

Won summary judgment from the West Virginia Supreme Court in a federal preemption case involving claims that Ford Motor Co. should have used different glass in its vehicle windows.

2009

In this case, the Supreme Court of West Virginia affirmed an order from the Circuit Court of Kanawha County granting summary judgment and dismissing the appellant's claim against Wheeler Trigg O'Donnell client Ford Motor Company. The Supreme Court agreed with the lower court that the appellant's state tort claim was preempted by federal law.

In January 2001, appellant Francis Robert Morgan was driving a 1999 Ford Expedition. The vehicle rolled over, and Mr. Morgan's left hand and arm went through the broken tempered glass of the driver's side-door window. The hand and arm became pinned between the vehicle and pavement, causing Mr. Morgan severe injury. Mr. Morgan contended that the vehicle was defective because Ford had used tempered glass instead of laminated glass in the Expedition's side-door windows.

The Circuit Court granted summary judgment and dismissed Mr. Morgan's glass defect claims against Ford based on briefing and argument by WTO attorney [Bryan Cross](#) that the claims were preempted by Federal Motor Vehicle Safety

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Standard ("FMVSS") 205, a regulation that expressly permits the use of various materials in motor vehicle side-windows.

After reviewing the record, the briefs and arguments of the parties, as well as applicable federal case law, the Supreme Court of West Virginia affirmed the Circuit Court's summary judgment order entered in favor of Ford and concluded that:

because the NHTSA [National Highway Transportation Safety Administration] gave manufacturers the option to choose to install either tempered glass or laminated glass in side windows of vehicles in FMVSS 205, permitting the plaintiff to proceed with a state tort action would foreclose that choice and would interfere with federal policy.

The Supreme Court of West Virginia was only the second appellate court in the country to address the preemptive effect of FMVSS 205 on glass defect claims, and it expressly rejected the United States Court of Appeals for the Fifth Circuit's finding of no preemption in *O'Hara v. General Motors*.

Mr. Cross's argument in this case was based in part on the preemption argument that WTO's Malcolm Wheeler successfully made before the United States Supreme Court in Geier v. Honda. In a victory for WTO client Honda and the automotive industry generally, the Supreme Court held that Honda could not be held liable for failing to install airbags when the applicable version of FMVSS 208 permitted but did not require such use. The plaintiff claimed her injuries could have been avoided if an airbag had been installed and that she was entitled to recover damages under state tort law. The Supreme Court ruled that FMVSS 208 preempted such "no airbag" claims, thereby foreclosing thousands of potential lawsuits.

