NO. 17-10622-EE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JAMIE LEE ANDREWS,
as surviving spouse of Micah Lee Andrews, and JAMIE LEE ANDREWS, as administrator of the estate of Micah Lee Andrews,

PLAINTIFF-APPELLANT,

v.

AUTOLIV JAPAN, LTD.,

DEFENDANT-APPELLEE.

On Appeal From the United States District Court for the Northern District of Georgia

---

BRIEF OF *AMICUS CURIAE* THE MOTOR & EQUIPMENT MANUFACTURERS ASSOCIATION IN SUPPORT OF APPELLEE AUTOLIV JAPAN, LTD.'S PETITION FOR PANEL REHEARING

Marc L. Fleischaker
Donald C. McLean
Alison L. Andersen
Andrew M. Murad
ARENT FOX LLP
1717 K Street, NW
Washington, DC 20006
Phone: (202) 857-6000
Fax: (202) 857-6395

Counsel for Amicus Curiae Motor & Equipment Manufacturers Association

April 13, 2018

AMICUS CURIAE'S CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and 11th Circuit Rules 26.1-1, 26.1-2, 26.1-3, and 29-1, proposed *amicus curiae*, the Motor & Equipment Manufacturers Association ("MEMA"), identifies the following judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that, to the best of MEMA's knowledge, have an interest in the outcome of this case:

- Alston & Bird LLP, Attorneys for Appellee
- Anand, Hon. Justin S., United States Magistrate Judge
- Andersen, Alison L., Counsel for *Amicus Curiae* Motor & Equipment Manufacturers Association
- Andrews, Jamie Lee, Plaintiff/Appellant
- Arent Fox LLP, Counsel for *Amicus Curiae* Motor & Equipment Manufacturers Association
- Autoliv, Inc. (NYSE: ALV), parent corporation of Autoliv Japan, Ltd., Defendant/Appellee
- Autoliv Japan, Ltd., Defendant/Appellee
- Ballard, William L., Attorney for Appellant
- Ballard & Feagle, LLP, Attorneys for Appellant
- Butler, James E. Jr., Attorney for Appellant

- Butler Wooten & Peak LLP, Attorneys for Appellant
- Canella, Tedra L., Attorney for Appellant
- Duffey, Hon. William S. Jr., United States District Judge
- Feagle, Gregory R., Attorney for Appellant
- Fleischaker, Marc L., Counsel for *Amicus Curiae* Motor & Equipment Manufacturers Association
- McLean, Donald C., Counsel for *Amicus Curiae* Motor & Equipment Manufacturers Association
- Mendelsohn, Jenny A., Attorney for Appellee
- Morrison, John M. III, Attorney for Appellant
- Motor & Equipment Manufacturers Association, *Amicus Curiae*
- Murad, Andrew M., Counsel for *Amicus Curiae* Motor & Equipment Manufacturers Association
- Original Equipment Suppliers Association, a division of *Amicus Curiae* Motor & Equipment Manufacturers Association
- Peak, Brandon L., Attorney for Appellant
- Scribner, Doug, Attorney for Appellee
- Weeks, Rory A., Attorney for Appellant
- Wooten, Joel W., Attorney for Appellant.

MEMA further certifies that it is a nonprofit trade association. It has no parent corporations, and no publicly held corporation owns 10% or more of its stock.

/s/ Alison Lima Andersen
Marc L. Fleischaker
Donald C. McLean
Alison L. Andersen
Andrew M. Murad
ARENT FOX LLP
1717 K Street, N.W.
Washington, D.C. 20006-5344
(202)857-6000
marc.fleischaker@arentfox.com
donald.mclean@arentfox.com
alison.andersen@arentfox.com
andrew.murad@arentfox.com

Attorneys for Amicus Curiae Motor & Equipment Manufacturers Association

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION AND STATEMENT OF INTEREST IN THE CASE[1]

