NO. 2007-TS-01172

IN THE SUPREME COURT OF MISSISSIPPI

FORD MOTOR COMPANY **APPELLANT**

v.

CARLOS and SHIRLEY CASANOVA **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Ford Motor Company, Appellant/Defendant;
2. Watson Quality Ford, Inc., Defendant;
3. Carlos Casanova, Appellee/Plaintiff;
4. Shirley Casanova, Appellee/Plaintiff;
5. Walker W. Jones, III, Barry W. Ford, Bradley W. Smith and Everett E. White, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., counsel of record for Ford Motor Company, Appellant/Defendant;
6. Joseph E. Roberts, Pittman, Germany, Roberts & Welsh, LLP, counsel of record for Watson Quality Ford, Inc., Defendant;
7. Michael W. Baxter and Barry D. Hassell, Copeland, Cook, Taylor & Bush, P.A., counsel of record for Watson Quality Ford, Inc., Defendant;
8. Carroll Rhodes, counsel of record for Carlos Casanova and Shirley Casanova, Appellees/Plaintiffs; and
9. Honorable Tomie T. Green, Circuit Court Judge, Hinds County, Mississippi.

WALKER W. JONES, III

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STATEMENT OF THE ISSUES

The general issue presented is whether the lower court erred in denying Ford's Motion for Summary Judgment. The specific issues presented are as follows:

I. WHETHER FORD IS ENTITLED TO SUMMARY JUDGMENT BECAUSE PLAINTIFFS ADMITTEDLY HAVE NO EVIDENCE OF A DEFECT OR CAUSATION.

II. WHETHER FORD IS ENTITLED TO SUMMARY JUDGMENT BECAUSE IT IS IMPOSSIBLE FOR PLAINTIFFS TO SHOW THAT A DEFECT EXISTED WHEN THE VAN LEFT FORD'S CONTROL.

III. WHETHER FORD IS ENTITLED TO SUMMARY JUDGMENT BECAUSE CASANOVA ASSUMED THE RISK OF ANY INJURY CAUSED BY AN ALLEGED DEFECT IN THE VAN.

IV. WHETHER FORD IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' CLAIM FOR BREACH OF THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE BECAUSE THE VAN WAS PURCHASED FOR THE ORDINARY PURPOSE OF TRANSPORTATION.

Q: ...[Y]ou're not saying these parts contain any type of specific defect; is that right?

A: ***I mean, I don't know. I don't know if they was [sic] defective. I don't know. I'm not - - I can't give an opinion of that.***

-- Reverend Victor Dixon (Plaintiffs' only liability "expert") (4:434, p. 137, lines 18-23) (R.E. 47) (emphasis added)[1]

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This is an interlocutory appeal from The Honorable Tomie T. Green's denial of Ford's Motion for Summary Judgment. The underlying suit is a products liability action arising out of a two-vehicle collision that occurred May 11, 2000, on the entrance ramp of Warren Elementary School in Vicksburg, Mississippi. (2:188) (R.E. 4). One of the vehicles involved was a Ford Econoline van operated by Carlos Casanova. *Id.* Casanova and his wife sued Ford and the local dealership[2] alleging that the wreck and his resulting injuries were caused by a steering problem in the van. *Id.*

Ford moved for summary judgment for a number of reasons. The most basic is that, as the above quote illustrates, Plaintiffs have no evidence of a defect or causation. Indeed, they mistakenly believe that such proof is not required as long as they style their product liability claim as breach of the implied warranty. (4:480) (R.E. 93). Thus, although they do not expressly say so, Plaintiffs apparently believe that *res ipsa loquitur* is available in product

[1] Citations to the record will be cited as "([volume]: [page])." Citations to Ford's Record Excerpts will be cited as "(R.E. [page])." The only exception to this format is that citations to the condensed version of transcripts in the record will include the page number and lines referenced.

[2] The local dealership is Watson Quality Ford, Inc. ("Watson Quality"). Watson Quality also filed a motion for summary judgment in this case. (5:689). It was denied the same day that Ford's Motion was denied. (7:967). Both Ford and Watson Quality petitioned for interlocutory review, which this Court granted. The appeals are separate because of the nature of Plaintiffs' claims.

liability actions. It is not. Regardless of the legal theories asserted in Plaintiffs' Complaint, they must still establish a defect and causation to recover against Ford. Mississippi law is clear on this.

As a result of Plaintiffs' admission that they have no evidence of a specific defect or causation, the primary issue in this appeal is purely legal: whether Plaintiffs have to prove that a particular component of the van was defective and the proximate cause of their injuries in order to recover from Ford. Although not articulated in the one-paragraph order denying Ford's Motion, the lower court presumably found that proof of a defect and causation is not required as long as Plaintiffs tether their claims to breach of the implied warranty of merchantability (IWM) and breach of the implied warranty of fitness for a particular purpose (IWFPP). (7:966) (R.E. 124). The lower court is incorrect. Because Plaintiffs seek to hold Ford liable for personal injuries caused by an alleged problem with the van's steering, their claim is, by definition, a product liability claim.[3] And product liability claims are governed by Mississippi's Product Liability Act ("MPLA" or "Act"), which plainly requires proof that a specific defect in the product caused the alleged damages. Miss. Code Ann. § 11-1-63. Plaintiffs cannot circumvent the Act's requirements by styling their claim as breach of implied warranty.

Moreover, even if the Plaintiffs could side-step the MPLA by traveling under implied warranty, their claims still fail. Their IWFPP claim fails because the van was purchased for the ordinary purpose of transportation; and their IWM claim fails because, just like the MPLA, proof of a specific defect and causation is required to establish a breach of the IWM. In addition, Plaintiffs' claims also fail because (1) Casanova wrecked the van twice prior to this accident

[3] Black's Law Dictionary, which is used frequently by the Mississippi Supreme Court, defines a product liability action as "[a] lawsuit brought against a manufacturer, seller, or lessor of a product—regardless of the substantive legal theory or theories upon which the lawsuit is brought—for personal injury, death, or property damage caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product." BLACK'S LAW DICTIONARY (8th ed. 1999).

(without having it repaired), so it was not in the same condition as when it left Ford's control (3:357-358) (R.E. 1-2); and (2) even if there was a pulling problem, which Ford denies, Casanova assumed the risk of any injury by driving the van for almost five months with full appreciation of the alleged pulling problem. (2:259).

