No. S22Q0279

In the
Supreme Court of Georgia

Kristin Domingue, *et al.*,

Appellants,

v.

Ford Motor Company,

Appellee.

GEORGIA DEFENSE LAWYERS ASSOCIATION'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEE

Pursuant to Rule 23 of the Rules of this Court, the Georgia Defense Lawyers Association ("GDLA") requests leave to file its Amicus Curiae Brief, attached hereto as Exhibit 1, in support of Appellee. GDLA is an association of nearly 1,000 lawyers, including sole practitioners and members of law firms of all sizes, who engage in litigation, primarily for defendants in civil lawsuits, and its members frequently represent their respective clients in various tort actions including, but not limited to, product liability actions involving automotive crashworthiness claims.

Following oral argument, GDLA believes the Court should consider additional analysis involving the certified question. Accordingly, in the attached Amicus Curiae Brief, GDLA focuses on the third part of the certified question and argues, based on this Court's history of jurisprudence, that it can and should recognize a limited judicial exception to the Seat Belt Statute, O.C.G.A. § 40-8-76.1(d), in product liability actions involving crashworthiness claims where the plaintiff places the design and/or manufacture of a vehicle's restraint system at issue.

WHEREFORE, GDLA respectfully requests that this Court grant leave to file the attached Amicus Curiae Brief in support of Appellee.

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I hereby certify that the foregoing Georgia Defense Lawyers Association's Motion for Leave to File Amicus Curiae Brief in Support of Appellee was filed with the Clerk of the Court using the electronic system which will automatically send email notification of such filing to the following attorneys of record:

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EXHIBIT 1

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INTRODUCTION

The question certified by the United States District Court involves the application and construction of O.C.G.A. § 40-8-76.1(d) ("the Seat Belt Statute") in the context of a product liability action challenging the design and manufacture of a vehicle's restraint system. The Seat Belt Statute provides: "[t]he failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of a motor vehicle which has a seat safety belt or belts shall not be considered evidence of negligence or causation, shall not otherwise be considered by the finder of fact on any question of liability of any person, corporation or insurer . . .." The certified question is:

> Does O.C.G.A. § 40-8-76.1(d) preclude a defendant in an action alleging defective restraint system design and/or negligent restraint system manufacture from producing evidence related to:
>
> (1) The existence of seatbelts in a vehicle as part of the vehicle's passenger restraint system; or
>
> (2) Evidence related to the seatbelt's design and compliance with applicable federal safety standards; or
>
> (3) An occupant's nonuse of a seatbelt as part of their defense?

Fairness and due process call for this Court to answer "no" to all three parts of the certified question. The Georgia Defense Lawyers Association ("GDLA")

submits this Amicus Curiae Brief following oral argument to support the reasoned position that the law allows, or should allow, manufacturers in automotive product liability actions to present relevant evidence of seatbelt nonuse when the plaintiff has placed at issue the design and/or manufacture of a vehicle's restraint system.

Here, Appellants contend that the design and manufacture of the vehicle's restraint system was defective and unreasonably dangerous because the passenger side airbag did not deploy, causing injuries to a vehicle occupant, Appellant Kristen Domingue. The airbag, however, was a secondary part of the restraint system and not designed to deploy in this type of accident; the primary component – the one designed to provide protection in accidents like this – was the seatbelt. To properly evaluate the restraint system's performance, the jury must know whether the injured occupant was wearing a seatbelt. Since Appellants have placed the design and manufacture of the restraint system at issue, the exclusion of seatbelt nonuse evidence would leave the jury with a fundamentally false view of the facts.

As a threshold matter, there appears to be little question that the correct answer to the first two parts of the certified question should be "no." The Seat Belt Statute does not state or suggest that the existence of seatbelts should be excluded from admissible evidence. Likewise, nothing in the statute states or suggests that a manufacturer should be precluded from adducing evidence that a restraint system's seatbelts comply with applicable federal safety standards, and there is no reason to

construe the statute to do so. The remaining part of the certified question (the third part), and the key question for this Court (that is, whether the Seat Belt Statute precludes a manufacturer from presenting evidence of seatbelt nonuse as part of its defense) must be answered in the specific context of a product liability action, and that answer, like the other answers, should be: “no.”

Evidence of seatbelt nonuse should be admissible in an automotive product liability action where, as here, Appellants have placed at issue the design and/or manufacture of a vehicle’s restraint system; in such actions, exclusion of this evidence would prevent the manufacture from establishing its defense(s) and leave the jury with a fundamentally false view of the facts, resulting in the denial of due process. To avoid fairness and constitutional concerns, the Court should recognize a limited judicial exception to the Seat Belt Statute in product liability actions alleging that the restraint system is defective and/or unreasonably dangerous.

STATEMENT OF INTEREST

GDLA is an association of nearly 1,000 lawyers, including sole practitioners and members of law firms of all sizes, who engage in litigation, primarily for defendants in civil lawsuits. GDLA is dedicated to, among other purposes, supporting and improving the civil defense bar, improving the adversary system of jurisprudence in our courts, eliminating court congestion and delay in litigation, and otherwise promoting improvements in the administration of justice. Though its

membership is diverse, GDLA members frequently represent their respective clients in various tort actions including product liability matters involving the crashworthiness of motor vehicles.