The Motor & Equipment Manufacturers Association ("MEMA"), established in 1904, is a trade association representing more than 1,000 companies that manufacture and distribute motor vehicle systems and parts for use in all classes of motor vehicles, from personal cars to heavy trucks, and for all stages of production, not only as original equipment in new cars, but also as replacement parts. MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association ("AASA"), Heavy Duty Manufacturers Association ("HDMA"), Motor & Equipment Remanufacturers Association ("MERA") and, of particular relevance here, the Original Equipment Suppliers Association ("OESA"). Motor vehicle component manufacturers are the largest sector of manufacturing jobs in the United States, directly employing over 871,000 workers in all 50 states, and contributing nearly $435 billion in GDP.

MEMA's OESA division champions the business interests of more than 430 member organizations that manufacture and supply new automotive parts for use in new motor vehicles, also known as "original equipment."[2] MEMA's members

[1] This brief was not authored in whole, or in part, by counsel for a party, and no party or party's counsel contributed money intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

[2] Autoliv ASP, Inc., a subsidiary of Autoliv, Inc., is a member of MEMA's OESA division. An OESA membership roster is available at https://www.oesa.org/become-member/member-list.

work collaboratively with their new motor vehicle customers, also known as original equipment manufacturers ("OEMs"), devoting significant resources to developing and producing vehicle technologies for integration into their OEM customers' completed motor vehicles. Accordingly, MEMA has a substantial interest in this proceeding and the disposition of Appellee Autoliv Japan, Ltd.'s ("Autoliv") Petition for Panel Rehearing (the "Petition").

Because MEMA represents a significant portion of the industry affected by a decision on the issues presented herein, it respectfully submits this *Amicus* brief in support of Autoliv's Petition.

STATEMENT OF THE ISSUE WARRANTING REHEARING

Whether the Court should grant Autoliv's Petition and certify the following question of state law presented therein to the Supreme Court of Georgia:

> Can a component part supplier who supplies a part that indisputably conforms to the specifications of the designer and manufacturer of the finished product, and who is not otherwise actively involved in the design, specifications, or formulation of a defective final product or of a defective component part, be held strictly liable for that part's design defect under Georgia law?

Petition at 1.

SUMMARY OF THE ARGUMENT

In *Davenport v. Cummins Alabama, Inc.*, the Georgia Court of Appeals established a bright line rule on the standard for imposing strict liability on a component part manufacturer or supplier for a design defect under Georgia Code

Annotated § 51-1-11(b)(1): "strict liability applies ***only to those actively*** involved in the design, specifications, or formulation of a defective final product or of a defective component part which failed during use of a product and caused injury." 284 Ga. App. 666, 671, 644 S.E.2d 503, 507 (2007) (emphasis added); *see also Bailey v. Cottrell, Inc.*, 313 Ga. App. 371, 373, 721 S.E.2d 571, 573 (2011) (reciting *Davenport* standard). The *Davenport* standard, in effect for over 10 years, provided clear guidance to courts and the motor vehicle supplier industry alike regarding the circumstances under which component part manufacturers and suppliers could be held strictly liable for the design and safety decisions of their OEM customers.

All this changed after the Court's March 16, 2018 decision, which held that a component part manufacturer can face strict liability under Georgia law for a defectively designed component part, regardless of its level of involvement in the design, specifications, or formulation of the product. *See* Opinion at 3. The Court's decision effectively overruled *Davenport* on a question of state law, and as a result, leaves unsettled the strict liability standard to be applied to a critical segment of the vehicle industry.