II. COURSE OF PROCEEDINGS

On May 6, 2003, Carlos and Shirley Casanova filed this suit against Ford and Watson Quality alleging that the accident was caused by one or more "malfunctioning" steering components in the van, and that Watson Quality failed to repair these allegedly malfunctioning steering components prior to the accident.[4] (2:190) (R.E. 6). Plaintiffs seek recovery from Ford under the theories of breach of the IWM and breach of the IWFPP.[5]

On February 7, 2007, after almost four years of discovery, Ford filed a Motion for Summary Judgment based on, *inter alia*, Plaintiffs' inability to prove that a defect in the van existed or caused their damages and Casanova's assumption of the risk. (2:165) (R.E. 55). In their Response to Ford's Motion, Plaintiffs argued that summary judgment was improper for the following reasons: (1) Plaintiffs were not required to prove that a specific component of the van was defective and the proximate cause of their injuries,[6] only that "the car itself is defective because it did not perform as a new car should have performed," (4:481) (R.E. 94); (2) a genuine

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[4] Shirley Casanova's only claim is for loss of consortium; thus, it is wholly derivative of Carlos Casanova's personal injury claim.

[5] Plaintiffs' Complaint also included claims of negligence and strict liability, but after Plaintiffs were unable to locate the allegedly "malfunctioning" steering components, they dismissed all claims against Ford except for breach of the IWM and IWFPP. (2:188) (R.E. 4); (1:61). Plaintiffs did so in the hopes that proof of a specific defect and causation would not be required to prove their product liability claim under implied warranty.

[6] (4:480) (R.E. 93) ("In order to prevail on a breach of implied warranty claim involving an automobile, the plaintiff does not have to prove that a 'defect' is to a particular part of the car."); (4:490) (R.E. 103) ("There is no requirement that the plaintiffs prove what specific defect caused the steering in the van from operating as it should have on the roadway.").

issue of material fact exists as to whether the van was in substantially the same condition at the time of the wreck as when it left Ford's control, (4:472-473) (R.E. 85-86); (3) the MPLA does not apply to breach of IWM claims, and common law assumption of the risk is not a complete bar to recovery, (4:480) (R.E. 93); and (4) an IWFPP existed because the purchaser of the van "relied upon the skill and judgment of [the seller] to select a white 'cargo' van." (4:480) (R.E. 93).

On June 21, 2007, five days prior to the scheduled hearing, the Circuit Court of the First Judicial District of Hinds County, Mississippi entered a one-paragraph Order denying Ford's Motion for Summary Judgment. (7:966) (R.E. 124). The Court's only finding was that the "...motion is not well taken and should not be granted inasmuch as there are genuine issues of material fact for a jury's determination." *Id.* Because the primary issues raised in Ford's Motion for Summary Judgment are purely legal, and because the material facts of this case are not genuinely disputed, Ford requested that this Court grant it permission to appeal from the Circuit Court's interlocutory order pursuant to M.R.A.P. 5(a).

On August 8, 2007, this Court granted Ford's request, along with the request of co-defendant Watson Quality. (7:970-971) (R.E.125). A briefing schedule was issued on January 24, 2008, designating March 4, 2008, as the date Ford's Appellant Brief is due.

III. STATEMENT OF THE FACTS

The following is a summary of the facts necessary to resolve the issues raised in this appeal.

A. HISTORY OF VAN USE PRIOR TO MAY 2000

In June of 1999, Jack DeMoney hired Plaintiff Carlos Casanova to lay tile for Resilient Flooring ("Resilient") in Ridgeland, Mississippi. (2:200, p. 15, lines 1-8). On January 7, 2000, Resilient purchased a new Ford Econoline E-250, the subject van, from Watson Quality.

Casanova was the primary driver, using the van to travel to different job sites for Resilient. In his deposition, Casanova testified that the van pulled to the right from the first day it was purchased. (2:243, p. 65, lines 22-25; p. 67, lines 3-5). On January 20, 2000, less than two weeks from the purchase date, Casanova wrecked the van twice in approximately two hours.[7] (3:357-358) (R.E. 1-2). According to the accident reports, both wrecks were Casanova's fault and resulted in heavy damage to all vehicles involved. *Id.* Notably, the van was not inspected after these wrecks, and thus the damage caused by them was not repaired until after the subject wreck on May 11, 2000. (3:366)

After these wrecks, Casanova asserts that he or Jack DeMoney took the van to Watson Quality once a month from January 2000 to April 2000 to have the alleged pulling problem repaired.[8] (2:243-245, p. 65, lines 22-25; p. 67, lines 3-5; pp.73-76). According to Casanova, however, the van continued to pull after these three, undocumented trips to Watson Quality. (2:245). Yet, apparently undeterred by the alleged pulling problem that had existed for over four months, and unconcerned about the damage from the January 20, 2000, wrecks, Casanova continued to drive the van until May 11, 2000, when he wrecked it for the third time in less than five months.

B. THE SUBJECT WRECK

On May 11, 2000, Casanova traveled to Vicksburg, Mississippi to work on a job for Resilient at Warren Elementary School. (2:279, p. 30, lines 24-25; p. 31, lines 1-6). Casanova

[7] Casanova does not allege that these wrecks were caused by the alleged pulling problem.

[8] Watson Quality documents, however, indicate that the only time the van was taken to Watson Quality was on April 7, 2000, and that Casanova refused to leave the van there overnight to be inspected. (3:360). Furthermore, Jack DeMoney denies that he ever took the van to Watson Quality to be repaired prior to April 2000, or that Casanova ever complained about the steering. (2:211, p. 59, lines 1-8). In any event, even if Casanova's testimony is believed, Plaintiffs still do not survive summary judgment: unsupported, self-serving testimony about a pulling problem in the van is simply not enough to establish a defect.

testified that the van was still pulling to the right during his trip from Ridgeland to Vicksburg that morning. *Id.* At approximately 5:15 p.m. that evening, as he was traveling down the school's entrance and exit ramp, the van, according to Casanova, suddenly swerved into the entrance lane and crashed into Vickie Wilson's 1998 Toyota Camry. (2:280, pp. 34-36). The front left side of the van collided with the front left side of the Camry, causing substantial damage to the body of the Camry and breaking numerous steering components in the van. (3:365); (3:366). Casanova estimated that he was traveling 10 miles per hour at the time of the accident. (3:306, p. 137, lines 3-4). Mrs. Wilson estimated her speed at 10 or 15 miles per hour. (3:394).[9] Wilson was not injured in the accident, but Casanova asserts that he suffered catastrophic injuries to his neck and back that have prevented him from working since the accident.

