THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIFIED QUESTIONS FROM
THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

Appellate Case No. 2018-001124

Crystal L. Wickersham; Crystal L. Wickersham, as Personal Representative of the Estate of John Harley Wickersham, Jr. v. Ford Motor Company
.....Plaintiff

v.

General Motors, LLC.....Defendant

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF ALLIANCE OF AUTOMOBILE MANUFACTURERS, INC. IN SUPPORT OF DEFENDANT

Alliance of Automobile Manufacturers, Inc. ("the Alliance") respectfully seeks leave of the Court to appear as *amicus curiae* pursuant to Rule 213, SCACR. This application is accompanied by the Alliance's Brief of *Amicus Curiae*, as EXHIBIT A attached hereto. In support of this motion, *amicus* respectfully shows the court as follows:

INTEREST OF *AMICUS CURIAE*

Alliance of Automobile Manufacturers, Inc. is an association of twelve vehicle manufacturers including the BMW Group, Fiat Chrysler, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America, and Volvo Car USA. Together, the members of the Alliance manufacture 77% of all new cars and light trucks sold in the United States. The Alliance is committed to developing and implementing constructive

solutions to public policy challenges that promote sustainable mobility and benefit society in the areas of environment, energy and motor vehicle safety.

The Alliance has a particular interest in this case because Plaintiff seeks to exclude product liability claims from this state's comparative negligence fault regime. If product liability claims were excluded from the state's comparative fault regime manufacturers would be subjected to liability far above their fair share of responsibility, even when a plaintiff engages in criminal misconduct in causing his or her own injuries. This position would push South Carolina far outside the mainstream of American jurisprudence as the overwhelming majority of courts around the country apply their comparative fault regimes to product liability cases. Courts should consider all of the factual and legal causes of a plaintiff's injuries. Failure to do so will create a particularly high risk of unwarranted liability exposure in cases assessing the crashworthiness of automobiles. In many situations, a plaintiff's own negligence in causing the collision may be a significant contributor of his or her injuries.

For the foregoing reasons, the Alliance respectfully requests that this Honorable Court grant leave to present an *amicus curiae* brief. A copy of the Alliance's proposed brief is attached hereto, and is being conditionally filed with this motion in accordance with Rule 213, SCACR.

Respectfully submitted,

Steve A. Matthews (S.C. Bar 3689)
Counsel of Record
HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201
(803) 779-3080

Victor E. Schwartz (*pro hac* motion filed)
Cary Silverman (*pro hac* motion filed)
Phil Goldberg (*pro hac* motion filed)
SHOOK, HARDY & BACON L.L.P.
1155 F Street, NW, Suite 200
Washington, D.C. 20004
(202) 783-8400

Attorneys for *Amicus Curiae*

Dated: September 7, 2018

EXHIBIT A

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certified Questions from the
United States Court of Appeals for the Fourth Circuit

Appellate Case No. 2018-001124

Crystal L. Wickersham; Crystal L. Wickersham, as Personal Representative of the Estate of John Harley Wickersham, Jr. ..... Plaintiffs,

v.

Ford Motor Company ..... Defendant.

BRIEF OF THE ALLIANCE OF AUTOMOBILE MANUFACTURERS, INC. AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT FORD MOTOR COMPANY

Steve A. Matthews (S.C. Bar 3689)
Counsel of Record
HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street 22nd Floor
Columbia, SC 29201-3226
(803) 540-7827

Victor E. Schwartz (*pro hac* motion filed)
Cary Silverman (*pro hac* motion filed)
Phil Goldberg (*pro hac* motion filed)
SHOOK HARDY & BACON LLP
1155 F Street NW, Suite 200
Washington, D.C. 20004
(202) 783-8400

Attorneys for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases **Page**

State Cases

Statutes

Other Authorities

STATEMENT OF THE ISSUES ON APPEAL

The questions certified by the United States Court of Appeals for the Fourth Circuit are as follows:

1. Does comparative negligence in causing enhanced injuries apply in a crashworthiness case when the plaintiff alleges claims of strict liability and breach of warranty and is seeking damages related only to the plaintiff's enhanced injuries?

2. Does South Carolina recognize an "uncontrollable impulse" exception to the general rule that suicide breaks the causal chain for wrongful death claims? If so, what is the plaintiff required to prove is foreseeable to satisfy causation under this exception—any injury, the uncontrollable impulse, or the suicide?

