

Appeals Court To Reconsider VW Fatality Case

2/19/2008 --- The U.S. Court of Appeals for the Fifth Circuit has agreed to rehear en banc a product liability lawsuit, just a few months after a three-judge panel of the court ruled that a lower court had improperly decided not to move a case filed by car crash victims against Volkswagen AG.

The appellate court said in a filing Thursday that all the judges of the court would rehear a venue issue in a case brought by the Singleton family after a 2005 car accident in Dallas. The family's suit claims that a defective seat produced by the automaker led to the death of 7-year-old Mariana Singleton.

"We are encouraged the court has decided to reconsider its prior decision," Jeffrey T. Embry, a lawyer with Hossley & Embry, L.L.P. who represents the family said Tuesday. "The Singletons lost their precious daughter and granddaughter, Marianna, when their VW crashed and she died a resident of the Eastern District of Texas. We strongly believe it is appropriate that a case seeking redress for her death belongs in the Eastern District of Texas and hope the court will deny mandamus when it considers this case again."

In October, the appellate panel granted Volkswagen's writ of mandamus to move the case from the U.S. District Court for the Eastern District of Texas in Marshall to the Northern District of Texas in Dallas, where the accident occurred.

Volkswagen requested to move the case from the Eastern to the Northern district because most of the witnesses and victims resided in Dallas, while no known parties or witnesses lived in Marshall. The district court denied the venue change, and the appeals court said in October that the district court used the wrong legal standard in denying Volkswagen's motion to transfer.

The lower court had stated that Volkswagen must show that "the balance of convenience and justice substantially weighs in favor of transfer."

The appeals court, while saying that its precedents "have not been the model of clarity," ruled that the district court "erroneously applied the stricter forum non conveniens dismissal standard.

"We agree, then, with the contention that the district court erred in requiring Volkswagen to show that the balance of convenience and justice substantially weighs in favor of transfer," the circuit court ruled.

The court also ruled that the lower court failed to properly consider and apply private- and public-interest factors for transfer. Private-interest factors

included ease of access to witnesses, while public-interest factors included an interest in having localized interests decided at home.

The appeals court said that the Dallas court was the more appropriate venue because all of the documents and physical evidence regarding the accident were located in Dallas, the Dallas court would have absolute subpoena power over witnesses and the cost of attendance for witnesses would be lower.

The court also ruled that Dallas had a greater local interest in the case even though the Volkswagen Golf involved in the accident could be available in Marshall. The court said “that a product is available within a given jurisdiction is insufficient to neutralize the legitimate local interest in adjudicating local disputes.”

Ruth Singleton was driving the Golf on a Dallas freeway when the car was struck from behind and propelled rear-first into a flat-bed trailer parked on the shoulder. In addition to Mariana's death, Singleton's husband, Richard, was also seriously injured in the accident.

The Singletons and Mariana's mother, Amy, filed suit against Volkswagen in the Eastern District of Texas, alleging that design defects in the Golf caused Richard's injuries and Mariana's death. Volkswagen filed a third-party complaint against a Dallas resident, the driver of the vehicle that struck the Golf, alleging that his negligence was the only cause for damages in the incident.

Attorneys for Volkswagen did not immediately respond to a request for comment Tuesday.

Volkswagen was represented in the appeals case by Hughes & Luce LLP; Burgain G. Hayes; and Herzfeld & Rubin PC.

The Singleton plaintiffs were represented by the Roth Law Firm; Hossley & Embry LLP; and Thomas Andrew Crosley.

The case was In re: Volkswagen of America Inc. et al., case number 07-40058 in the U.S. Court of Appeals for the Fifth Circuit.

--Additional reporting by Ron Zapata