

## TOP DEFENSE WINS OF 2005

### Ford turned scrutiny onto toddler's mother

By: June D. Bell

**CASE TYPE:** Products liability

**CASE:** *Ayala v. Ford Motor Co.*, No. 2:04-CV-395 (E.D. Texas)

**DEFENSE ATTORNEYS:** Kevin C. Schiferl and Robert B. Thornburg, partners, Locke Reynolds, Indianapolis; and Ronald D. Wamsted, Thompson, Coe, Cousins & Irons, Austin, Texas

**PLAINTIFFS' ATTORNEYS:** Mikal C. Watts, The Watts Law Firm, Corpus Christi, Texas; J. Hunter Craft, the Watts Law Firm, Houston

The grieving and outraged parents of a toddler strangled by the power window of a Ford pickup truck demanded \$31 million for her death. Surely a jury weighted heavily with mothers would be receptive to the plaintiffs' attorney, Mikal C. Watts, and hit the auto manufacturer fast and hard.

The jury did act quickly, deliberating for only an hour on Aug. 5, 2005. But the verdict in the first power-window death case

to go to trial was a victory for the defendant.

Ford Motor Co. attorney Kevin C. Schiferl prevailed by employing a defense that easily could have backfired: While conceding that Ford could have used a safer window switch in its pickups, he also suggested that better supervision of the 2-year-old victim would have prevented her death.

The victory was all the more impressive considering the skill and track record of Schiferl's opponent. This was the only trial of four against Ford that The Watts Law Firm lost last year. (Two others settled during trial.) This case was tried in Marshall, Texas—Watts' home turf and a venue widely considered plaintiff-friendly.

Schiferl said Watts appeared to have the upper hand headed into trial. The plaintiffs' team had won every pretrial motion it filed. The defense had lost every single one of its own pretrial motions. And then it lost another motion during trial, when a second bereaved mother was permitted to testify about how her child died a similar death in a Ford vehicle.

If Watts made an error, it was in allowing too many mothers onto the jury. Five of the six jurors were women, and four were mothers. The defense actually wanted a female jury, Schiferl said, "because the biggest critic of women is women."

He made the case that the victim's



SCHIFERL: Won a delicate case for Ford Motor Co.

mother "overrode several safety systems" in the vehicle by failing to keep little Yancey Ayala restrained in a car seat and leaving the key in the ignition after parking the truck. Had she secured Yancey or removed the key, the girl would not have been able to clamber onto the passenger window armrest, stick her head out the open window and then press the rocker-type power-window switch with her

knee, trapping her neck in the window.

The defense also suggested that Yancey's mother did not tell the truth about whether she was in the truck at the time of the accident. The jury apparently did not believe her, Watts said: "[The defense] did a good job cutting into the plaintiff's credibility."

He attacked the window switch design, noting that an alternative, push-pull mechanism would have prevented the death. New safety standards approved by Congress will eliminate power-window rocker switches by 2009, a fact reported in an article published in *USA Today* on the first day of trial.

Schiferl, a partner in the Indianapolis firm Locke Reynolds, said he viewed the timing as a less than favorable omen. Turns out he was wrong.

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### CHOOSING THE TOP 10 DEFENSE WINS

IN CHOOSING THE BEST DEFENSE WINS of 2005, *The National Law Journal* considered the obstacles that defense attorneys encountered, including plaintiff-friendly venues, the amount of damages at stake and the potential effect on similar cases.

We looked for a mix of bench and jury verdicts—class actions, criminal and significant civil cases—from a variety of jurisdictions. We interviewed dozens of trial counsel in distilling scores of nominations from across the country into the list you find here.

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