C. POST-WRECK REPAIRS TO VAN

The day after the wreck, May 12, 2000, the van was taken to Watson Quality where the damage was assessed by Farm Bureau Appraiser, Darryl Russell. (3:366). Mr. Russell determined that, among other things, a number of steering components were damaged as a result of the accident and needed to be replaced.[10] *Id.* The van was then sent to Ridgeland Body Shop where they repaired the body of the van and replaced the damaged steering components. *Id.* Significantly, all of the steering components that were removed from the van were destroyed or recycled by Ridgeland Body Shop. *Id.* Thus, none of the parties have ever seen any of the allegedly malfunctioning steering components.

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[9] To date, Plaintiffs have not set forth any evidence as to precisely what caused the alleged pulling problem. (3:421, p. 83) (R.E. 34).

[10] In this brief, the phrase "steering components" includes the steering pitman arm, the steering gear assembly, the radius arm, the suspension retainer, and the radius arm bracket.

In addition to replacing several steering components, Ridgeland Body Shop also repaired more than $400 worth of damage to the rear bumper caused by one of Casanova's wrecks on January 20, 2000; no determination was made regarding the extent of any other damage caused by Casanova's January 2000 wrecks. *Id.* In total, the subject wrecks caused nearly $3,000 worth of damage to the van. *Id.*

D. PLAINTIFFS' CASE

Plaintiffs' case against Ford is based entirely on the testimony of two people — Carlos Casanova and Reverend Victor Dixon. Casanova testified that the van had a pulling problem that caused the subject wreck and his injuries; and Reverend Dixon, a pastor/mechanic designated as Plaintiffs' only liability expert, testified that the steering components should not have been damaged in an accident of this severity. (4:426, p. 105) (R.E. 39). Reverend Dixon is not qualified to offer this innocuous opinion, but even if he was, the opinion is not enough to establish any type of claim against Ford. Moreover, Reverend Dixon admitted point-blank in his deposition that he does not know whether any component of the van was defective. (3:421, p. 83) (R.E. 34). Therefore, as discussed herein, even if Casanova's and Dixon's testimony is viewed in the light most favorable to Plaintiffs, their claims still fail as a matter of law.

SUMMARY OF THE ARGUMENT

This is a products liability action dressed up in warranty claims. Plaintiffs attempted to avoid having to prove defect and causation by characterizing their product liability claim as breach of the IWM and IWFPP. Their scheme fails for the following reasons.

First, Plaintiffs' product liability action is governed by the MPLA, which requires proof that Plaintiffs admittedly do not have: evidence of a defect in the van and a causal link between that defect and Plaintiffs' damages. Thus, Ford is entitled to summary judgment for this reason alone. Alternatively, even if Plaintiffs could pursue their product liability claim under warranty,

their IWM claim still fails because proof that a specific defect in the van caused their alleged damages is required to establish a breach of the IWM.

Second, even if Plaintiffs had evidence of a defect, their claim still fails because they cannot show that a defect existed when the van left Ford's control. It is undisputed that Casanova wrecked the van twice on the same day four months before the subject accident, and that he failed to have the van inspected or repaired after these wrecks. (3:357-358) (R.E. 1-2). While Plaintiffs speculate that these wrecks did not damage the van, the repair records show that, following the subject wreck, the body shop had to repair damage caused by these previous wrecks. (3:366). Therefore, because the extent of the damage caused by Casanova's previous wrecks is unknown (and now unknowable because the parts are unavailable) it is impossible for Plaintiffs to show that a defect was present when the van left Ford's control. In other words, it is impossible to show that the van was in substantially the same condition at the time of the wreck as when it left Ford's control. Since Plaintiffs are required to offer such proof under both the MPLA and IWM, their claim fails for this reason as well.

Third, if the MPLA governs Plaintiffs' suit, then Plaintiffs are barred from recovery by the doctrine of assumption of the risk. Assumption of the risk is an affirmative defense codified in the MPLA. Unlike its common law counterpart, it is a complete bar to recovery under the Act. Thus, while Ford does not admit that the van ever had a pulling problem, even if it did, Casanova assumed the risk of any injury because he (1) knew of the alleged problem, (2) appreciated the danger caused by the problem, and (3) continued to drive the van for five months. As a result, Casanova cannot recover from Ford under the MPLA.

Finally, even if not governed by the MPLA, Plaintiffs' hapless IWFPP claim fails as a matter of law because no IWFPP existed on the van. The Mississippi Supreme Court has declared that there is no IWFPP for vehicles purchased for the ordinary purpose of

transportation. And it is irrefutable that this van was purchased to transport Casanova and other workers to different job sites for Resilient; i.e., for the ordinary purpose of transportation. Thus, there was no IWFPP on the van. And since there was no IWFPP, Ford could not have breached it. Therefore, Ford is entitled to summary judgment on the IWFPP claim for this reason as well.

REQUEST FOR ORAL ARGUMENT

Ford respectfully requests oral argument. While application of the law to this case should be relatively straightforward – Plaintiffs are required to set forth evidence that the admittedly do not have – oral argument may be helpful in resolving the issue of whether the MPLA governs Plaintiffs' suit. This issue, the scope of the MPLA, is vitally important to all product liability actions and has been the source of much confusion over the last decade.

ARGUMENT

I. LEGAL FRAMEWORK

This Court "employs a de novo standard of review when reviewing orders granting or denying summary judgment." *Thomas v. Columbia Group, LLC*, 969 So. 2d 849, 852 (Miss. 2007). Summary judgment is mandated where the moving party establishes that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Miss. R. Civ. P. 56(c). For the reasons set forth below, there are no genuine issues of material fact and Plaintiffs' claims fail as a matter of law. Ford therefore requests that this Court reverse the lower court's ruling and render summary judgment in Ford's favor.

II. FORD IS ENTITLED TO SUMMARY JUDGMENT BECAUSE PLAINTIFFS ADMITTEDLY HAVE NO EVIDENCE OF A DEFECT OR CAUSATION.

A. NO GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO WHETHER PLAINTIFFS HAVE EVIDENCE OF A SPECIFIC DEFECT IN THE VAN OR CAUSATION.

