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Plaintiff's Claims in Seat-Belt Case Will Test Ford's Defense

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A trial in Chatsworth pitting a disabled 12-year-old against the Ford Motor Co. could expose the automotive giant to a multimillion-dollar verdict.

That's in part because many experts favorable to Ford's position in the case, which claims Johan Karlsson was rendered paralyzed by a defective seat belt, will be sitting this one out, thanks to a judge's ruling limiting the motor company's ability to defend itself.

Karlsson's lawyers obtained the sanctions from Los Angeles Superior Court Judge Howard Schwab, who found that Ford violated discovery orders in the case.

Thomas Girardi said his legal team tracked down several dozen instances of discovery abuse by Ford in other cases to support its pursuit of sanctions.

"We all know how corporate America behaves," Girardi of Los Angeles' Girardi & Keese said after court Friday. "But when you have all these orders from trial and appellate courts across the country making findings about Ford's lack of candor, then you have to say to yourself that this is really different than how corporate America behaves."

Ford representative Kathleen Vokes said that the company has turned over tens of thousands of pages of documents, produced witnesses for 30 days of depositions and provided access to its reading rooms for the Karlsson case.

"There has yet to be a description of what was not produced," Vokes said.

Girardi's ally in the discovery battles with Ford was Trans Continental Transport, an earlier defendant in the case, which has settled with the Karlsson family. The trucking company, whose employee was



THOMAS GIRARDI

involved in the accident that injured Johan Karlsson, was seeking discovery that could shift liability to Ford.

Highlighting a key sanction, Girardi told jurors in his opening statement Thursday that they won't hear testimony about whether a Ford seat belt adequately protected his client during a 1996 highway collision.

"That issue is going to be told to you by the judge," Girardi of Los Angeles' Girardi & Keese said. "You'll be instructed that [the belt] did not provide adequate protection to the plaintiff and that Ford failed to warn the plaintiff of this dangerous condition."

Ford did not equip its 1996 Windstar with a three-point seatbelt, which includes both lap and shoulder straps, for the vehicle's center rear seat, where Karlsson was sitting.

Karlsson had only a two-point belt, which

crosses the lap. Six other passengers had the three-point belt, which is why they did not sustain similar injuries, Girardi told jurors.

After the proceedings, Girardi explained that Karlsson was an active 51/2-year-old before the 1996 accident severed his spine.

"Even now, he is phenomenal," Girardi said. "He has great spirit."

Other sanctions prohibit Ford from entering certain evidence and limit the company's ability to object to what the plaintiffs enter.

"The Court has found that Ford Motor Company attempted to conceal evidence in order to prevent its being used in this trial," reads one jury instruction.

In a motion opposing the sanctions, Ford argued that, although opposing counsel disagreed over discovery, the company did not violate court orders.

Ford challenged the sanctions order to the 2nd District Court of Appeal, which earlier this year affirmed most of the sanctions and altered others.

Outside the courtroom Thursday, Ford attorney Frank Kelly declined to comment on how the sanctions affected his client's strategy.

In his opening statement, Kelly placed responsibility for the accident on Trans Continental Transport truck driver Michael Savage. A 29,000-pound roll of steel fell from Savage's truck after it hit another truck on Interstate 5. The Karlssons' minivan crashed into the roll.

Agneta Karlsson was traveling in the van with her five children. Her brother-in-law, Tim Mansfield, was driving. All were plaintiffs in the original suit, but Johan Karlsson, the only occupant who suffered serious injuries, is the lone remaining plaintiff.

Discovery Violations Limit Ford's Defense

The defense also claims that Karlsson's injuries resulted from the severity of the crash — the minivan went from 55 mph to a sudden stop in the space of 4 feet after hitting the roll — and the plaintiff's improper use of the seat belt.

Kelly said that it wasn't Karlsson's fault he was asleep at the time of the accident, but the belt wasn't on properly.

"If the [belt's] not worn properly, it cannot do its job," Kelly told jurors.

Girardi said Friday that Kelly was a talented and ethical lawyer.

"The problem with Ford is not its lawyers but Ford itself," Girardi said.