The decision also directly conflicts with the typical course of dealing among OEMs and their part suppliers in the automotive industry. OEMs generally set and assess design and safety requirements for the vehicle itself and all component parts

that will be integrated into the vehicle, while a part supplier produces vehicle equipment according to the OEM's detailed specifications. This course of dealing does not deny any consumer or final product purchaser relief for any defect, but instead addresses the identity of the party responsible for the design and safety decisions for the motor vehicle. This trade practice also corresponds with the allocation of responsibility between OEMs and part suppliers under the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. § 30101 *et seq.* (the "Safety Act"), which places the burden on the OEM to remedy defective vehicles and all original equipment installed on them. By limiting the *Davenport* standard to non-manufacturer entities, however, the Court set an overly broad precedent that conflicts with the established OEM-part supplier relationship, and unreasonably burdens vehicle component part manufacturers by effectively transforming them into the role of insurer for design and safety decisions made by their OEM customers. The Court should not disturb the traditional OEM-part supplier trade practice, and impose such undue burdens on component part manufacturers, based on a potentially erroneous interpretation of Georgia law. The Georgia Supreme Court should, therefore, be given an opportunity to address these issues of critical importance to the part supplier community.

ARGUMENT AND CITATIONS OF AUTHORITY

MEMA fully supports the arguments set forth in Autoliv's Petition, and provides the following additional arguments to assist the Court in its consideration.

I. The Court's Decision Is Inconsistent with the Typical Business Relationship Between Component Part Suppliers and Vehicle Manufacturers.

A. The vehicle manufacturer generally establishes design and safety requirements for the vehicle and each component part manufactured for assembly into the vehicle.

The Court's holding that Autoliv could be held strictly liable under Georgia law for the seatbelt's allegedly defective design simply because it manufactured the component part, without more, Opinion at 3, is contrary to the long-standing relationship between OEMs and their part suppliers. The OEM establishes design and safety parameters for the vehicle. The component part manufacturer, on the other hand, produces vehicle equipment that satisfies the OEM's requirements and specifications. The Court should not upset this traditional dynamic, and impose strict liability for the OEM's design and safety decisions.

The relationship structure between Mazda and Autoliv is typical among OEMs and their component part suppliers. In addition to the general terms and conditions issued by OEMs, which provide the basic framework for the parties' supply arrangement, an OEM and part supplier's business relationship is generally defined by a series of other contracts and agreements, such as specifications and

requirements documents, and purchase orders, among others. One such document, often referred to as a Statement of Work ("SOW"), outlines the parties' production agreement for a specific component part that will ultimately be integrated into the final, assembled vehicle. The SOW also establishes certain testing procedures, and the OEM's desired requirements and specifications for the item of equipment, which the OEM may use in one or more of its vehicle platforms.

After the SOW is issued, but before the OEM approves the part for mass production, the part supplier and OEM work cooperatively in an effort to create and produce a component part that satisfies the OEM's design criteria. During this phase, the part supplier may assist the OEM in a number of ways, including presenting multiple part options to the OEM that could satisfy the OEM's criteria, assisting with design and product validation testing, and attending meetings with the OEM to assess the part's performance under different testing scenarios and environments. Once all product verification testing is complete, the OEM ultimately selects a part that satisfies its specifications and requirements from among the various options presented, and approves it for mass production. The supplier then begins production of the component and ships it to the OEM for integration into the vehicle. This is the process that was essentially followed here. *See* Op. & Order, *Andrews v. Autoliv Japan, Ltd.*, No. 1:-14-cv-03432-WSD, at 12 (N.D. Ga. Jan. 10, 2017) ("D.C. Op.") ("Put another way, as Mazda's expert

testified, Mazda 'worked together with [Autoliv] to ensure the appropriateness of th[e] [seatbelt] design for the vehicle, and then Mazda ultimately decide[d] that it me[t] their specifications for incorporation into the vehicle.'") (citation omitted).

Importantly, the OEM, not the supplier, is responsible for integrating each component part into the final vehicle assembly, and ensuring that the completed vehicle satisfies all design and safety requirements. The part supplier does not install or test its component part after it is installed into the vehicle, and does not otherwise assist or participate in the vehicle production or assembly process. In sum, trade and custom in the automotive industry generally dictate that a component part manufacturer's role is limited to producing vehicle equipment according to the OEM's detailed specifications. *See Zager v. Johnson Controls, Inc.*, 18 N.E.3d 533, 545 (Ohio Ct. App. 2014) (dismissing Ohio design defect claim against supplier of allegedly defective rear seating assembly where, *inter alia*, it was "undisputed that [component supplier] met or exceeded each of the specifications and requirements set by Chrysler" and therefore "the seatback was not defective at the time it left [component supplier's] control").