For the following three (3) reasons, there is no genuine issue of material fact as to whether Plaintiffs have evidence that a defective component of the van caused their injuries.

They clearly do not.

First, it is now impossible for Plaintiffs to offer proof of a specific defect or causation because all of the subject steering components were recycled or destroyed by Ridgeland Body Shop prior to litigation. (3:366). Second, even if it was theoretically possible to offer evidence that a particular component of the van was defective and caused their injuries, Plaintiffs admit that they have no such evidence; indeed, they do not think the law requires it. (4:480, 489) (R.E. 93, 102). Third, even if it were theoretically possible, and even if Plaintiffs asserted that a specific defect in the van existed, Plaintiffs' only liability expert admitted point-blank that he does not know whether any part of the van was defective. (4:434, p. 137, lines 18-23) (R.E. 47). As noted, Plaintiffs' only liability "expert" is a pastor/mechanic named Reverend Victor Dixon. In his deposition, Reverend Dixon not only admitted numerous times that he did not know whether any part of the van was defective, he flatly declared that he is not offering an opinion that any particular part of the van was defective. The following excerpts from Reverend Dixon's Deposition conclusively establish this:

> Q: ...[Y]ou're not saying these parts contain any type of specific defect; is that right?
>
> A: ***I mean, I don't know. I don't know if they was defective. I don't know. I'm not - - I can't give an opinion of that.***

Id. at p. 137, lines 18-23 (emphasis added).

> Q: And as you sit here today, you can't point to a specific defect in the pitman arm that caused this accident, correct?
>
> A: Correct.

(3:421, p. 82, lines 21-24) (R.E. 34).

Q: And as you sit here today, you can't point to a specific defect in the suspension radius arm that caused this accident, correct?

A: Correct.

Id. at p. 82, line 25; p. 83, lines 1-3.

Q: And as you sit here today, you can't point to any defect in any steering component part in the Ford van Mr. Casanova was driving on the day of the accident that caused the accident, correct?

A: ***No. Correct. And just to let me say, in my opinion, nobody can, you know.***

Id. at p. 83, lines 4-10 (emphasis added).

Q: You're not saying that these particular parts deviate in any way from Ford's specifications or anything like that?

A: Now, that, I don't know.

(4:435, p. 139, lines 8-11) (R.E. 48).

Q: And you're not saying they were designed improperly or anything like that?

A: That, I don't know.

Id. at p. 139, lines 12-14.

In sum, Plaintiffs have not, and cannot, offer any evidence that a particular component of the van was defective and the proximate cause of their injuries. Indeed, Plaintiffs do not seriously argue otherwise; they do not think such proof is required. As discussed in the next section, however, proof of a defect and causation is plainly required to establish a breach of the IWM or a claim under the MPLA.

B. PLAINTIFFS MUST PROVE THAT A SPECIFIC DEFECT CAUSED THEIR ALLEGED DAMAGES UNDER BREACH OF THE IWM OR THE MPLA.

As established in the previous section, Plaintiffs admittedly have no evidence that a defective component in the van caused their injuries. Thus, the central dispute between the parties here is legal, not factual, and should therefore be resolved through summary judgment.

Specifically, the dispute is over what Mississippi law requires Plaintiffs to prove in order to recover against Ford for personal injury caused by an alleged "pulling problem" with the van. Plaintiffs proclaim that as long as they label their claim "breach of implied warranty" they do not have to reckon with the MPLA and do not have to prove that a specific defect in the van caused Casanova's injuries. They argue that "[i]n order to prevail on a breach of implied warranty claim involving an automobile, the plaintiff does not have to prove that a 'defect' is to a particular part of the car...."(4:480) (R.E. 93). And that "[t]here is no requirement that the plaintiffs prove what specific defect caused the steering in the van from operating as it should have on the roadway."(4:490) (R.E. 103). Plaintiffs believe instead that it is sufficient to show that "the car itself is defective because it did not perform as a new car should have performed." (4:481) (R.E. 94). Plaintiffs are simply mistaken.

As set forth in the following sub-sections, even if they can pursue their product liability claim outside the MPLA, Plaintiffs must prove that a specific defect in the van caused Casanova's injuries in order to establish a breach of the IWM. Since they admittedly have no such evidence, Ford is entitled to summary judgment. In addition, Plaintiffs' "warranty" claims against Ford are really product liability claims: Plaintiffs seek recovery from a manufacturer (Ford) for personal injury caused by an alleged defect ("malfunctioning" steering components) in a product (the van). Thus, Ford submits that Plaintiffs' lawsuit is governed by the MPLA, which also requires proof of a defect and causation. Consequently, Ford is entitled to summary judgment under either IWM law or the MPLA.[11]

1. Proof of a Defect and Causation is Required to Establish a Breach of the IWM.

[11] Because the scope of the MPLA has been the subject of much debate and confusion over the last fifteen (15) years, the Court should take this opportunity to clarify the scope for the lower courts and hold that the MPLA governs all actions aimed at holding manufacturers liable for personal injuries caused by an alleged defect in a product, regardless of the legal theory asserted in the complaint.

Contrary to Plaintiffs' assertions, Mississippi law is absolutely clear that plaintiffs must set forth evidence that a specific defect in the product caused their injuries in order to establish a breach of the IWM.[12] Numerous Mississippi cases have so held. Ford will briefly discuss three of them here.

Russell v. Ford Motor Co.

In *Russell*, plaintiff sued Ford alleging that, among other things, the steering system in the Ford vehicle was defectively designed. *Russell v. Ford Motor Co.*, 2006 WL 2947874, * 2 (Miss. App. 2006). Plaintiff sought recovery under theories of strict liability, negligence, negligent misrepresentation, *breach of implied warranties*, and gross negligence.[13] *Id.* In response to Ford's motion for summary judgment, plaintiff did not set forth any evidence that a particular component of the vehicle was defective. *Id.* As a result, the trial court granted summary judgment in Ford's favor. The Court of Appeals affirmed, reasoning that:

> Establishing that one of these components was defective when it left Ford's control in 1996 is an ***essential element of every one of [plaintiff's] claims***. Because plaintiff has failed to make a sufficient showing on those material facts, the granting of summary judgment was appropriate.

Id. at *4 (emphasis added). Since breach of the IWM was one of the plaintiff's claims in *Russell*, it follows that an "essential element" of that claim was proof that a component of the vehicle was defective. Therefore, proof that a component of the subject van was defective is an essential element of Plaintiffs' IWM claim here.

