

Products Liability

LAW
REPORTER

Wide range of vehicle data discoverable in case alleging defect in air bag caused fatality in low-speed collision.

Katona v. Toyota Motor Sales, U.S.A., Inc., No. 00-080-93-K (Tex., Dallas County 192d Jud. Dist. Ct. Apr. 19, 2001) (unpublished).

A Texas trial court held that a manufacturer is required to produce various test and fatality data involving the use of child restraints and air bags in several vehicle lines it produces, despite the fact that wide variation in vehicle and air bag designs exist.

Here, Castillo, 5 months, was seated in a rear-facing car seat in the front passenger seat of 1996 Lexus ES300. He was fatally injured when the passenger-side air bag deployed during a low-speed collision. Castillo's parents, individually and on behalf of his estate, sued the vehicle manufacturer, alleging that the air bag was defective and should not have deployed during the collision. Specifically, plaintiffs claimed that the speed between the two vehicles on impact was only about eight m.p.h., a speed at which an air bag has a greater potential for harm than good.

During discovery, plaintiffs filed a motion to compel, arguing defendant failed to produce all documents, photographs and films of tests it had conducted examining in the consequences of using a child restraint in the front seat of its vehicles equipped with passenger-side air bags. Plaintiffs also claimed defendants failed to provide information on all substantially similar incidents involving air bags and fatalities of children under 6 years of age in its vehicles. Finally, plaintiffs argued defendant failed to produce its crash and sled test data involving air bags and child restraints.

Granting the motion, the court overruled defendant's objections that the requests were overbroad and exceeded the permissible scope of discovery. With respect to the crash test data, the court rejected defendant's claim that the requests made no effort to consider that different vehicles had different designs, geometries and air bag systems. The court also held that information on vehicles manufactured for international sale was subject to discovery, despite defendant's objection that the information is irrelevant because those vehicles do not have to comply with federal regulatory standards implemented in the United States.

The court also overruled defendant's objections arguing that the fatality data requested was not discoverable under Texas R. Evid. 404. That rule prohibits the introduction

over evidence of a defendant's actions where the evidence is offered to prove that a party acted in conformity with a character trait. Additionally, the court overruled defendant's objection asserting that the documents were protected by both the attorney-client privilege and the work product doctrine.

Plaintiff's Counsel

*Jeffrey T. Embry, Dallas, Tex.

Comment: In a separate order, the court ruled that the defendant was also required to produce the information contained in the air bag's "black box" data recorder, as well as any information necessary for interpreting that data.

For another decision requiring a manufacturer to produce "black box" data, see *Anderson-Barahona v. General Motors Corp.*, No. 99A19714 (Ga., Cobb County State Ct. Apr. 7m 2000) (unpublished), 19 PLLR 156 (Oct. 2000). *Matthew C. Flournoy, Marietta, Ga.; *Thomas W. Malone, Atlanta, Ga.; *Christian D. Searcy, West Palm Beach, Fla.; *Harry A. Shevin, Miami, Fla.; and *Larry Wight, Roswell, Ga., represented plaintiff.

Documents in *Katona and Anderson-Barahona* are available through the Litigation Resources section at p. 166, courtesy of plaintiffs' counsel.