STATEMENT OF INTEREST

The Alliance of Automobile Manufacturers, Inc. ("the Alliance"), formed in 1999 and incorporated in Delaware, has twelve members: BMW Group, FCA US LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Car Corporation. Alliance members are responsible for 70% of all car and light truck sales in the United States. The Alliance's mission is to improve the environment and motor vehicle safety through the development of global standards and market-based, cost-effective solutions to meet emerging challenges associated with the manufacture of new automobiles. This case is of importance to the Alliance because it raises important questions involving the extent to which automakers are subject to liability where injuries sustained during a collision result from a driver's own negligence, rather than a defect in a vehicle's design, and whether automakers may be held liable for a person's suicide following an automobile accident.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This Court is faced with the question of whether South Carolina law, which already imposes greater liability on automakers in crashworthiness cases than most states, blindfolds a jury from considering whether a driver's actions exacerbated the very injuries he attributes to the design of the vehicle and whether a driver's suicide, long after an automobile accident, subjects a manufacturer to liability for his or her death.

Here, Mr. Wickersham drove at 42 miles per hour straight through a T-intersection, hit a curb, went airborne, and crashed into a tree. Ford presented evidence that Mr. Wickersham was leaning over the passenger seat when the airbag deployed, rather than sitting upright, leading his face to hit the gear shift lever. He suffered significant facial injuries in the accident. After struggling with pain and the ability to maintain employment, Mr. Wickersham, who had a history prior to the crash of suicidal ideation caused by depression and bipolar disorder, committed suicide a year-and-a-half after the collision. Plaintiffs seek to hold the manufacturer of his car liable not only for enhanced injuries they attribute to the airbag's deployment, but also for his later suicide. A jury attributed 70% of responsibility for his injuries and death to the automaker and 30% of fault to Mr. Wickersham. Yet, the trial court imposed the full amount of the Plaintiffs' damages, $4.65 million, on the automaker, declining to reduce the award to reflect the degree of responsibility that the jury attributed to Mr. Wickersham.

South Carolina tort law and sound public policy do not support this result. First, South Carolina law, the laws of states taking a similar approach to crashworthiness claims as South Carolina, and principles of personal responsibility all call for a reduction of damages when a plaintiff's actions cause, increase, or fail to mitigate the severity of his or

her own injuries following the initial crash. Automakers should not be subject to liability for injuries that did not result from a defect in their products.

Second, tort law has long recognized that suicide is a superseding cause that breaks the chain of causation in a wrongful death case. The only exception to this rule is the rare circumstance in which either the suicide is a foreseeable, natural result of an action or a special relationship creates a duty to *prevent* the suicide. This Court has not, and should not, adopt a new exception that expands liability. If it does, automakers will be subject to open-ended liability as family members understandably struggling with a loved one's death file lawsuits claiming injuries from a prior automobile accident contributed to that person's decision to take his or her own life.

ARGUMENT

I. SOUTH CAROLINA COURTS SHOULD APPLY COMPARATIVE FAULT PRINCIPLES IN CRASHWORTHINESS CASES WHEN A DRIVER'S ACTIONS CAUSE OR EXACERBATE ENHANCED INJURIES

When there is evidence that a plaintiff's actions may have caused or exacerbated the injuries he or she experienced in an automobile accident, juries should be permitted to allocate fault among those responsible for the harm.

South Carolina, in *Mickle v. Blackmon*, 252 S.C. 202, 166 S.E.2d 173 (1969), was among the first states to adopt the crashworthiness doctrine. This doctrine imposes liability on automobile manufacturers for design defects that did not cause the accident, but rather allegedly caused injuries that would not have occurred but for the defect. *See Mickle,* 252 S.C. at 242-43, 166 S.E.2d at 191-92. It applies when a design defect, not connected to causing the collision, causes the plaintiff to sustain injuries greater than those that would have otherwise resulted from the accident, or when a manufacturer could have incorporated a reasonable, feasible precaution that would have avoided or minimized the harm. *See id.*

While most courts have found that principles of comparative negligence allow a jury to allocate fault among all those whose actions contributed to injuries in an automobile accident—including the driver and the automobile manufacturer—this Court adopted the minority view in *Donze v. Gen. Motors, LLC*, 420 S.C. 8, 15, 800 S.E.2d 479, 482-83 (2017). There, the Court held that, in crashworthiness cases, a driver's (or third party's) negligent conduct in causing an accident is irrelevant to an automaker's duty to design a vehicle that does not cause enhanced injuries—that is, additional harm above and beyond that caused by the accident itself. *See* 420 S.C. at 20, 800 S.E.2d at 485. For that reason, the Court held that, in product liability actions challenging the design of a vehicle, comparative fault does not reduce the liability of a manufacturer for enhanced injuries to account for a plaintiff's careless or reckless driving (or the negligence of another driver) that caused the collision. *See id.*

