound where the air bag had hit her chest. Hospital personnel apparently didn’t see the extent of the injury to the otherwise healthy woman, which was revealed in the autopsy.

“That’s a horrible way to die,” said Cooper. He described the 69-year-old mother of two and grandmother of six as “the glue that held the family together.”

Cooper did not name a dollar amount but asked the jury for puni-

tive damages against the automaker. “They knew how to fix it; they chose not to. They knew how to warn; they chose not to,” Cooper said. “I ask you to do two things: recognize the full value of Evelyn LaFleur’s life and ultimately tell Kia, ‘never again.’”

That left Kia’s counsel with the challenge of overcoming the emotion of the situation and deflecting the blame to the other defendant—Leverette, who was driving the pickup truck that hit the Sportage—and to LaFleur herself for sitting too close to the steering wheel.

After a short break, Kia’s lawyer began an hour-long opening. Representing Kia, James P. Feeney of Dykema Gossett in Bloomfield Hills, Mich., immediately began disputing the facts that Cooper had laid out, even the speed of the crash. Cooper had noted the low speed of the vehicles—about 15 miles per hour or less; Feeney added the speeds together to come up with a 30 mile per hour impact. Feeney listed his own expert witnesses and crash tests, which he said will prove that the Sportage was “safe” or “reasonably safe” and that the visor warning in the car said to sit as far back as possible.

“The fact that an airbag can injure or kill you is not a defect,” Feeney said. “You can’t offer guarantees that any air bag will not cause injuries.”

Feeney is being assisted by Peter M. Kellett and Brittany M. Schultz from his Michigan firm as well as a local counsel, C. Bradford Marsh of Swift, Currie, McGhee & Hiers. Feeney and the other lawyers from his firm exchanged sharp words with the plaintiffs’ attorneys—outside the jury’s presence—in arguments over motions and evidence.

In a clash over whether to allow testimony over an alleged problem with the Kia seat belt—which had already

been dropped from the case—Feeney complained of being interrupted and told Pearson, “Let me finish.” A moment later, when Feeney interrupted Pearson, Pearson shouted, “You let me finish.”

The judge silenced them both with, “You let me direct the attorneys. Y’all just don’t even talk to each other if this is what it’s going to come down to.” The she ruled out the seatbelt testimony unless the defense counsel brings it up.

Early in his opening, Feeney told the jury, “Let’s get something straight right now. Mrs. LaFleur was not in a normal seated position.” He suggested that she was leaning forward and to the right at the moment of the crash, which skewed the impact with the air bag. He suggested that she may have been reaching for a cup of coffee but stopped short of blaming her death on that, saying only that the Sportage had a “coffee stain on the windshield.” He added, “She had to be leaning forward.” He also said, “It was a safe vehicle.” He said no other deaths had been reported to Kia from the same cause.

“It’s tragic, but accidents happen. They happen,” Feeney told the jury. “There is a tendency to find a way to blame someone, to blame someone financially able to pay, but that’s not the law.” He reminded the jury of instructions they had just heard from the judge that “everyone stands equal in the eyes of the law,” and that a corporation is to be regarded with the same rights as a person.

Feeney ended his opening with this: “This is a very, very tragic situation with a very simple explanation. Mr. Leverette made a left turn when he shouldn’t have, and Mrs. LaFleur was in the wrong position at the time.”

The case is *Godbee v. Kia*, No. 2007A-12496-3. ☎