

# The Legal Intelligencer

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## **N.J. \$6 Mil. Class Action Verdict Is Second Kia Loss**

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Three Philadelphia firms won their second class-action victory in a case over allegedly defective Kia brakes following a \$6 million verdict in New Jersey.

After a five-week trial in *Little v. Kia Motors America Inc.*, a majority of a nine-member jury found in its June 6 verdict that class members who owned Kia Sephias sold in New Jersey between 1997 and 2000 are each owed \$750 because of defective braking systems. The class is estimated to be between 8,000 to 8,400 members.

New Jersey Superior Court Judge Katherine R. DuPuis presided over the case.

"I'm just pleased to be part of an effort to allow 8,000 consumers to have their legal rights vindicated," said Alan M. Feldman of Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig.

Plaintiffs co-counsel included Edward S. Goldis of Feldman Shepherd, Michael D. Donovan of Donovan Searles, James A. Francis of Francis & Mailman and Nicole Acchione of Trujillo Rodriguez & Richards.

The jury found that Kia breached its express and implied warranty to Kia owners. The jury also found that Kia violated the federal Magnuson-Moss Warranty Improvement Act, which regards warranties that turn out to be unenforceable. The finding in favor of the class on the Magnuson-Moss Warranty Improvement Act will allow the plaintiffs attorneys to seek class counsel fees and costs.

The jury rejected the claim under the New Jersey Consumer Fraud Act that Kia failed to comply with its written warranty by replacing defective brake parts with equally defective replacements and that the Kia owners and lessees suffered depreciation in the value of their vehicles.

The jury deliberated for five hours, and came out 8-1 in favor of finding Kia violated the express and limited warranty claims, Feldman said. By stipulation, all three alternates were allowed to deliberate with the jury of six, Feldman said.

Kia said in a statement that it plans to appeal the verdict.

"While Kia is gratified that the jury in the Little case held that it did not violate New Jersey's Consumer Fraud causes of action, Kia Motors America is disappointed that the jury ruled against Kia regarding the breach of implied and express warranties. Kia also believes that the jury correctly concluded that there was no diminished value in its

vehicles due to the claims about the Sephia brakes," the statement said.

"Kia believes that the evidence persuasively showed that Kia fully honored its warranties in providing brake repairs to the class members as it promised to do in its warranty. This case involved complex legal issues and Kia believes that it has sufficient grounds to seek review in a higher court and is planning on filing an appeal."

According to the plaintiffs' pretrial memorandum, the Kia Sephia brakes wore out prematurely because their design failed to dissipate heat adequately.

The express warranty was violated because cars were sold or leased to class members with a brake system not free from "defects in materials or workmanship" as promised by their warranty, class representative Regina Little argued in court papers. Little purchased her vehicle March 13, 1999, and had her brakes repaired four times during her warranty period, according to court papers.

Kia argued in its defense pretrial memorandum that it was aware of "various customer satisfaction issues relating to the Sephia brakes in or around 1997," so changes were made to the front brake components in the 1997-2000 models, and that a significant percentage of vehicle owners never had a warranty repair and that a vast majority of class vehicles were repaired after one or two times.

The plaintiffs couldn't prove that each class member paid out of pocket for a repair that should have been covered by warranty, Kia's memorandum said. Kia paid for more than 8,000 brake repairs in New Jersey, according to court papers.

"Plaintiff cannot demonstrate that any conduct of KMA was illegal where it never made any representation to any consumer regarding brake life and where it was not only making continuous modification to improve the front brakes but was also honoring its warranty by covering thousands of brake repairs under warranty," the memorandum said.

The plaintiffs' legal team also handled a class action in Philadelphia Common Pleas Court, which has been upheld on appeal to the Superior Court. In the *Samuel-Bassett v. Kia Motors* case, a Philadelphia jury found that 9,402 class members' 1995 to 2001 Kia Sephias had brakes prone to wear that needed replacement about every 5,000 miles, which was much more frequently than normal, and violated the express warranty of 36,000 miles or 36 months. The jury awarded a total of \$5,641,200, or \$600 a piece, to class members. A total of \$4.1 million in plaintiffs' attorney fees was awarded in the Philadelphia case. Feldman expects the application for New Jersey attorney fees to be a parallel amount.

Feldman said Kia was much more aggressive in litigating the New Jersey case than it was in the Pennsylvania case, including asking for Rule 104 hearings challenging whether the plaintiffs' experts had the right to express their opinion to the jury.

The third class action the plaintiffs' lawyers were handling in Florida had its class certification reversed Wednesday by the Florida Third District Court of Appeal. The court's opinion said "individual questions of fact predominate over common questions of fact in this case" and certification of class did not "promote economies of time, effort, and resources."

Defense counsel in the New Jersey trial included Stephanie P. Alexander, senior counsel with Gordon & Rees in California, Frederick H.L. McClure and E. Colin Thompson with DLA Piper's Tampa, Fla., office, and Neal Walters with Ballard Spahr Andrews & Ingersoll's New Jersey office.