

VERDICT: DEFENSE

PERSONAL INJURY

ASBESTOS EXPOSURE

VERDICT: Defense

CASE/NUMBER: Vicky Haye v. Jimmie Johnson Kearny Mesa Chevrolet, Hendrick Automotive Group, ACDelco, Does 1 to 25 / 37-2019-00049465-CU-PO-CT

COURT/DATE: San Diego Superior / Apr. 13, 2023

JUDGE: Hon. Matthew C. Braner

ATTORNEYS:

Plaintiff - John H. Gomez, Patrick J. Hughes (Gomez Trial Attorneys)

Defendant - Rey S. Yang, Johanna Boktor (Yang Professional Law Corp.)

FACTS:

Plaintiff, Vicky L. Haye, contended that she sustained personal injury as a result of exposure to battery acid (electrolytes) from a purportedly defective car battery. Plaintiff essentially contends that she was somehow exposed to battery acid fumes from a cracked and leaking car battery between approximately August 15, 2018, and September 18, 2018 (when the “cracked” battery was discovered).

Plaintiff apparently operates a family-owned auto body shop (Southland Auto Body), which was previously owned by her father. According to Plaintiff, Southland Auto Body has purchased automotive parts from Jimmie Johnson Kearny Mesa Chevrolet (“JJ Chevrolet”) since approximately 2010. According to plaintiff, Southland Auto Body uses car batteries manufactured by Interstate Batteries. JJ Chevrolet, on the other hand, sells primarily ACDelco car batteries, which are manufactured by General Motors.

On or about May 28, 2014, Plaintiff acquired a 2004 Cadillac SRX SUV, with a salvage title, which she used as her personal vehicle.

On June 26, 2018, Rosario Cruz, an autobody technician from her autobody shop, purportedly installed a new battery in her Cadillac. Plaintiff testified that the receipt from Interstate Battery dated June 28, 2018, which was produced by Plaintiff during discovery, was “the one that I kept in my file and a copy in my -- my glove box of my vehicle when I purchased the battery.” At trial, it was established that the Interstate battery identified in the receipt is for a top post/terminal battery which would not have fit in Plaintiff’s Cadillac, which requires a side terminal battery.

Sometime after replacing the battery, Rosario Cruz, attempted to replace the auto sensors because the “check engine” light had turned on. Mr. Cruz indicated that he was unable to turn off the “check engine” light, and Plaintiff’s husband took her vehicle to JJ Chevrolet for service.

On August 15, 2018, an automotive technician at the dealership, reset the check engine light. On August 22, 2018, Plaintiff’s husband brought her Cadillac to JJ Chevrolet to address a “service air-bag” warning. Another automotive technician at the dealership repaired a faulty terminal tension at the seat connector. Both technicians testified that the minor service work they performed on August 15, 2018, and August 22, 2018, had no relationship to the car battery.

Because Plaintiff was having issues with her vehicle starting, Plaintiff, on or about September 18, 2018, instructed her autobody technician to replace the starter. Apparently, while replacing the starter, plaintiff’s autobody worker discovered an ACDelco battery in the Cadillac (and not the Interstate battery allegedly installed in June 2018). Plaintiff indicated that the ACDelco battery had a large crack in the casing which was leaking battery acid from the top and down its side. According to Plaintiff, the ACDelco battery had green painter’s tape which stated, “JIMMIE JOHNSON KM”.

After the battery was allegedly removed from the vehicle, Plaintiff took a photograph of the ACDelco battery (on the floor), and texted a photograph of the battery to the counter representative at the dealership. Although the counter representative determined that JJ Chevrolet had not previously sold the same, non-standard model battery within, at least, the last two years, the dealership representative found that the ACDelco battery was still under its 42-month warranty. On September 18, 2018, the dealership representative made a manufacturer’s exchange for a new battery, as a courtesy to Plaintiff.

On or about October 10, 2018, Plaintiff retained an asbestos testing company to perform testing on the Cadillac for “sulfuric acid”. The field technician from the asbestos testing company obtained surface samples from the dash and air filter, which apparently tested positive for “sulfuric acid”.

PLAINTIFF’S CONTENTIONS: Plaintiff contended that the cracked car battery leaked sulfuric acid which generated into a mist that entered the passenger compartment of the vehicle and that she sustained a nasal perforation as a result of exposure to sulfuric acid mist.

DEFENDANT’S CONTENTIONS: Defendants contended that Plaintiff’s description of the exposure was impossible and that Plaintiff had a lengthy smoking history which substantially contributed to her nasal injuries

SETTLEMENT DISCUSSIONS: Defendants offered \$19,000 through a statutory offer to compromise. Plaintiff made a statutory offer to compromise in the amount of \$749,000. At trial, Plaintiff’s counsel sought a \$10 million award from the jury.

RESULT: Defense verdict.

FILING DATE: Sep. 18, 2019