The Court should not disturb the OEM-part supplier relationship—and open the door to strict liability claims against part manufacturers and suppliers for the design decisions traditionally made by their OEM customers—by creating an

unsettled question of Georgia law, which could be clarified by the Georgia Supreme Court.

B. Federal law makes the vehicle manufacturer responsible to conduct safety recalls concerning its vehicles and all original equipment installed on them.

The Court's holding also conflicts with the recall and remedy regime established by Federal law. Under the Safety Act and the National Highway Traffic Safety Administration's ("NHTSA") implementing regulations, OEMs are responsible for remedying any safety-related defect or noncompliance with a Federal Motor Vehicle Safety Standard ("FMVSS") that exists either in the vehicle itself *or* any item of original equipment that is installed on the vehicle.[3] *See* 49 U.S.C. § 30120(a); *id.* §§ 30102(b)(1)(F), (G); *see also* 49 C.F.R. § 573.5(a) ("Each manufacturer of a motor vehicle shall be responsible for any safety-related defect or any noncompliance determined to exist in the vehicle or in ***any item of original equipment***.") (emphasis added). In other words, "even if the safety defect or noncompliance is in an item of equipment on the vehicle that the vehicle manufacturer did not manufacture, it is responsible for notifying owners and providing a free remedy." U.S. DOT, NHTSA, ODI, SAFETY RECALL

[3] Original equipment is defined under the Safety Act, for relevant purposes, as "motor vehicle equipment (including a tire) installed in or on a motor vehicle at the time of delivery to the first purchaser." 49 U.S.C. § 30102(b)(C). Autoliv's seatbelt assembly qualifies as an item of "original equipment" under this definition.

COMPENDIUM at 4, https://www-odi.nhtsa.dot.gov/recalls/documents/recompendium.pdf.[4]

Federal law recognizes the very limited role that original equipment suppliers play when it comes to establishing and assessing the design parameters and safety effectiveness of the vehicle itself, and appropriately places responsibility for conducting a recall on the OEM. Indeed, the OEM has superior knowledge of how each vehicle system and component is intended to interact with one another, and is in the best position to properly assess overall safety and performance. By contrast, a component part supplier lacks such insight, as its responsibility is limited to manufacturing a specific component pursuant to the OEM's specifications and requirements. Just so here: Mazda, not Autoliv, was actively involved in the design of the seatbelt, "made the ultimate decision regarding the types of components to incorporate," D.C. Op. at 15, and was in the best position to assess the performance of the seatbelt assembly in the vehicle.

But, in finding that Autoliv could be held strictly liable under Georgia law for Mazda's design decisions, the Court imposes a heightened duty for component part manufacturers moving forward to identify and remedy defects in original

[4] Separately, the OEM is responsible for certifying that the vehicle complies with all applicable FMVSSs prior to the sale or distribution of the vehicle. *See* 49 U.S.C. § 30115; 49 C.F.R. pt. 567; *see also* 49 C.F.R. §§ 571.208 (FMVSS for active and passive restraint systems), 571.209 (FMVSS for seatbelt assemblies).

vehicle equipment—a duty that rests with the OEM, not the supplier, under Federal law. This heightened duty is especially inappropriate where the part supplier's role is limited to producing a component part in accordance with the OEM's detailed specifications. As a result of this Court's decision, part suppliers are now subject to inconsistent legal standards and regulatory burdens under Georgia and Federal law, respectively. This inconsistency rests on a potentially flawed interpretation of unsettled Georgia law, which should be resolved by the State itself.

