



The Voice

And The Defense Wins

Published 5-25-16 by DRI

Nelson G. Apjohn, Rebecca H. Gallup and Thomas N. Vanderford, Jr.



A Massachusetts Superior Court jury returned a defense verdict for Hyundai Motor America in a product liability trial in Bristol County Superior Court on February 18, 2016, after less than a day of deliberation. The case is *Hussey v. Hyundai Motor America*, Civil Action No. 0973CV01670, Bristol County Superior Court – New Bedford, Massachusetts. Hyundai Motor America was represented by [Nelson G. Apjohn](#) and [Rebecca H. Gallup](#) of **Nutter, McClennen and Fish, LLP** (Boston, Massachusetts), and [Thomas N. Vanderford, Jr.](#) of Hyundai Motor America (Fountain Valley, California).

The case involved a tragic accident in which a 2002 Hyundai Elantra hit Mr. Hussey, a garbage man who was emptying a garbage can in the back of a municipal garbage truck. Mr. Hussey's legs were pinned between the front of the Elantra and the back of the garbage truck. Both of Hussey's legs had to be amputated above his knees. The Elantra was driven by William Hackett, a 68-year-old man who had rented the car shortly before the accident. He told the investigating police officer that he thought the vehicle was either in park or neutral when he touched the gas pedal. Later, when his deposition was taken, before Hyundai was brought into the lawsuit, Hackett testified that the Elantra "just spun out" as he shifted from park to drive with his foot on the brake, not the accelerator.

Plaintiffs' human factors expert Dr. Rudolph Mortimer testified that the accident happened because Hackett's foot was inadvertently placed on both the brake and accelerator pedals at the same time. He testified that the Elantra is defectively designed because the pedals are too close together and because the brake pedal is too low. Because the pedals are too close together, Mortimer claimed that it is easy for the driver to press both pedals at once mistakenly. Dr. Mortimer testified that if the brake pedal had been higher, the brakes would have stopped the car even though the accelerator was also being pressed. At trial, Dr. Mortimer admitted that he could not say that it was more likely than not that the brake configuration caused this accident.

Hyundai's experts testified that the accident was caused by Mr. Hackett's misapplication of the accelerator pedal for reasons having nothing to do with the pedal configuration, including potential distraction from a woman passenger who was seen by three eyewitnesses fleeing the accident scene. Moreover, Hyundai's experts testified that drivers make mistakes with pedal application for various reasons, with various vertical separations between the brake and accelerator pedals. They testified that the Elantra's pedal configuration in regard to the horizontal and vertical pedal separations was typical for vehicles within the same size and class and that the pedal configuration is well designed and safe. Hyundai's experts showed the jury testing that demonstrated that if the brake pedal is applied simultaneously with the accelerator pedal, the brakes hold and the car does not move forward.

After a seven-day trial, the jury found in favor of Hyundai Motor America, determining that the configuration of the Elantra's brake and accelerator pedals was not defectively designed. The verdict was unanimous (14–0).

To learn more about DRI, an international membership organization of attorneys defending the interests of business and individuals in civil litigation, visit www.dri.org.