GDLA and its members share a common interest in ensuring basic principles of common sense, fairness, and due process, and this extends to one of the most basic judicial principles: a defendant's self-evident right to present a full and accurate defense of the claims alleged against it.

ARGUMENT AND CITATION OF AUTHORITY

A. Application of the Seat Belt Statute to a Product Liability Claim that a Restraint System is Defective and/or Unreasonably Dangerous Would Eviscerate the Truth-Seeking Purpose of Trial.

"[T]he very nature of a trial [i]s a search for truth." *Nix v. Whiteside*, 475 U.S. 157, 166 (1986); *see* O.C.G.A. § 24-1-1 ("[t]he object of all legal investigation is the discovery of truth."). To effectuate this fundamental precept of our justice system, this Court, throughout its history, has crafted judicial exceptions to Georgia statutes, including, for example, *constitutional* exceptions (*see, e.g.*, *Howard v. State*, 272 Ga. 242, 243 (2000) (finding that the solicitation of sodomy statute must be narrowly construed to avoid constitutional concerns and, therefore, applies only in certain situations)), *equitable* exceptions (*e.g.*, *Brown v. Liberty Oil & Refining Corp.*, 261 Ga. 214, 215-16 (1991) (finding that the Wrongful Death Act is subject to an equitable exception to the exclusive standing of a surviving spouse so others may

assert such claim when or where the spouse has abandoned that role); *Fuller v. Fuller*, 279 Ga. 805, 807 (2005) (finding equitable exception to prohibition on set-off to support judgment); *JPMorgan Chase Bank, N. A. v. DelPiano*, 356 Ga. App. 354, 357 (2020) (finding equitable exception to statute of limitations to reform a written document)), and *at issue* or *waiver* exceptions (*e.g., Hill, Kertscher & Wharton, LLP v. Moody*, 308 Ga. 74, 79 (Ga. 2020) (finding that attorney-client privilege, O.C.G.A. § 24-5-501(2), does not apply to communications that have a direct bearing on claims asserted by a client against the lawyer); *Armstead v. State*, 293 Ga. 243, 245–46 (2013) (finding that "any statutory privilege or right of privacy in [psychiatric] records may be waived by the accused, in particular if the accused affirmatively places his mental capacity in issue.")).

Here, the Court should find a judicial exception to the Seat Belt Statute. The Seat Belt Statute provides that "[t]he failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of a motor vehicle which has a seat safety belt or belts shall not be considered evidence of negligence or causation, shall not otherwise be considered by the finder of fact on any question of liability of any person, corporation or insurer . . .." Whatever the wisdom of that exclusionary rule, the Legislature, through the statute's enactment, accomplished the goal of preventing seatbelt use evidence from becoming a feature of the case in tort actions, especially since, in many (or most) cases, the plaintiff does not claim that the restraint system

caused or enhanced his or her injuries. This action is different; this is a product liability action involving vehicle crashworthiness claims. Here, Appellants allege that the vehicle's restraint system caused or enhanced Appellant Domingue's injuries. In an automotive crashworthiness case, a manufacturing defendant's liability pivots on the design and/or manufacture of the vehicle's restraint system. To have a fair understanding as to whether the design and/or manufacture of the restraint system was defective and/or unreasonably dangerous, the jury must know how the vehicle and its restraint system performed in the accident. Integral to that analysis are the facts involving *use* and *nonuse* of the restraint system, including the seatbelt. Here, the vehicle occupant, Appellant Kristin Domingue, was not wearing her seatbelt, the principal component of the restraint system.

To better illustrate this point, consider how a reasonable juror might address the issue in an automotive crashworthiness case. If and when a manufacturing defendant introduces evidence that the design and/or manufacture of the restraint system is not defective but, instead, reasonably safe and complies with applicable federal standards, jurors might ask: if the design and manufacture of the restraint system was safe and effective, why did it not protect the occupant? The jury is entitled to hear an answer to this question and, to present a full and fair defense, the manufacturing defendant must provide an answer. Here, the answer must include the fact that the injured occupant was not using (not wearing) the seatbelt.

Thus, there are two fundamental reasons to find a limited judicial exception to the Seat Belt Statute in automotive crashworthiness cases like this. First, Appellants' claims necessarily place at issue an occupant's nonuse of the seatbelt, and this Court should not allow the Seat Belt Statute to be used as a sword and a shield. Second, because application of the Seat Belt Statute would necessarily prevent a manufacturing defendant, like Appellee, from presenting a meaningful defense in an automotive crashworthiness case and thereby violate the due process clause of the Georgia and U.S. Constitutions, this Court should read the statute narrowly so that it cannot apply and/or its protections have been waived when the plaintiff has placed at issue the design and/or manufacture of the restraint system.

B. An Exception to the Bar on Non-Use Evidence Should be Recognized for Product Liability Claims that Necessarily Place at Issue the Design and/or Manufacture of a Restraint System.

