

CASE No. S272113

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MICHAEL R. RATTAGAN,

PLAINTIFF AND APPELLANT,

v.

UBER TECHNOLOGIES, INC.,

DEFENDANT AND RESPONDENT.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CASE No. 20-16796
APPEAL FROM U.S. DISTRICT COURT FOR NORTHERN CALIFORNIA
CASE No. 3:19-cv-01988-EMC
HONORABLE EDWARD M. CHEN

**APPLICATION OF LESLIE SPELLMAN FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER;
PROPOSED *AMICUS CURIAE* BRIEF**

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**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF PETITIONER**

Leslie E. Spellman respectfully requests leave to file the accompanying brief as *amicus curiae* in this proceeding in support of petitioner Michael R. Rattagan under California Rule of Court 8.520(f)(2).

On February 9, 2023, this Court extended Leslie Spellman's deadline to file the *amicus curiae* brief to March 1, 2023.

This brief has been drafted entirely by Spellman's counsel, Strategic Legal Practices, APC ("SLP"), without compensation or monetary contribution from any party or counsel for a party, and has been served on all parties (proof of service attached).

Interest of the Amicus Curiae. Leslie Spellman is the plaintiff and real party in interest in *Kia America, Inc. v. Superior Court (Spellman)* (Case No. D079858), a case that presents issues as to whether the economic loss rule bars a claim for fraudulent inducement of contract that is committed via fraudulent concealment. This Court issued a grant-and-hold order in *Spellman* on April 20, 2022 (Supreme Court Case No. S273170), pending a decision in *Rattagan v. Uber Technologies* (Supreme Court Case No. S272113). In light of her personal interest in how *Rattagan* is decided and because she brings a valuable perspective to the issues before this Court, Ms. Spellman wishes to aid the court as *amicus curiae*.

In addition, Ms. Spellman's counsel, SLP, is a plaintiff's-side law firm consisting of over 20 attorneys practicing in California. The firm, which was established in 2010, regularly litigates fraudulent concealment/inducement claims against automobile manufacturers, in

which manufacturers fail to disclose automobile defects to consumers. Indeed, SLP has litigated thousands of such cases in the State of California and has taken a leading role in advancing and protecting the rights of injured consumers, including through individual and class actions. SLP thus can provide perspective on the issues before this Court, including whether the Court should reach the fraudulent inducement issue encompassed by the Ninth Circuit's certified question.

AMICUS CURIAE BRIEF

Ms. Spellman adopts the positions in Knight Law Group LLP's amicus curiae brief—specifically, that (1) the Ninth Circuit's certified question encompasses both types of fraudulent concealment claims, namely, fraud during the performance of a contract and fraud in the inducement to enter into a contract; (2) courts in California have long held that claims for fraudulent inducement are not barred by the economic loss doctrine; (3) the fraud-in-the-performance analysis in *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979 (*Robinson*) does not bar claims for fraud in the inducement; (4) even more broadly, *Robinson* does not bar claims for fraudulent concealment; and (5) *Robinson*'s exception to the economic loss doctrine is not limited to fraudulent affirmative misrepresentations.

Further, by virtue of having litigated thousands of fraudulent concealment claims against car manufacturers, Ms. Spellman's counsel, SLP, has extensive experience with respect to car manufacturers' attempts to exploit the economic loss doctrine. In the past few years, SLP has observed a flood of cases in which manufacturers assert that the economic loss doctrine bars all fraudulent concealment claims.

Spellman is typical. *Spellman* involves an engine defect that can cause certain Kia vehicles to spontaneously burst into flames. Kia sold millions of these vehicles to consumers, but never disclosed the defect to consumers or the National Highway Traffic Safety Administration ("NHTSA").¹ This defect has resulted in, among other things, a United States Congressional hearing into Kia and Hyundai's conduct (at which their officials refused to appear)², criminal indictments brought by the Seoul Central District Prosecutors' Office against former Kia and Hyundai executives on charges of delaying recall processes even though the executives were aware of defects³, \$210 million in civil penalties assessed by NHTSA against Kia and Hyundai for their delayed and untimely recall of affected vehicles⁴, a whistleblower award in excess of \$24 million (the maximum amount allowed by law) to the former Hyundai employee who revealed Hyundai's safety violations⁵, and an ever-expanding NHTSA investigation into Kia and Hyundai's conduct⁶.

These events tell the story of Kia's large-scale fraud against

¹ <https://www.consumerreports.org/car-recalls-defects/park-recalled-hyundai-kia-vehicles-outside-due-to-fire-risk-a1002120529/>

² <https://www.nbcdfw.com/news/local/ceos-of-hyundai-kia-decide-not-to-attend-hearing-on-burning-cars/78652/>;
<https://www.abcactionnews.com/news/local-news/i-team-investigates/kia-hyundai-ceos-refuse-to-attend-senate-hearing-to-explain-cause-of-car-fires>

³ [http://www.koreaherald.com/view.php?ud=20190724000850](http://www.koreaherald.com/view.php?ud=20190724000850;);
<http://www.koreaaitimes.com/news/articleView.html?idxno=92104>

⁴ <https://www.reuters.com/business/autos-transportation/us-regulators-step-up-probe-into-hyundai-kia-engine-fires-2021-12-27/>

⁵ <https://www.npr.org/2021/11/09/1053985268/whistleblower-gets-more-than-24m-for-reporting-hyundai-and-kia-over-engine-fires>;
<https://www.newsweek.com/whistleblower-who-reported-that-hyundai-kia-moved-too-slowly-major-recall-awarded-24m-1647630>

⁶ <https://www.reuters.com/business/autos-transportation/us-regulators-step-up-probe-into-hyundai-kia-engine-fires-2021-12-27/>

consumers. Yet rather than acknowledge and come to terms with its wrongdoing, as Volkswagen did in connection with its diesel emissions scandal, Kia has sought to evade the consequences of its fraud by trying to exploit the economic loss doctrine.

This is precisely what happened in *Spellman*. Despite the absence of any legal support in the case law for its position, Kia invoked the economic loss doctrine as its basis to demur to Ms. Spellman's fraudulent inducement / fraudulent concealment claim—a claim which alleges that Kia knew about a dangerous engine defect in 2018 Kia Sportage vehicles prior to the sale of the plaintiff's vehicle, but failed to disclose the defect to her at the time of sale or thereafter.

The manufacturers' position on the economic loss rule is untenable. No case law supports it. That's why in *Spellman*, the trial court easily ruled that the economic loss doctrine does **not** bar claims for fraudulent inducement / fraudulent concealment. As the Knight Law Group amicus brief makes clear, this is the obvious and only conclusion, since there is no published California case that has applied the economic loss rule to bar a claim for fraudulent inducement.

Kia's strategy in *Spellman* is part of a comprehensive, systematic effort to avoid fraud liability and has been used, in almost identical form, by numerous other car manufacturers in California—indeed, SLP sees these arguments regularly. Because there is no actual split in authority on whether the economic loss rule bars claims for fraudulent inducement, there is no need for further briefing on the issue.

Rather, the Court should simply address the issue in its decision in *Rattagan*. Indeed, the Ninth Circuit's certified question on its face *includes* both fraud in the inducement and fraud in the performance.

The Court should therefore answer the question as broadly as the Ninth Circuit asked it and should hold that the economic loss doctrine does not apply to claims for fraudulent concealment / inducement.

Dated: March 1, 2023

Respectfully submitted,

/s/Caitlin J. Scott

By: _____
Payam Shahian
Tionna Dolin
Caitlin J. Scott
attorney for Leslie Spellman

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