Farris v. Coleman Co., Inc.

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[12] As discussed *supra*, Plaintiffs' IWFPP claim fails (even if Plaintiffs can assert it outside the MPLA) because the van was purchased for the ordinary purpose of transportation.

[13] In *Russell*, as well as in *Farris* and *Davis* discussed below, the defendant apparently did not argue that the MPLA applied. Thus, the issue of the MPLA's scope was not before the court.

In *Farris*, plaintiff sued Coleman Co., Inc. ("Coleman") alleging that a Coleman cooler, which was electrically charged through the cigarette lighter, was defective and caused a fire in his truck. *Farris v. Coleman Co., Inc.* 121 F. Supp. 2d 1014, 1017 (N.D. Miss. 2000). According to the plaintiff, he turned the cooler on, left the truck for thirty minutes, and when he returned the cab was engulfed in flames. *Id.* Plaintiff's expert found that there was a short in the cooler's power cord, but did not opine that the cord was defectively manufactured or defectively designed, and could not determine the cause of the short. *Id.* The court held that the plaintiff failed to produce sufficient evidence of a defect in the cooler/power cord, and granted summary judgment on plaintiff's claim of *breach of the implied warranty of merchantability*. *Id.* at 1018. Thus, just as the court in *Russell* did, the court in *Farris* required proof of a specific defect in the product to establish a breach of the IWM.

Davis v. Ford Motor Co.

In *Davis*, plaintiffs sued Ford alleging that their injuries were caused by numerous defects in a 2000 Ford Explorer. *Davis v. Ford Motor Co.*, 375 F. Supp. 2d 518, 519 (S.D. Miss. 2005). Two of plaintiffs' defect theories were that the seatbelt and door latch were defectively designed. *Id.* at 522. Plaintiffs' expert, however, did not opine that the seatbelt or door latch contained a specific defect. *Id.* Rather, the expert merely opined that since the door was open after the accident, and nobody on the scene claimed to have opened it, then the door more likely than not came open during the accident, and therefore did not function properly. *Id.*

Ford argued that expert testimony was required to prove that a specific defect in the vehicle caused plaintiffs' injuries. *Id.* Plaintiffs countered that, even though they were unable to inspect and test the allegedly defective parts, and even though their expert did not opine that the parts were defective, testimony from the driver and other circumstantial evidence was sufficient to create an issue for the jury. *Id.*

The court rejected plaintiffs' argument and held that "plaintiffs must prove that a defect existed; and to do that here, expert testimony which identifies a *defect* is essential but lacking. Accordingly, the court concludes that the motion for partial summary judgment [on the seatbelt and door latch claims] should be granted." *Id.* at 523 (emphasis in original). The court's reasoning provided below, is particularly instructive here:

> In other words, plaintiffs insinuate that . . . they need not prove a specific defect, in that it is instead enough merely to show that something must have been defective, for otherwise [the driver] would not have been thrown from the vehicle. Their position is rejected. The court concludes that . . . plaintiffs cannot prove the existence of a defect at the time the vehicle left the manufacturer merely by showing that the seat belt and the door somehow came unlatched or otherwise failed during the accident. They need expert proof that these systems were defective, and this, they obviously lack.

Id. at 523.

Davis is indistinguishable from this case. The Casanovas, just like the plaintiffs in *Davis*, are arguing that proof of a defective component in the van is not required, and that it is sufficient to show through circumstantial evidence that something must have been wrong with the vehicle because it allegedly had a pulling problem. The *Davis* court unequivocally rejected that argument, and this Court should do the same.

Furthermore, not only did the *Davis* Court require proof that a specific component of the van was defective when it left Ford's control, it required expert testimony on the issue; lay testimony and circumstantial evidence were legally insufficient. Therefore, under, *Russell*, *Farris*, and *Davis*, plaintiffs are required to prove through expert testimony that a specific part of the van was defective and the proximate cause of their injuries in order to establish a breach of

the IWM.[14] As demonstrated above, because the Casanovas have not offered (and cannot offer) such proof, summary judgment in Ford's favor is required.

2. The MPLA Governs This Product Liability Action and Requires Proof of a Defect and Causation.

The Court does not have to address the scope of the MPLA to render summary judgment in Ford's favor. It could easily hold that Ford is entitled to summary judgment on Plaintiffs' IWM claim because they admittedly have no evidence that a defect in the van caused their injuries. *See* § IIA. It could also render summary judgment because Casanova wrecked the van twice prior to the subject wreck without having the van repaired. *See* § III. Nevertheless, Ford respectfully requests that the Court use this unique opportunity to clarify the scope of the MPLA; Plaintiffs do not usually argue that they are not required to prove defect or causation, so the issue is rarely framed as neatly as it is here.

As shown below, this Court has already held that the MPLA governs all actions "based upon product liability." *R.J. Reynolds Tobacco Co. v. King*, 921 So. 2d 268, 271 (Miss. 2005). The next step is explaining that "based upon product liability" means all actions aimed at holding a manufacturer liable for damages (other than to the product itself) caused by an allegedly defective product regardless of the legal theory asserted in the complaint. This clarification is necessary because some courts and plaintiffs still believe that the MPLA can be side-stepped if plaintiffs style their product liability claims as negligence or breach of warranty.

The Casanovas are among those who believe that the MPLA is optional for product liability claims. That is why they labeled their claims as breach of implied warranty. But even though the claims are dressed up in warranty, this lawsuit is the archetype product liability case:

[14] In previous filings, Plaintiffs have attempted to distinguish *Russell* and *Davis* by characterizing them as irrelevant "product liability cases dealing with the MPLA." (4:489) (R.E. 102). As shown above, however, both cases "dealt" with IWM claims and required proof of a defect and causation.

Plaintiffs are suing a manufacturer (Ford) for personal injuries caused by an alleged defect (steering problem) in a product (the van). As such, this action should be governed by Mississippi's product liability statute. And if the Court finds that the MPLA governs this action, it should grant Ford's motion for summary judgment because Plaintiffs admittedly do not evidence required by the Act, namely proof of defect and causation.

