



HOME

**In This Issue**

- This Week's Feature
- DRI News
- And The Defense Wins!
- Quote of the Week
- DRI CLE Calendar

**Links**

- About DRI
- Annual Meeting
- Membership
- Membership Directory
- News and Events
- CLE Seminars and Events
- Publications
- The Alliance
- DRI Europe
- Archive

## And The Defense Wins

On May 29, 2009, the New Mexico Court of Appeals denied new trial and affirmed the verdict for defendants in *Kilgore vs. Fuji Heavy Industries Ltd., et al.*, N.M. Ct. App. No. 27,470, 5/29/09). Takata Seat Belts Inc. was represented by [David R. Kelly](#) of **Bowman and Brooke LLP** in Minneapolis, Minnesota and [Douglas A. Baker](#) of **Atkinson Thal & Baker, PC** in Albuquerque, New Mexico. Fuji Heavy Industries was represented by [Thomas M. Klein](#) of **Bowman and Brooke LLP** in Phoenix, Arizona and [Patrick M. Shay](#) of **Rodey, Dickason, Sloan, Akin & Robb, P.A.** in Albuquerque. The plaintiffs were represented by Peters & Lister, P.C. in Dearborn, Michigan, and Comeau, Maldegen, Templeman & Indall, LLP in Santa Fe, New Mexico.

Plaintiffs Donald and Carole Kilgore claimed that Carole's seatbelt unlatched when their 1998 Subaru Legacy Outback station wagon rolled over in the single-vehicle crash in 2000. The Kilgores claimed the seatbelt buckle, made by Takata, unlatched because it was allegedly susceptible to accidental press button release. Plaintiff, Carole Kilgore, was paralyzed in the rollover crash. Fuji Heavy Industries (Subaru) and Takata Corporation and Takata Seat Belts Inc. (Takata) denied that the seatbelt buckle design was defective and denied that the buckle released in the crash, contending that somebody at the scene, possibly even Carole Kilgore herself, before her spinal cord swelled enough to result in her paralysis, unbuckled the belt after the rollover. After a three-week trial in September 2006, a Santa Fe County, New Mexico, District Court jury returned a unanimous defense verdict, rejecting claims that Subaru and its seatbelt supplier were responsible for the injuries sustained by the plaintiff.

On appeal, the Kilgores argued that they should have been granted a new trial because of juror misconduct, the exclusion of evidence of other claims, an alleged "surprise" defense theory, and the admission of "speculative" testimony regarding Takata's seatbelt buckle ball-press testing. The appellate court rejected those arguments.

As to the claim of juror misconduct, the appellate court found that, even though a juror had spoken to a Subaru repair shop owner early in the trial, there was no showing that she had disobeyed the trial judge's order not to discuss the case with others, and the incident did not rise to the level appropriate for a presumption of prejudice.



The appellate court ruled that evidence of other claims and incidents was properly excluded because the plaintiffs failed to show substantial similarity to the circumstances of the Kilgore accident.

The court of appeals also rejected plaintiffs' argument that, in his opening statement, Subaru's counsel had sprung a "surprise theory" that Carole Kilgore may have been the person who unlatched her own seatbelt after the crash. The court of appeals rejected this claim, finding that the plaintiffs could have reasonably anticipated that defense theory, plaintiffs' counsel failed to object during the opening statement, and plaintiffs' counsel ultimately explored the very same issue with one of his own experts during plaintiffs' case-in-chief.

Finally, the court of appeals found no merit in plaintiffs' argument that the testimony by a Takata engineer regarding the amount of force applied to release the buckle in certain ball-press testing was speculative or without foundation. The court of appeals held that the admissibility of the Takata engineers' testimony estimating forces involved in Takata's testing was within the discretion of the trial court, and the jury could evaluate its weight and credibility.

This was a welcome ruling for automobile manufacturers and for seatbelt manufacturer, Takata, because the Takata "AB" model seat belt buckle at issue here is a popular design used in the vehicles of many automobile manufacturers.