

Mal Wheeler Argues Honda Case in U.S. Supreme Court

News

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DENVER - Does federal law prohibit common-law suits regarding motor vehicle airbags? That is the key question in the case Malcolm E. Wheeler, a founding director of Wheeler Trigg O'Donnell, argued before the U.S. Supreme Court in December 1999. Wheeler represented American Honda Motor Co. Inc. in its claim that common law design claims are preempted by the National Traffic and Motor Vehicle Safety Act.

In a case that is widely viewed as possibly the most significant ruling of its kind in nearly 17 years, Wheeler argued that when the federal government has set a safety standard specifically authorizing the vehicle design that a plaintiff claims to be defective, the plaintiff should not be allowed to sue the manufacturer on the ground that the design was defective and caused an injury.

The case in point revolves around Alexis Geier, who was injured in a single-car accident in Washington, D.C., in 1992. The then-17-year-old was driving around a curve when her Honda Accord left the road and hit a tree. Although Geier was wearing a lap belt and shoulder harness, her head hit the windshield or steering wheel. Geier and her parents sued

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Honda, claiming the Accord was defective due to its lack of airbags.

Airbags were not required then by federal law, however, and therein lies the crux of the matter. The Safety Act contains a preemption provision that, Wheeler argued, in conjunction with a federal regulation that phases-in airbags, implies that Geier's suit is groundless. Section 1392(d) states that:

"Whenever a federal motor vehicle established under this sub-chapter is in effect, no state or political subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment, any safety standard applicable to the same aspect of performance, of such vehicle or item of equipment, which is not identical to the federal standard."

"Both the House and the Senate," Wheeler told the Court on Dec. 7, 1999, "in enacting the statute . . . expressed concern about the chaos that would occur if all 50 states could regulate independently. That is exactly what these types of tort actions would do."

Geier's attorneys disagree, claiming that compliance with federal standards does not exempt anyone from liability under common law.

So far, the courts have agreed with Wheeler's argument in this case. In December 1997, the U.S. District Court for the District of Columbia granted Honda's motion for summary judgment, noting that the no-airbag claim was expressly preempted by federal law. Geier appealed, but the Court of Appeals unanimously affirmed the district court's decision.

The U.S. Supreme Court is expected to hand down its decision in the coming months. On March 6 of this year, though, it ruled on another preemptive case, *United States v. Locke, Governor of Washington*, that was argued on the same day as this case, so a decision could appear any day.

What the U.S. Supreme Court will decide is unclear. “Your guess is as good as mine,” said Wheeler. But what is clear is the record Wheeler brings with him to this case. He has been practicing law for 30 years, and he established his credentials as a product liability authority back in 1980 when he was part of a team that successfully defended Ford Motor Co. from criminal charges. In three decades, he has lost only two cases, and he has been featured in *The National Law Journal* as one of the top trial lawyers in the country.