This approach, now the law in South Carolina, imposes significantly greater liability on automobile manufacturers than most other states. While it is too early to evaluate the direct impact of *Donze*, Florida's experience cautions against further expanding liability. In *D'Amario v. Ford Motor Co.*, 806 So. 2d 424 (Fla. 2001), the Florida Supreme Court held that juries may not allocate fault in crashworthiness cases to the individual who caused the accident. The decision has enabled individuals who are drunk, have fallen asleep at the wheel, or whose reckless driving exposed others to danger to point the finger at automobile manufacturers with no consequence for their own behavior. *See* Charles T. Wells, Douglass B. Lampe & Larry M. Roth, *D'Amario v. Ford: Time to Expressly State the Decision Is No Longer Viable*, Fla. B.J., v. 85, no. 4, at 10 (Apr. 2011) (citing cases). After *D'Amario*, the number of crashworthiness cases in Florida jumped

400% and the cost of resolving crashworthiness cases increased 1,000% due to the increased liability exposure. *See id.* (citing testimony of a Ford representative before the Florida legislature). Ultimately, the Florida Legislature intervened to supersede *D'Amario*, finding the ruling inconsistent with the state's comparative fault statute. *See* Fla. Laws ch. 2011-215, § 2 (codified at Fla. Stat. Ann. § 768.81(3)(b)).

Donze does not demand blindfolding the jury and court to the plaintiff's conduct in every crashworthiness case or every product liability action. In this case, unlike in *Donze*, the jury was not asked to consider the plaintiff's fault in causing the *accident*. Rather, the jury was asked to evaluate the extent to which the plaintiff's conduct contributed to the *enhanced injuries* that the plaintiff attributes to the vehicle's design and that are the very subject of the product liability claim.

Indeed, other courts that this Court found persuasive in adopting the minority approach would not themselves go so far to bar consideration of how a plaintiff may have contributed to his enhanced injuries. For example, New Jersey law, while similarly finding plaintiff's conduct in causing a collision "irrelevant," *Green v. Gen. Motors Corp.*, 709 A.2d 205, 212 (N.J. Super. Ct. App. Div. 1998), allows juries to determine whether the plaintiff's negligence increased the nature and severity of his or her injuries and to subtract that amount from the total damages. *See Waterson v. Gen. Motors Corp.*, 544 A.2d 357, 374, 375 (N.J. 1988). When a plaintiff sustains avoidable enhanced injuries, comparative fault applies to damages arising from those injuries.

When a federal court interpreting South Carolina law evaluated this issue, it also distinguished the "precipitating cause of the collision," which is presumed in crashworthiness cases, from a manufacturer's liability for injuries enhanced by a defect in

the vehicle. *Jimenez v. Chrysler Corp.*, 74 F. Supp.2d 548, 565 (D. S.C. 1999), *affirmed on this issue and reversed on separate grounds by Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439 (4th Cir. 2001). The court recognized that this approach effectively "apportions fault and damages on a comparative basis; defendant is liable only for the increased injury *caused by its own conduct*, not for the injury resulting from the crash itself." *Jimenez*, 74 F. Supp.2d at 565-66 (emphasis added). The *Donze* Court found compelling the district court's reasoning, concluding that "the better rule was to exclude any evidence of a plaintiff's or another defendant's alleged negligence *in causing the initial collision*." *Id.* (quoting *Jimenez*, 74 F. Supp.2d at 566) (emphasis added).

These decisions (including *Donze*) demonstrate that what is precluded in crashworthiness cases under South Carolina law is consideration of the plaintiff's negligence in causing the accident, not consideration of whether the plaintiff's actions contributed to the enhanced injuries for which he seeks to recover and attributes to the vehicle's design. While *Donze* found that "any negligence by the plaintiff or another defendant which may have contributed to the initial collision is entirely irrelevant," 420 S.C. at 20, 800 S.E.2d at 485, it did not foreclose consideration of evidence that the plaintiff's conduct contributed to the alleged enhanced injury. 420 S.C. at 20 n.4, 800 S.E.2d at 485.

