

# The Legal Intelligencer

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## **\$5.6 Mil. Verdict In Jury Trial of Philadelphia. Class Action**

By Asher Hawkins

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A Philadelphia jury has returned a verdict worth roughly \$5.6 million in a class action lawsuit involving allegations that thousands of models of the Kia Sephia sedan had defective brake systems.

According to plaintiffs attorneys in Samuel-Bassett v. Kia Motors America Inc., the Pennsylvania-only class included some 9,400 purchasers of Sephia models made from 1997 through 2000.

The eight-member jury's verdict provides for each member of the class to be given \$600 in compensation for repairs and replacements that needed to be made to the brake systems, which were allegedly prone to premature wear and tear.

Class counsel in Samuel-Bassett were Michael Donovan of Donovan Searles, Alan Feldman of Feldman Shepherd Wohlgerlenter Tanner & Weinstock and James Francis of Francis & Mailman.

Philadelphia Common Pleas Judge Mark I. Bernstein, who is the team leader for all class actions in the city's common pleas court, presided at trial. A clerk in Bernstein's office said Samuel-Bassett marked the second class action jury trial Bernstein has handled.

Feldman said he and his co-counsel believe the case involved only the first class action jury trial held in Philadelphia since Bernstein presided over Debbs v. Daimler Chrysler Corp. in January 1999. The verdict in favor of the class in Debbs was ultimately vacated by the Superior Court, which cited improper certification.

Feldman suggested that the outcome in Samuel-Bassett proves that the jury trial format can be successfully used in class actions in Philadelphia.

"The legacy of Debbs was to question the utility of trials for class actions," Feldman said.

Donovan, Feldman and Francis are also class counsel in pending actions against Kia in state courts in New Jersey and Florida.

The three hope to argue before courts in those jurisdictions that the Philadelphia jury's verdict in Samuel-Bassett - which involved claims they believe to be essentially identical to those in the two other cases - can be fairly applied to those class actions before they proceed to trial.

Kia was defended in the matter by attorneys from DLA Piper Rudnick Gray Cary. A call to the firm seeking comment was not immediately returned. Bernstein granted certification to the Samuel-Bassett class in September 2004. (The matter had previously been in the federal court system before being transferred to common pleas.)

In an opinion in support of his decision, Bernstein found that the class represented by Philadelphia resident Shamell Samuel-Bassett had met all the requirements for certification under Pennsylvania's rules of civil procedure for her breach of warranty claims, but not regarding her consumer protection claim.

"There is sufficient record evidence that defendant knew that a vast number of its Sephia automobiles between 1997 and 2001 required replacement of brake pads and rotors at intervals of less than 5,000 miles," Bernstein wrote in that opinion.

Brake pads are supposed to last between 20,000 and 30,000 miles. The Kia manual recommends that the Sephia owner schedule a brake pad check by 30,000, Bernstein noted.

He highlighted some of the statistical evidence presented by the plaintiff: 55 percent of all Sephia 1997 models, 88 percent of the 1998 models and 70 percent of the 1999 models required brake repair within the first year of being driven.

If the brakes didn't need repair in the first year, more than a third of each of those models needed repair in the second, Bernstein observed.

According to Feldman, a settlement was almost reached in Samuel-Bassett as the trial was about to get under way. Kia - attempting to settle actions against it that included the New Jersey and Florida cases - had drafted a tiered settlement proposal that would have resulted in payments of approximately \$275 to the class members able to prove the most serious brake damage, Feldman said.

However, Bernstein rejected that settlement proposal, and Samuel-Bassett went to trial.

The trial began May 16 and continued through this past Thursday, Donovan said. The jury, which was not polled, returned its verdict Friday after roughly six hours' deliberations.

The defense's main arguments at trial were that the brake systems were not defective and that the plaintiffs needed to show that they all experienced the same type of premature wear problems, the plaintiffs attorneys said.

Plaintiffs' experts at trial included R. Scott King, a mechanical engineer at DJS Associates in Abington; and Jack Matthews, an economist from the University of Wisconsin.

Feldman said that during post-verdict discussions, the jurors told the attorneys that they had found critically important King's testimony concerning the alleged defect in the brake systems of the 1997-2000 model Sephias.

The plaintiffs attorneys all said the ability to have three firms' resources focused on the case was key to a successful outcome on behalf of their clients.

In the coming weeks, the three attorneys will file a petition for fees, which are not included in the damages. They said they had not yet worked out how much they expect to be paid for their services.

According to Bernstein's trial work sheet, the exact amount of damages was \$5,641,200.