It is fundamentally unfair for a plaintiff to prosecute a claim that a vehicle's restraint system is defective and/or unreasonably dangerous and, at the same time, invoke the Seat Belt Statute to bar evidence of the nonuse of a key component of that system. A challenge to the restraint system necessarily places at issue an occupant's nonuse, and barring evidence of such nonuse would improperly allow a plaintiff to use the Seat Belt Statute as a sword and a shield. The Seat Belt Statute should not be applied to permit such a result.

This situation is closely analogous to the offensive use doctrine that limits the application of the attorney-client privilege. As the Eleventh Circuit has observed, where a litigant places information protected by the privilege at issue, "to allow the privilege to protect against disclosure of such information would be manifestly unfair to the opposing party." *Cox v. Administrator, U.S. Steel & Carnegie*, 17 F.3d 1386, 1418-20 (11th Cir. 1994). This Court employed the same reasoning in *Daughtry v. Cobb*, 189 Ga. 113, 118 (1939):

> the rule as to privilege has no application where the client, in an action against the attorney, charges negligence or malpractice, or fraud, or other professional misconduct. In such cases it would be a manifest injustice to allow the client to take advantage of the rule of privilege to the prejudice of his attorney.

Id. at 118. As the Court explained in *Hill, Kertscher & Wharton, LLP v. Moody*, 308 Ga. 74 (2020):

> [P]laintiff-clients should not be allowed to file a claim for malpractice against a former attorney "and at the same time conceal from him communications which have a direct bearing on this issue simply because the attorney-client privilege protects them. To do so would in effect enable them to use as a sword the protection which the Legislature awarded them as a shield."

Id. at 79-80 (citation omitted).

The facts in the appeal at bar are no different. Appellants chose to place at issue the design and manufacture of the restraint system, and therefore they should not be allowed to both prosecute that claim and invoke the Seat Belt Statute to exclude relevant, highly important, and countervailing evidence of nonuse. The

statute should not be used as a sword and shield. *See Christenbury v. Locke Lord Bissell & Liddell, LLP*, 285 F.R.D. 675, 682 (N.D. Ga. 2012). This Court should rule that the Seat Belt Statute cannot apply and its protections have been waived when the design and manufacture of the restraint system is at issue.

C. The Seat Belt Statute Should Be Construed to Avoid Violation of the Due Process Clauses of the Georgia and Federal Constitutions.

This Court has the power to reject wooden readings of a statute that would or could result in manifest injustice. As the Court observed in *State v. Fielden*, 280 Ga. 444, 448 (2006), "[t]his Court may construe statutes to avoid absurd results, *e.g., State of Ga. v. Mulkey*, 252 Ga. 201, 204, 312 S.E.2d 601 (1984), and has the authority to narrow statute to avoid unconstitutional infirmities. *E.g., Howard v. State,* 272 Ga. 242(1), 527 S.E.2d 194 (2000)."

Here, as applied to product liability actions involving automotive crashworthiness claims, the Seat Belt Statute prevents a manufacturing defendant from presenting a true defense. As such and as applied, it violates the due process clauses of both the Georgia and United States Constitutions. Ga. Const. Art. I, § 1, ¶ 1; U.S. Const. Am. 14. The test for due process under both is whether a statute, as applied, lacks a rational legislative purpose and is arbitrary and discriminatory. *Quiller v. Bowman*, 262 Ga. 769, 771 (1993); *Nebbia v. New York*, 291 U.S. 502, 511 (1934) (federal due process demands that laws "shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial

relation to the object sought to be attained.") Denying a manufacturing defendant the right to put on a defense in a product liability action involving automotive crashworthiness claims plainly discriminates against the defendant and runs afoul of basic principles of justice and fairness. *See Lindsey v. Normet*, 405 U.S. 56, 66 (1972) (due process requires "an opportunity to present every available defense."). There is no rational legislative purpose that would justify such a result.

C.W. Matthews Contracting Co., Inc. v. Gover, 263 Ga. 108 (1993), does not change the calculus. The due process analysis in *C.W. Matthews* dealt with the statute on its face and concluded, generally, that the statute rationally provided a method of encouraging seatbelt use while limiting the penalty. *Id.* at 109. In contrast, the product liability action at bar involves automotive crashworthiness claims that directly place at issue the design and manufacture of the vehicle's restraint system, including the seatbelt. As applied, the statute will result in the jury hearing a fundamentally false view of the facts involving, among other things, the safety of the restraint system, its performance, and injury causation. That would be particularly arbitrary and unjust in cases where a plaintiff has placed at issue the design and/or manufacture of the restraint system. This Court should not allow such a result, and it should invoke its power to avoid unconstitutional applications of the statute. The Court should find a constitutional and equitable exception; it should rule

that the Seat Belt Statute cannot apply and its protections have been waived when the design and/or manufacture of a vehicle's restraint system is at issue.

CONCLUSION

For the foregoing reasons, and the reasons expressed by Appellee, this Court should answer all three parts of the certified question "no."

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