

**Summary of SC90681, *Jeanne Moore and Monty Moore v. Ford Motor Company***

Appeal from the St. Louis County circuit court, Judge Mark D. Seigel  
Argued and submitted Sept. 16, 2010; opinion issued Jan. 25, 2011

**Attorneys:** The Moores were represented by Randall L. Rhodes and Christopher J. Stucky of Douthit, Frets, Rouse, Gentile & Rhodes LLC in Kansas City, (816) 941-7600; and Stanley J. Goodkin of Stanley J. Goodkin PC in Clayton, (314) 863-6383. Ford was represented by Dan H. Ball, Carole L. Iles, Stephen G. Strauss and Molly M. Jones of Bryan Cave LLP in St. Louis, (314) 259-2000.

The Product Liability Advisory Council Inc., which filed a brief as a friend of the Court, was represented by Thomas E. Rice Jr., Angela M. Higgins and Bryan E. Moubert of Baker Sterchi Cowden & Rice LLC in Kansas City, (816) 471-2121; and Hugh F. Young Jr. of the council in Reston, Va., (703) 264-5300.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A husband and wife appeal the judgment against them in a product liability suit they brought against an automobile manufacturer after the wife was injured in an accident. In a 4-2<sup>1</sup> decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the judgment in part, reverses it in part and remands (sends back) the trial court's judgment directing a verdict against the couple on their claims that the manufacturer failed to warn them adequately that the vehicle's front seats might collapse in a crash due to the wife's weight, causing her a risk of serious injury. The trial court erred in directing a verdict against the couple on this claim as they presented sufficient evidence for the claim to be submitted to the jury. The trial court did not abuse its discretion, however, in restricting the couple's cross-examination of the manufacturer's expert, in overruling their objections to the manufacturer's expert's testimony or in admitting testimony from another of the manufacturer's expert witnesses.

Chief Justice William Ray Price Jr. dissents. He would affirm the trial court's judgment with respect to the failure to warn claims. Here, the couple offered no evidence of what a feasible, adequate warning might have said or where it might have been placed; therefore, they failed to make a submissible case.

**Facts:** Jeanne Moore and her husband owned a 2002 Ford Explorer. She was 6 feet tall and weighed approximately 300 pounds. While stopped to make a left turn in the Explorer, she was hit from behind by another vehicle. At impact, the driver's seat collapsed backward and her head and shoulders hit the back seat, fracturing her T9 vertebra. The injury rendered her a paraplegic. Moore and her husband sued Ford under theories of negligent failure to warn, strict liability failure to warn, negligent design and strict liability design defect. At trial, Moore testified that she paid attention to weight warnings when she purchased products because of her weight and

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<sup>1</sup> A circuit judge served by special designation in place of Judge Mary R. Russell until his term of office expired Dec. 31, 2010.

because her husband and son were both tall and heavy. She further testified that, after she purchased the vehicle but before the wreck, she looked through the owner's manual for other information and, in doing so, saw no listing of maximum weight limits for the front seats and no warnings that the Explorer's seats might collapse backward in a rear-end impact. Moore further testified, without objection, that she would not have bought the Explorer had she known the seats were not designed for people of her weight. Her husband testified, without objection, that had Ford provided some warning or indication that the Explorer's seats were not designed for people of his wife's weight, he would not have purchased the vehicle and would have done everything in his power to prevent her from riding in it. At the close of the Moores' presentation of evidence, the trial court directed a verdict in Ford's favor on the Moores' negligent failure to warn claim without allowing the Moores to present evidence on this claim or to submit it to the jury. In doing so, it held Missouri does not recognize such causes of action when the claim is that a failure to warn would have caused plaintiff not to buy or use the product. The Moores then dismissed their negligent design claim. The jury found in favor of Ford on their claim for strict liability design defect. The Moores appeal.

**AFFIRMED IN PART; REVERSED IN PART; REMANDED.**

**Court en banc holds:** (1) The trial court erred in directing a verdict for Ford on the Moores' failure to warn claims. The elements of a cause of action for strict liability failure to warn are: the defendant sold the product in question in the course of its business; the product was unreasonably dangerous at the time of sale when used as reasonably anticipated without knowledge of its characteristics; the defendant did not give adequate warning of the danger; the product was used in a reasonably anticipated manner; and the plaintiff was damaged as a direct result of the product being sold without an adequate warning. Here, it is undisputed that the Moores presented substantial evidence of the first, third and fourth elements, and the record shows they presented sufficient evidence of the second and fifth claims as well, entitling them to a jury determination of their claim.

(a) The jury was entitled to consider whether the Explorer seat was rendered unreasonably dangerous when not accompanied by a warning of its greater potential to collapse in a low to moderate rear-end collision while occupied by a person of Moore's weight. One of the Moores' experts testified that testing he conducted showed that the point of failure for a 2002 Explorer seat is 16,870 inch pounds and that the changed velocity and sustained gravitational forces in the wreck, combined with Moore's weight, would exceed the seat's capability. The fact that the jury found the seat was not defective in design does not preclude a failure to warn claim, for a properly designed product may be unreasonably dangerous if adequate warnings and instructions as to its use are not given. Additionally, Missouri law does not place on the plaintiff the burden of proposing exact wording for a suitable warning for a failure to warn claim to bemissible.

(b) There was sufficient evidence for the jury to determine whether the lack of warning caused Moore's injuries. Moore and her husband presented substantial evidence through expert testimony that the seats did collapse and that she received her injuries in the accident. In addition, Missouri law presumes that an adequate warning will be heeded. Here, there is no question that the Moores did not know of the danger when they

purchased and drove the Explorer. Further, while Ford presented some evidence that they would not have heeded the warning, the Moores presented contrary evidence that they would not have bought the vehicle or would not have driven it had they received a warning of the dangers.

(2) The trial court did not abuse its discretion in restricting the cross-examination of Ford's expert Dr. Harry Smith. While a witness may be cross-examined as to all matters in the case, the Moores' offer of proof as to the scope of their proposed cross-examination of Dr. Smith was inadequate. Moreover, the trial court would have been well within its discretion to find the Moores' proposed questions not legally relevant.

(3) The trial court did not abuse its discretion in overruling the Moores' objections to the testimony of Ford's expert, Roger Burnett, whom Ford called to help show that its design was not defective or unreasonably dangerous by demonstrating that its design was more protective of riders in a variety of circumstances than other available designs. That such evidence – in the form of proof of alternative designs and evidence as to their relative safety – also would have been relevant to the Moores' former negligence claims did not require its exclusion merely because those claims were dismissed.

(4) The trial court did not err in admitting testimony from Ford's expert, Dr. Catherine Corrigan, even though she was not a medical doctor. She has a Ph.D. in medical engineering and a master's degree in mechanical engineering and limited her testimony to the areas of her expertise.

**Dissenting opinion by Chief Justice Price:** The author would affirm the trial court's judgment with respect to the failure to warn claims. To establish a cause of action in Missouri for strict liability or negligent failure to warn, the plaintiffs must prove, among other things, that the defendant did not give adequate warning of the danger and that the plaintiff was damaged as a direct result of the lack of adequate warning. Here, the Moores offered no evidence of what a feasible, adequate warning might say or where it might be placed. Therefore, they failed to make a submissible case. As in Indiana, from which Missouri adopted its "heeding presumption" – that a plaintiff would have heeded an adequate warning had one been given – Missouri should require the plaintiff to offer some evidence of the content or placement of a warning that would have prevented the danger posed by the product in question. To require anything less potentially subjects a manufacturer to liability for failing to do the impossible.