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Justices Chastise Ford Motor over Answers; Company Denies it Misled Anyone

Robin Frazer Clark, who represented plaintiffs, said ruling could affect future discovery answers.
John Disney/Staff

The Georgia Supreme Court ruled unanimously Monday that because Ford Motor Co. intentionally misled plaintiffs in a product liability trial the company won in 2009, the plaintiffs will get another chance to try the case.

"If this case is to teach any lesson, it is that the civil discovery process is supposed to work to allow the parties to obtain the information they need to prove and defend their cases at trial before impartial juries," Justice David Nahmias wrote in a 58-page opinion. "Discovery is not supposed to be a game in which the parties maneuver to hide the truth and relevant facts, and when a party does intentionally mislead its adversary, it bears the risk that the truth will later be revealed and that the judgment it obtained will be re-opened to allow a new trial based on the truth."

The information at issue had nothing to do with evidence about the Ford Explorer the plaintiffs' claimed caused the death of one person in a 2006 rollover crash and the traumatic brain injury of another person.

Instead, Ford got into trouble for how it answered a question about whether it carried insurance to cover a verdict against the company. The question is asked so that potential jurors who also hold policies with a defendant's insurers may be screened for conflicts of interest.

Ford had said only that it would be able to pay any verdict, but its lawyers acknowledged in a separate case that it

held insurance policies—leading to new trials or sanctions in three cases, including the one decided Monday.

The company issued a statement Monday saying, "Ford is disappointed with the Georgia Supreme Court's decision, but remains confident that it will once again convince the jury that it is not responsible for the accident at issue in this case. While Ford respects the Court's decision, at no point did Ford take any actions that were misleading, as we believe the record in this case demonstrates."

Ford's lawyers include former Georgia Attorney General Michael Bowers of Balch & Bingham, Adam Charnes of Kilpatrick Townsend & Stockton and Michael Boorman and Audrey Berland of Huff Powell Bailey.

Robin Frazer Clark, who represented the plaintiffs during oral arguments in October, said the opinion may well have an effect on future discovery answers. "It doesn't absolutely directly apply to other cases, but I hope defense attorneys will say we need to review it and not do that," she said.

The high court's decision upheld an order for a retrial by Cobb County State Court Judge Kathryn Tanksley.

She granted a new trial after information came to light in another Ford Explorer rollover crash case. Tanksley declared a mistrial in that case after Ford's defense counsel announced that the answers they had given to questions about insurance coverage were incorrect. That case ultimately settled.

Ford appealed the new trial order in the case decided Monday and a new trial ordered in a third case with similar issues.

The cases attracted widespread attention with dueling amicus briefs. On Ford's side, the national Product Liability Advisory Counsel Inc., including makers of everything from cars to electronics and retailers such as Wal-Mart, argued that the new trial order could create a flood of others. On the plaintiffs' side, the Georgia Trial Lawyers Association filed a brief saying the new trial must be upheld in order to insure "the right of all litigants to a just verdict rendered by a fair, impartial and constitutionally valid jury."

On Monday, Nahmias made a point of keeping the focus on the case at hand. "Accordingly, our decision today should not be read as breaking any new ground, but rather as simply affirming the grant of an extraordinary motion for new trial based on the application of settled rules of law to a set of facts that may well be peculiar to Ford's ill-considered discovery practice," Nahmias wrote. But the opinion also sounded a warning to other litigants.

"We close by addressing the contention of Ford and its amicus that if we affirm the trial court's ruling, the floodgates will be opened for countless more extraordinary motions for new trial to be granted, and final judgments undermined," Nahmias wrote. "However, outside the circumstances of this case, which we certainly hope are unusual, such efforts are unlikely to be successful because of the strict requirements for granting extraordinary motions for new trial."

A page later, Nahmias wrote that the amicus "does not suggest that the businesses for whom it speaks frequently commit discovery violations that can and would be reasonably construed by courts as providing false and misleading answers. Indeed, there is no indication that other defendants in Georgia civil cases have engaged in Ford's former practice—we assume it has now been stopped—of customarily indicating that the defendant is self-insured."

Justice Harold Melton wrote a one page concurring opinion that offered a different perspective on the dispute. "Although I agree with the outcome of the majority opinion, I write separately to emphasize that the presumption of harm raised by the failure to qualify a jury with regard to insurance coverage is a rebuttable one." Melton wrote that if "a trial is conducted from start to finish with no mention of any insurance carrier, harm would appear to be highly unlikely, given the fact that the jurors could not be adversely affected by information never disclosed to them. Under such circumstances, the presumptive harm associated with the lack of qualification might properly be rebutted."

The underlying case was tried by Benjamin Baker Jr. of Beasley Allen in Montgomery, Ala., who plans to try the case again. "We're pleased with the result," he said in an email.

The case is *Ford v. Conley*, No. S13A1601.