The following is (a) a brief description of the background of the MPLA; (b) a discussion of the two seminal cases interpreting the MPLA's scope; and (c) an analysis of why the MPLA mandates summary judgment on Plaintiffs' claims here.

a. Background of the MPLA

In 1993, the Mississippi legislature codified product liability law in the MPLA. The purpose of the statute was to bring under one umbrella the confusing and inconsistent practice of asserting a multiplicity of theories of recovery for damages allegedly caused by a product. *See, e.g., Coca-Cola Bottling Co., Inc. v. Reeves*, 486 So.2d 374, 384 (Miss. 1986) (discussing alternative theories being asserted for products liability claims and noting that "plaintiff creates unnecessary legal complications in a lawsuit and creates substantial danger of reversal when he determines that he must kill the snake more than once"). According to Judge Mills, a key drafter of the Act,"[w]hat [the MPLA] does is say if there is a product out here that injures someone, here are four ways you can take that action into court . . . ***If it doesn't fit one of those four, you don't have a lawsuit.***" Paul Barton, *Mills Defends Law Defining Product Safety*, THE COMMERCIAL APPEAL, Feb. 24, 1993, at A 12. In other words, the MPLA is not optional.

Nevertheless, since the Act's inception, plaintiffs have tried to avoid its provisions by filing products liability suits under a number of other legal theories (e.g., strict liability, negligence, and breach of implied warranty). This unfortunate practice was facilitated by two misguided *Erie* guesses and dicta from the Mississippi Supreme Court which suggested that the

MPLA was not the exclusive theory of recovery in a products liability action. *See Taylor v. General Motors*, 1996 WL 671648 (N.D. Miss. 1996); *Childs v. General Motors Corp.*, 73 F. Supp. 2d 669 (N.D. Miss. 1999); and *Bennett v. Madakasira,* 821 So. 2d 794 (Miss. 2002). In the last few years, however, this Court has revisited the scope of the MPLA. The two seminal cases on this issue, both of which involved claims against tobacco companies, are *Lane v. R.J. Reynolds Tobacco Co.* 853 So. 2d 1144, 1150 (Miss. 2003) and *R.J. Reynolds Tobacco Co. v. King*, 921 So. 2d 268, 271 (Miss. 2005)

b. Lane and King

In *Lane*, the plaintiff filed a wrongful death action against several tobacco companies claiming that her father's mouth cancer and subsequent death was caused by cigarettes. One of the issues on appeal was whether the MPLA's "inherent characteristic" defense barred plaintiff's claims. The Court agreed with the lower court's ruling and held that the MPLA's inherent characteristic defense "precludes all tobacco cases that are based on products liability," including plaintiff's suit. *Lane*, 853 So. 2d at 1150.

In *King*, the issue was once again the scope of the MPLA's inherent characteristic defense in the context of a wrongful death claim against tobacco companies. The lower court found that the defense applied to plaintiff's product liability claims (which were styled as negligence, strict liability, and warranty), but not to plaintiff's fraud and conspiracy claims. *King*, 921 So. 2d at 270. Both parties appealed, but the plaintiff's appeal was untimely. Thus, the only issue before the Court was whether, under *Lane*, the MPLA's inherent characteristic defense applied to all of plaintiff's claims, or only those claims based on product liability.

The Mississippi Supreme Court held that the MPLA only applies to causes of action based on products liability, not ones based on fraud, conspiracy or other non-defect related causes of action. It reasoned that "this Court never gave an affirmative answer in *Lane* that the

MPLA *bars* all suits, but rather concluded: 'State law *precludes* all tobacco cases that are *based on products liability*....' Clearly, this Court only stated that state law precludes all tobacco cases *based upon products liability,* not *all* tobacco cases, which could be based on other possible theories of recovery." *Id.* at 272. (internal citations omitted) (emphasis in original).[15] The Court went on to clarify that "[a]ny holding or language in *Lane* that is inconsistent or contrary to our holding today is expressly overruled." *Id.* at 275.

Therefore, as professor Weems observed, in the wake of *Lane* and *King*,

> [i]t would appear that the most important question now is what causes of action are 'based upon products liability' and thus subject to MCA § 11-1-63. It can be inferred that the answer is those causes of action dismissed by the trial court [strict liability, negligence, and implied warranty] in this case [*King*], but the Court does not expressly say so.

2007 Summary of Recent Mississippi Law, Robert A. Weems, at p. 92-93.

The Court should now expressly say so. And a simple but effective way to do this is by adopting the following Black's Law Dictionary definition of "product liability action":

> A lawsuit brought against a manufacturer, seller, or lessor of a product—***regardless of the substantive legal theory or theories upon which the lawsuit is brought***—for personal injury, death, or property damage caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product.

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[15] It is important to recognize that this holding was a significant departure from earlier Mississippi decisions that had held that the provisions of the MPLA did not apply to product liability claims brought under common-law strict liability, implied warranty, or negligence theories. *See Taylor v. General Motors*, 1996 WL 671648 (N.D. Miss. 1996); *Childs v. General Motors Corp.*, 73 F. Supp. 2d 669 (N.D. Miss. 1999); and *Bennett v. Madakasira,* 821 So. 2d 794 (Miss. 2002). Those decisions, which Plaintiffs will likely rely on, are now inapposite to the extent they conflict with the more recent decision in *King*. Moreover, a number of federal courts have also recently applied the MPLA to product liability suits asserted under negligence and breach of the IWM, finding that the entire purpose of the MPLA would be thwarted if plaintiffs were allowed to avoid its provisions by styling their claims as negligence or implied warranty. *See e.g., Collins v. Ford*, 2006 WL 2788564, * 1 (S.D. Miss. 2006); *Willis v. Kia Motors Corp.*, 2007 WL 1860769, * 3 (N.D. Miss. 2007); *Jones v. General Motors Corp.*, 2007 WL 1610478, * 2 (S.D. Miss. 2007).

BLACK'S LAW DICTIONARY (8th ed. 1999) (emphasis added).

By adopting this definition, the Court would instantly clear up nearly fifteen (15) years of confusion regarding the scope of the MPLA and end the unseemly practice of filing product liability actions under negligence and warranty to avoid the Act. This would be a tremendous help to the lower courts and practitioners alike.

c. This Case

The Court should find that Plaintiffs' claims here are "based upon products liability," and thus governed by the MPLA, because Plaintiffs seek to hold Ford liable for personal injury caused by alleged steering problems in the van – exactly the situation that the MPLA was designed to govern.[16] As such, Plaintiffs should be required to establish a prima facie case under the Act in order to survive summary judgment.

