

CL-10233890-3094

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And Associates

2008 JUL -1 PM 1:24

[REDACTED]
Bellevue
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June 11, 2008

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Judge O'Brien
Court Room 705
City County Building
Pittsburgh, PA 15219

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Department of Transportation
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Washington, DC 20590

GD 07-009784 [REDACTED]

Hyundai

Gentlemen:

Enclosed is a memorandum writing to sum up the argument of the plaintiff in response to what was understood to be the essential basis for opposing counsel of Hyundai Motor America seeking a summary judgment.

Copies of this letter and attached page were hand delivered to the three parties in Pittsburgh listed above and the same mailed to NHTSA , being done accordingly June 11, 2008.

Very truly yours,

[REDACTED]

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MEMORANDUM OF LOGIC PRESENTED JUNE 10, 2008 BEFORE JUDGE O'BRIEN

The challenge presented to plaintiff counsel was, "Where is your expert witness that will testify that the seat and head restraint of the Hyundai GLS Elantra year 2003 model was defective? (Did it not conform to the federal regulations in force in the year 2003 and is thus not defective?)"

ANSWER: We can readily supply a person who does annual Pennsylvania automobile state inspections who can testify that when he does year 2009 annual inspections he will abide by the 49 CFR 571 Code of Federal Regulations as were in force and continue in force for Hyundai GLS Elantra year 2003 model which remain unchanged for that year model and he will abide by the 49 CFR 571.202a Code of Federal Regulations as at that time shall be in force for Hyundai GLS Elantra year 2009 model, which are more stringent, changed from preceding years for that new year model. It is a token gesture, meaningful only in a narrow rigid display of court procedural rules.

Assuming that by some magic we could induce witness appearance of someone from Washington who worked on the committee that compiled 49 CFR 571.202a and its preceding code versions. Such person could say that the 49 CFR 571 regulations speak for themselves including the quoted preamble "S1. Purpose and scope. This standard specifies requirements for head restraints to reduce the frequency and severity of neck injury in rear-end and other collisions."

Take asbestos as an example. In the year 1900 it was a standard and accepted insulation material for heating pipes in residential housing, and in schools. In the year 2008 asbestos insulation is censured, as an extreme hazard for schools and ignored for private residences in existing structures. Conformity to trade practices or conformity to current government regulations does not increase or decrease the degree of hazard one bit if mode of usage is unchanged.

So it was for [redacted] 528 A.2d 590 decided by the Supreme Court of Pennsylvania. The hoist conformed to current trade practice and was not a design controlled by a federal government regulation. The injury spoke for itself. [redacted] were awarded judgments.

In the present action the injury of [redacted] peaks for itself. Defendant Hyundai Motor America provided the instrumentality that inflicted a significant injury. Highway statistics which guided issuance of 49 CFR 571.202a are confirmation that the instrumentality is dangerous. The members of a class of users of the product should at least be entitled to recall notice to have the option to replace the obsolete head restraint or to willingly and knowingly assume the risk.

If the Court is locked in on requiring a technology witness, the [redacted] can provide a token witness from a repair garage. [redacted] can not afford a \$10 thousand fee for a government rule committee member from Washington just to render a free *pro bono publico* service. Let us place the expense burden upon the government agency. NHTSA division ODI is being contacted.