



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**VIRGINIA and JOHN COX v. FORD MOTOR CO.
CV-10-0336-PR**

PARTIES AND COUNSEL:

Petitioner: Defendant/Appellee Ford Motor Co.

Respondents: Plaintiffs/Appellants Virginia and John Cox

Amici: The Product Liability Advisory Council
The Arizona Association for Justice/Arizona Trial Lawyers Association
The Arizona Association of Defense Counsel

FACTS:

Mrs. Cox was injured in a low-speed head-on collision. Investigators estimated the speed of the 1995 Ford Crown Victoria that Mrs. Cox was driving was between zero to five miles per hour, and that the other vehicle's speed was between 20 to 25 miles per hour. Upon impact, the airbags in the Crown Victoria deployed. The Coxes maintain that injuries to Mrs. Cox's right arm and her face were caused by the vehicle's airbag, a "single stage" airbag system that inflated with the same explosive energy as it would have in a high speed collision. Her right arm was crushed, she suffered a broken and exposed radius and severe damage to her wrist, and her nose and other facial bones were shattered. She underwent numerous procedures to repair her facial bones and eyelids and was treated for corneal ulcers and eye pain.

The Coxes sued Ford and other now-dismissed manufacturers. As relevant here, Ford filed partial summary judgment motions as to design defects in the airbag crash sensing and inflation systems. It argued the "single stage" airbag system in the 1995 Crown Victoria conformed to then-existing state-of-the-art technology, and that the Coxes could not prove that Mrs. Cox's injuries were caused by a single airbag system. The Coxes responded that the evidence was sufficient to reach a jury on theories that a dual-stage airbag system would have been less likely to injure Mrs. Cox in the accident, and that the single stage airbag system employed in the 1995 Crown Victoria was unreasonably dangerous.

The trial court rejected the Coxes' arguments, finding that Ford presented ample evidence that the airbag system used in the 1995 Crown Victoria was "state-of-the-art," and that the Coxes did not present more than a scintilla of evidence to rebut that prima facie showing. "State-of-the-art" means the technical, mechanical, and scientific knowledge of manufacturing, designing, testing, or labeling the same or similar products that were in existence and reasonably feasible for use at the time of manufacture. A.R.S. §12-681(10).

The Coxes offered expert testimony to suggest that General Motors designed and tested an

experimental dual-stage airbag system in the 1970's, when airbags were not yet even available for consumer vehicles. The trial court, however, concluded that although the expert testimony suggested the experimental design had promise and, if implemented, could have had significant safety benefits, the record was devoid of evidence to suggest that the actual design tested by General Motors in the 1970's was ever manufactured for use in production vehicles, or that in the mid-1990s the concepts developed by General Motors were "reasonably feasible" for manufacture. Thus, the trial court held that "[t]o submit the case to a jury based upon this purported genuine dispute of material fact would be to invite speculation untethered to the evidence." Accordingly, the court granted Ford summary judgment, concluding that no vehicles sold in the 1990s by any manufacturer had used a dual-stage air bag and that such a system was not feasible in 1995.

The Coxes appealed. The court of appeals reversed, finding that whether a product is state-of-the-art is a fact question for the jury. The court noted the lower court's ruling did not comment on other theories raised by the Coxes, including whether a jury might find Ford's crash sensing system was defective and unreasonably dangerous, or whether Ford was liable for not using feasible and available technology to improve its sensing system.

ISSUE:

Did the court of appeals err in ruling that an unbuilt, untested design concept is sufficient evidence to create a jury question on the statutory state of the art defense?

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