

# California Supreme Court Ruling Favoring Product Manufacturers Echoes Haynes and Boone Amicus Brief

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On Aug. 27, 2018, in *Kim v. Toyota Motor Corp.*, the California Supreme Court delivered a significant win to product manufacturers concerning the admissibility of industry custom and practice evidence in a strict product liability design defect action.

Haynes Boone Partner M.C. Sungaila drafted an amicus brief in the case on behalf of the International Association of Defense Counsel, urging the California Supreme Court to find that the automatic exclusion of this type of evidence is both impractical and unwise.

The plaintiff, William Jae Kim, lost control of his 2005 Toyota Tundra pickup truck and drove off an embankment. Kim sued Toyota for his injuries, alleging the pickup truck was defectively designed because it lacked a relatively new vehicle safety feature at the time: vehicle stability control. The jury heard evidence that, at the time, the standard equipment in pickup trucks did not include this safety feature. The jury found for Toyota. Plaintiff appealed, and the Court of Appeal affirmed.

The Supreme Court appeal turned on whether the trial court committed reversible error in admitting, as relevant to the risk-benefit test for design defect, evidence of industry custom and practice related to the alleged design defect. California's High Court granted review to resolve divergent results among the California courts of appeal on this question, and held that the trial court did not err in allowing the jury to hear evidence concerning industry custom and practice.

Overruling several previous cases, the Kim Court agreed with Toyota that industry custom and practice evidence is not "categorically" admissible or inadmissible. Rather, its admissibility hinges on "the application of ordinary rules of evidence," guided by two considerations: (1) whether the party seeking admission of such evidence has established its relevance to at least one of five elements of the risk-benefit test for design defect set forth in *Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413; and (2) whether such evidence's probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice, among other potential countervailing considerations. The Court held that "Barker's risk-benefit test calls on juries to consider whether a design is safe enough, given 'the relative complexity of design decisions and the trade-offs that are frequently required in the adoption of alternative designs,'" and other manufacturers' design decisions are admissible when they "reflect legitimate, independent research and practical experience regarding the appropriate balance of product safety, cost, and functionality." It held the evidence in Kim met this standard and affirmed Toyota's defense verdict.

The California Supreme Court's opinion in Kim tracked many of the key themes and arguments developed in Haynes Boone's amicus brief. Among other things, the brief emphasized that industry custom provides important context that aids jurors in their analysis of the feasibility and marketability of a plaintiff's chosen alternative design. Such context is necessary for a juror to make a reasonable and practical assessment of competing design considerations. Anything less, the brief argued, would inevitably untether a jury from reality, since the jury would lack the information a

manufacturer would have, including evidence of industry custom, in determining the trade-offs among various design choices incorporated into, or omitted from, a product.

Finally, the brief urged California's High Court to overrule a line of cases categorically excluding evidence of industry custom, which the Kim Court did in this new and important case for product manufacturers.