II. In Holding that the *Davenport* Standard Is Limited to Non-Manufacturers, the Court Sets an Inappropriate Precedent under Georgia Law that Could Make the Part Supplier an Insurer for the Vehicle Manufacturer's Design and Safety Decisions.

In limiting *Davenport*'s holding to non-manufacturer entities, the Court set an overly broad precedent that could unreasonably burden the motor vehicle parts supplier industry. If the Court's decision is based on an incorrect interpretation of state law, then, absent a clarification by the Georgia Supreme Court, component suppliers could be strictly liable for simply manufacturing a component part pursuant to the finished product manufacturer's design specifications. Such a result would effectively turn part suppliers into insurers for the design and safety decisions made by their OEM customers. *See Davis v. Komatsu Am. Indus. Corp.*, 42 S.W.3d 34, 41 (Tenn. 2001) (noting, in the context of adopting the component supplier doctrine in Tennessee, that "[i]mposing liability would require the component seller to scrutinize another's product which the component seller has no

role in developing. This would require the component seller to develop sufficient sophistication to review the decisions of the business entity that is already charged with responsibility for the integrated product.") (quoting Restatement (Third) of Torts: Products Liability § 5 cmt. a).

The Court should avoid placing unjust, inefficient, and disproportionate burdens on vehicle parts manufacturers and suppliers, the nation's largest direct employer of manufacturing jobs, unless it is certain that its decision is based on a sound interpretation of Georgia law. *See id.* at 40 ("[N]o public policy can be served by imposing a civil penalty on a manufacturer of specialized parts . . . according to the specifications supplied by [the final assembler] . . . . The effect of such a decision on component parts manufacturers would be enormous. They would be forced to retain private experts to review an assembler's plans and to evaluate the soundness of the proposed use of the manufacturer's parts.") (quoting *Orion Ins. Co. v. United Techs. Corp.*, 502 F. Supp. 173, 178 (E.D. Pa. 1980)). It is therefore imperative that the Court grant Autoliv's Petition, vacate its decision, and certify this critical question of state law to the Georgia Supreme Court.

CONCLUSION

For these reasons, MEMA respectfully urges the Court to grant Autoliv's Petition for Panel Rehearing, vacate its March 16, 2018 Opinion, and certify the question presented to the Georgia Supreme Court.

Respectfully submitted this 13th day of April, 2018.

/s/ Alison Lima Andersen
Marc L. Fleischaker
Donald C. McLean
Alison L. Andersen
Andrew M. Murad
ARENT FOX LLP
1717 K Street, N.W.
Washington, D.C. 20006-5344
(202)857-6000
marc.fleischaker@arentfox.com
donald.mclean@arentfox.com
alison.andersen@arentfox.com
andrew.murad@arentfox.com

Attorneys for Amicus Curiae Motor & Equipment Manufacturers Association

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g) this document complies with the word limit of Fed. R. App. P. 29(b)(4) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 2,548 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman 14-point font.

This 13th day of April, 2018.

/s/ Alison Lima Andersen
Alison Lima Andersen

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2018, I filed an electronic copy of the foregoing Brief of *Amicus Curiae* The Motor & Equipment Manufacturers Association in Support of Appellee Autoliv Japan Ltd.'s Petition For Panel Rehearing with the United States Court of Appeals for the Eleventh Circuit via CM/ECF and that a copy of this filing and notice of electronic filing was sent by CM/ECF to:

James E. Butler, Jr
Tedra Cannella
Rory Weeks
BUTLER WOOTEN & PEAK LLP
2719 Buford Highway
Atlanta, Georgia 30324

William L. Ballard
Gregory R. Feagle
BALLARD & FEAGLE, LLP
1180 West Peachtree Street
Suite 2250
Atlanta, Georgia 30309

Attorneys for Plaintiff-Appellant

Doug Scribner
Jenny A. Mendelsohn
Alston & Bird LLP
doug.scribner@alston.com
jenny.mendelsohn@ alston.com
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

Attorneys for Appellee Autoliv Japan, Ltd.

/s/ Alison L. Andersen