To establish a claim under the Act, plaintiffs must prove that a defect in the product caused their alleged damages. The relevant portion of the Act states:

> Subject to the provisions of Section 11-1-64, in any action for damages caused by a product except for commercial damage to the product itself:
>
> (a) The manufacturer or seller of the product shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the manufacturer or seller:
>
> (i) 1. The product was defective because it deviated in a material way from the manufacturer's specifications or from otherwise identical units manufactured to the same manufacturing specifications, or
>
> 2. The product was defective because it failed to contain adequate warnings or instructions, or
>
> 3. The product was designed in a defective manner, or

[16] If Plaintiffs were allowed to treat the Act as an optional or alternate cause of action, then the entire Act would be irrelevant: no informed plaintiff would ever choose to bring a product liability action under the stringent requirements of the Act if negligence and implied warranty were available.

> 4. The product breached an express warranty or failed to conform to other express factual representations upon which the claimant justifiably relied in electing to use the product; and
>
> (ii) The defective condition rendered the product unreasonably dangerous to the user or consumer; and
>
> ***(iii) The defective and unreasonably dangerous condition of the product proximately caused the damages for which recovery is sought.***

Miss. Code Ann. § 11-1-63(a) (emphasis added). Therefore, in order to recover under the MPLA, Plaintiffs here must prove that a particular component of the van was defective and the proximate cause of Casanova's injuries. As discussed in detail above, Plaintiffs admittedly do not have such evidence and do not even believe it is required. Consequently, Ford is entitled to summary judgment under the MPLA.

III. FORD IS ENTITLED TO SUMMARY JUDGMENT BECAUSE PLAINTIFFS CANNOT SHOW THAT A DEFECT EXISTED WHEN THE VAN LEFT FORD'S CONTROL.

Even if Plaintiffs had evidence of a specific defect in the van and causation, their claim still fails as a matter of law. To establish a claim under either the MPLA or IWM, Plaintiffs must not only show that the defect existed, but that it existed when the product left the manufacturer's control. *See* Miss. Code Ann. § 11-1-63 (a); *see also Langford v. Makita U.S.A. Inc., 1*998 WL 34024159, *2 (N.D. Miss. 1998) (plaintiff has the burden of proving that the allegedly defective product was "in substantially the same condition at the time of a plaintiff's injury as the product was when it left the custody and control of the defendant."). One court explained that "the concept is that the manufacturer is responsible for the product that it made, not for the product that exists after subsequent changes." *Wolf v. Stanley Works*, 757 So. 2d 316, 319-320 (Miss. App. 2000). Here, it is impossible for Plaintiffs to establish that a defect existed when the van left Ford's control, i.e., that the subject van was in substantially the same condition at the time of the wreck as when it left Ford's control, because Casanova wrecked the van twice prior to the subject wreck.

On January 20, 2000, Casanova wrecked the subject van twice in approximately two hours. (3:357-358)(R.E. 1-2). According to the accident reports, both wrecks were Casanova's fault. *Id.* The first wreck was caused by Casanova slamming on the brakes in the middle of the road, and the second wreck occurred when Casanova rear-ended the car in front of him. *Id.* In both wrecks, the accident reports described the damage to the vehicles involved as "heavy." *Id.*

Significantly, the "heavy" damage to the subject van from these January 20, 2000 wrecks was not repaired until after the subject wreck on May 11, 2000.[17] Since the van was not inspected or repaired by a mechanic after these wrecks, it is impossible to determine the extent of the damage caused by them, *or whether damage from these wrecks caused or exacerbated the van's alleged pulling problem.*

Plaintiffs contend that these wrecks did not damage the van, but have nothing to support this contention other than Casanova's self-serving speculation. That does not satisfy their burden. Because the extent of the damage from these wrecks is unknown, Plaintiffs cannot show that a defect existed when the van left Ford's control. Therefore, Plaintiffs' claims fail as a matter of law and the lower court's denial of Ford's Motion for Summary Judgment was improper for this reason as well.

IV. FORD IS ENTITLED TO SUMMARY JUDGMENT BECAUSE CASANOVA ASSUMED THE RISK OF ANY INJURY CAUSED BY AN ALLEGED DEFECT IN THE VAN.

The previous two arguments establish that Ford is entitled to summary judgment regardless of whether the Court applies the MPLA or IWM law. This third, and equally as compelling, reason for summary judgment, however, only applies if the Court finds that the

[17] Documents produced by Farm Bureau establish that the damage to the rear of the van caused by Casanova's first wreck on January 20, 2000, (the one where he was rear-ended after slamming on his brakes in the middle of the road) was repaired by Ridgeland Body Shop at the same time they repaired the damage caused by the May 11, 2000 wreck. (3:366).

MPLA governs. If the Court follows the *King* decision and applies the MPLA, then Casanova's claims are barred under the doctrine of assumption of the risk.

The doctrine of assumption of the risk, as codified in the MPLA, serves as a complete bar to recovery. Miss. Code Ann. § 11-1-63(d); *see also Green v. Allendale Planting Co.* 954 So. 2d 1032, 1040 (Miss. 2007). The relevant portion of the Act provides:

> . . . the manufacturer or seller ***shall not be liable*** if the claimant (i) had knowledge of a condition of the product that was inconsistent with his safety; (ii) appreciated the danger in the condition; and (iii) deliberately and voluntarily chose to expose himself to the danger in such a manner to register assent on the continuance of the dangerous condition.

Miss. Code Ann. § 11-1-63(d) (emphasis added).

Here, all of the elements for assumption of the risk are met.[18] Therefore, Plaintiffs' claims are barred and summary judgment in Ford's favor should be granted.

A. CASANOVA KNEW THE VAN HAD A PULLING PROBLEM.

The first element of assumption of the risk is that the plaintiff "had knowledge of a condition of the product that was inconsistent with his safety." Miss. Code Ann. § 11-1-63(d)(i). In his deposition, Casanova repeatedly asserted that the van began pulling to the right from the first day he drove it. (2:243, p. 65, lines 22-25; p. 67, lines 3-5). Moreover, Casanova testified that the van pulled to the right every time he drove it. (2:279, p. 31, lines 7-9). A van that continuously pulls to the right clearly jeopardizes the safety of the van's driver, and of other drivers on the road. Thus, Casanova had knowledge of a condition (the pulling problem) that was inconsistent with his safety.