Karlsson's team, which also includes Girardi & Keese partner David Lira and sole practitioner Marvin Kay, indicated that the sanctions are critical because they relieve the plaintiff of having to prove the inadequate protection and failure-to-warn elements regarding the seat belt, burdens that normally would weigh down the defect case.

Edgar Heiskell, a lawyer at Michie, Hamlett, Lowry, Rasmussen & Tweel in Charlottesville, Va., said that the *Karlsson* case is one of many in which Ford has been sanctioned for discovery misconduct.

"Inside the office of general counsel, there is a culture of covering up that the courts have found unacceptable," Heiskell said recently. "It's all designed to hide the defects."

"That's totally false," Vokes countered. "We have people making these accusations, and they are completely unfounded."

Heiskell has litigated 33 cases against Ford involving rollovers of the Bronco II and Explorer models and sudden-acceleration problems in vehicles.

Another plaintiffs' attorney who regularly battles with Ford is David Perry of Perry & Haas in Corpus Christi, Texas.

"Most of the big companies are very

tough," Perry said last week, referring generally to discovery battles. "It's not uncommon to have a lot of problems with all of the big companies, but I think that Ford is one of the worst."

In May, a Mississippi judge in *Tennin v. Ford Motor Co.* sanctioned Ford \$50,000 for "blatantly and intentionally" ignoring a court order to produce documents.

"*Tennin* involved production of documents one day late that had not been requested in mid trial," Vokes responded in a written statement.

Also this year, a federal judge in the U.S. District Court for the Northern District of Illinois, in Chicago, sanctioned Ford attorney fees and costs for "willfully concealing the existence" of certain evidence and for making "numerous misrepresentations to this court and plaintiffs," according to an order dated Jan. 21, 2003.

U.S. District Judge Robert Gettleman, who presided over that case, *Johnson v. Ford Motor Co.*, 2003 U.S. Dist. LEXIS 1526 (N.D. Ill. Jan. 23, 2003), said in a February hearing that Ford's conduct "almost borders on criminal."

Ford settled the case, which involved a rollover wreck of a Ford E-350 Super Club Wagon, shortly after that hearing.

Vokes said that Gettleman's "borders on criminal" remark was irresponsible.

"Either you're criminal or you're not, just like you're either pregnant or you're not," Vokes said. "There's nothing we can do if someone makes claims like that. To make that claim was just irresponsible."

In October 2001, a Michigan appellate court upheld a lower-court order of \$546,836 against Ford in *Witala v. Ford*, 2001 Mich. App. LEXIS 2009 (Ct. App. Mich. Oct. 5, 2001), ruling that "the record supports the trial court's implied finding that defendant's discovery violation

was willful."

Ford's handling of the evidence has frustrated federal regulators.

Allan Kam, former senior enforcement attorney at the National Highway Traffic Safety Administration, said that Ford regularly failed to provide evidence of possible defects to agency investigations.

Five investigations in the 1980s involved a Ford ignition module.

"In all five, Ford didn't tell what they knew," Kam, who retired in 2000, said. "The agency didn't find out what they knew until many years later. By then, the statute of limitations to pursue civil penalties had run out."

Kam has served as a plaintiffs' expert in cases against Ford since his retirement.

Vokes said the Kam's claims also were "totally false."

"All government data — 18 years' worth — prove that our vehicles are as safe or safer than other vehicles, and NHTSA investigations of this matter found no safety defect," Vokes added in a written statement.

Heiskell has developed a packet detailing 31 cases, most in the past 10 years, in which Ford was reprimanded for misconduct. Heiskell uses the packet in motions to compel discovery and for sanctions against Ford, and he has made it available to interested plaintiffs' attorneys, including Karlsson's team.

"Ford Motor Company has a solid history of ethical behavior during litigation," Vokes wrote in an e-mail. "If you look at the 31 cases, you can hardly say there is a pattern and practice of bad conduct by Ford based on only a couple of sanctions since the mid-1990s (and even those are questionable) compared with the thousands and thousands of cases we had during that time."

Girardi, however, suggested last week that the discovery violations uncovered by his team and other plaintiffs' attorneys are "just the tip of the iceberg."