[18] Ford does not concede that the subject van had a pulling problem or that Casanova ever took the van to Watson Quality prior to April 7, 2000. All of the evidence contradicts Casanova's testimony on these points. Nevertheless, taking Casanova's testimony as true, his claims are still barred because he assumed the risk of any injury caused by alleged defects in the van.

B. CASANOVA APPRECIATED THE DANGER CREATED BY THE ALLEGED PULLING PROBLEM.

The second element of assumption of the risk is that the plaintiff "appreciated the danger in the condition." Miss. Code Ann. § 11-1-63(d)(ii). After driving the van for several weeks, Casanova testified that the van was "pulling worse" everyday. (2:244, p. 72, lines 6-11). He further testified that he told Jack DeMoney "you need to drive the van yourself because I don't want to have no accident. The van, you can't control. And when you hit the brakes, it go like shaking the whole van." *Id.* at p.72, lines 12-16. Therefore, since Casanova knew that the van couldn't be controlled, he necessarily appreciated the dangers created by the alleged pulling problem.

C. CASANOVA CONTINUED TO DRIVE THE VAN DESPITE THE ALLEGED PULLING PROBLEM.

The third element of assumption of the risk is that the plaintiff "deliberately and voluntarily chose to expose himself to the danger in such a manner to register assent on the continuance of the dangerous condition." Miss. Code Ann. § 11-1-63(d)(iii). Even though Casanova knew that he could not control the van, he continued to drive the van for nearly five months prior to the subject accident. Such extended use of a van that allegedly could not be controlled shows Casanova's "assent on the continuance of the dangerous" pulling problem. *Id.*

Additionally, Casanova's explanation for why he continued to drive the van does not negate his assumption of the risk. In his deposition, Casanova explained, "I never wanted to drive the van from the beginning since I find the problem. It was pulling. I don't want to drive the van. . . . Take it to Watson Quality. Take it back. . . . Go to work. . . . Do this. . . . I was like a monkey in between Watson Quality and my boss. I had to do what they say." (2:259, p. 130, lines 7-15). Under Mississippi law, however, a "[p]laintiff may not avoid the assumption of the risk defense by using the fear of termination from employment." *Langford v. Makita U.S.A. Inc.*,

1998 WL 34024159, *2 (N.D. Miss. 1998). Consequently, Casanova is deemed responsible for his decision to drive the van for such an extended period of time with knowledge of the alleged pulling problem.

Finally, Casanova's testimony establishes that he assumed the risk as a matter of law, thus summary judgment is appropriate. As the Mississippi Supreme Court has observed, "[o]ften the question of whether the plaintiff appreciated and understood the risk is a question of fact for the jury, however, 'in certain circumstances the facts may show as a matter of law that the plaintiff understood and appreciated the danger.'" *Allen*, 954 So. 2d at 1041.

In *Allen*, the court affirmed the trial court's granting of summary judgment to the defendant manufacturer on grounds that plaintiff's claims were barred as a matter of law under the assumption of the risk doctrine in the MPLA. The court reasoned that plaintiff "admitted in his deposition testimony that he had knowledge and appreciated the dangerous condition of the mule boy [farm implement]." *Id.* at 1044. The same is true here. Casanova freely admitted that he had knowledge and appreciated the allegedly dangerous condition of the van. (2:244, p. 72, lines 6-16). Indeed, Plaintiffs do not argue otherwise. They simply believe (mistakenly) that the MPLA does not apply to their claim. (4:480) (R.E. 93).

In short, Casanova knew that it was dangerous to drive the van because of the alleged pulling problem, and despite this knowledge, continued to drive the van for almost five months. Therefore, under the MPLA, Casanova assumed the risk of any injury caused by the alleged pulling problem in the van. Consequently, Plaintiffs are barred from recovering against Ford for damage caused by this alleged pulling problem and summary judgment in Ford's favor is required.

V. FORD IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' IWFPP CLAIM BECAUSE THE VAN WAS PURCHASED FOR THE ORDINARY PURPOSE OF TRANSPORTATION.

As discussed elsewhere in this brief, Plaintiffs warranty claims are, in reality, product liability claims governed by the MPLA. But even if the Court finds that Plaintiffs can proceed with their product liability claims outside the MPLA, Plaintiffs' IWFPP claim still fails as a matter of law. Plaintiffs' entire argument, relegated to a footnote in their Response to Ford's Motion, is that the IWFPP is applicable because Jack DeMoney (Casanova's boss and the purchaser of the van) "relied upon the skill and judgment of [the seller] to select a white 'cargo' van." (4:479) (R.E. 92) Ironically, the case that Plaintiffs' cited in support of their argument, *Royal Lincoln-Mercury Sales, Inc. v. Wallace*, 415 So. 2d 1024 (Miss. 1982), actually establishes that Plaintiffs do not have a claim for breach of the IWFPP.

In *Wallace*, the court held that there was no IWFPP on vehicles purchased for the ordinary purpose of transportation. *Id.* at 1027. The court reasoned:

> Although it can be envisioned that an automobile could be purchased for a particular purpose such as racing, towing a large trailer, or other specialized use, where the ordinary purchaser would need the seller's skill and judgment in making a selection, this was not so in the present case [car purchased for transportation]. We, therefore, think that [the IWFPP] has no application.

Id. (internal citations omitted).

Here, if Mr. DeMoney's statement to the seller that he needed a white cargo van constituted reliance on the seller's "skill and judgment," then those words are meaningless and nearly all automobile purchasers would be deemed to rely on the skill and judgment of the seller. More importantly, it is undisputed that the subject van was used for the ordinary purpose of transporting Resilient employees to different job sites; and the court in *Wallace* made it clear that there can be no IWFPP on automobiles purchased for the ordinary purpose of transportation. *Id.*

Therefore, because there was not an IWFPP on the subject van, Ford could not have breached the IWFPP and Plaintiffs' claim fails as a matter of law. As a result, the lower court's failure to grant Ford's Motion for Summary Judgment on this issue was improper.

CONCLUSION

For these reasons, Ford respectfully requests that this Court (1) reverse the lower court's denial of Ford's Motion for Summary Judgment and render judgment in Ford's favor on all of Plaintiffs' claims; (2) clarify the Court's holding in *King* by expressly stating that the MPLA exclusively governs all product liability actions, as defined by Black's Law Dictionary; and (3) censure the lower court for ignoring basic principles of Mississippi law and failing to articulate any basis for denying Ford's Motion.

THIS the 4 day of March, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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