Allocating fault between all those whose conduct contributes to a plaintiff's enhanced injuries is fully consistent with both South Carolina's statutory cause of action addressing liability for defective products and its comparative fault statute. Product liability actions do not subject manufacturers to absolute liability. *See Bragg v. Hi Ranger*, 319 S.C. 531, 543, 462 S.E.2d 321, 328 (Ct. App. 1995) ("Strict liability is not equivalent either to

absolute liability or to insurance of the safety of the product's user."); *see also Daly v. Gen. Motors Corp.*, 575 P.2d 1162, 1166 (Cal. 1978) (recognizing strict products liability "has never been, and is not now, absolute liability"). A plaintiff must show that the manufacturer sold the product in a defective condition that was unreasonably dangerous to the user, that the plaintiff was injured by the product, and the defect was a proximate cause of the injury sustained. *See Rife v. Hitachi Const. Machinery Co.,* 363 S.C. 209, 215, 609 S.E.2d 565, 568-69 (2005).

Design defect and breach of warranty claims are fault-based theories. The American Law Institute adopted the "strict liability" moniker in Section 402A solely with manufacturing defects and product malfunctions in mind, such as bicycle with a missing spoke or a beverage containing a foreign object. *See* John W. Wade, *On the Nature of Strict Liability for Products*, 44 Miss. L.J. 825, 825 (1973) ("The prototype case was that in which something went wrong with the manufacturing process, so that a product had a screw loose or a defective or missing part or a deleterious element, and was not the safe product it was intended to be."). The value of Section 402A was not the "strict liability" label, but its adoption of the rule in *Greenman v. Yuba Power Products, Inc.*, 377 P.2d 897 (Cal. 1963). Section 402A established a direct, tort-based cause of action against a manufacturer for harms caused by its products by casting aside the doctrinal mix of warranty and contract law that had existed to that point.

This Court has long recognized that design defect and breach of warranty claims are based on the reasonableness of the manufacturer's design choices. *See, e.g., Claytor v. Gen. Motors Corp.*, 277 S.C. 259, 265, 286 S.E.2d 129, 132 (1982) ("A common element to each of these separate causes of action is proof that the product was not *reasonably* fit

or safe for its intended use.") (emphasis added). South Carolina courts determine whether a product is unreasonably dangerous and defective by evaluating if "the danger associated with the use of the product outweighs the utility of the product." *Branham v. Ford*, 390 S.C. 203, 225, 701 S.E.2d 5, 16 (2010).

The value of strict product liability, as compared to negligence, is that it relieves the plaintiff of the obligation of identifying what the defendant did that was wrong in the manufacturing process, and allows the plaintiff to focus solely on what is wrong with the product itself. *See Bragg*, 319 S.C. at 540, 462 S.E.2d at 326 ("The focus here is on the condition of the product, without regard to the action of the seller or manufacturer."). These claims are easier for plaintiffs to prove, but they remain fault-based theories of liability. *See* William C. Powers, *The Persistence of Fault in Products Liability*, 61 Tex. L. Rev. 77 (1983) (explaining that fault remains the essence of liability under both design defect and breach of warranty theories). The plaintiff must show what was wrong with the product and that the manufacturer could have produced a safer product. In addition, causation remains a central element of a product liability action. As South Carolina's codified product liability statute provides, "[o]ne who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability *for physical harm caused* to the ultimate user or consumer, or to his property. . . ." S.C. Code Ann. § 15-73-10(1) (emphasis added).

Recognizing that product liability actions are rooted in fault, most states, through development of common law, judicial interpretation of a comparative negligence statute, or express statutory language consider a plaintiff's comparative fault in strict liability claims. *See* Victor E. Schwartz, Comparative Negligence § 11.02, at 250-56 (5th ed. 2010);

see also Restatement Third, Torts: Apportionment of Liability § 1, Rptrs' Note cmt. b (2000) (confirming application of comparative fault in strict product liability actions is the majority rule). The Supreme Court of California, which gave rise to strict products liability, has long followed this approach. *See Daly*, 575 P.2d at 1162 (finding that the goals of strict liability in protecting and compensating victims of defective products is not frustrated by application of comparative fault). South Carolina's Contribution Among Tortfeasors Act states that it applies in actions seeking recovery for personal injury and wrongful death and purposefully requires juries to determine the relative "fault" of the parties. S.C. Code Ann. § 15-38-15(A), (C). Thus, the plain language of the statute indicates that South Carolina follows the majority approach.

In *Donze,* this Court did not find otherwise. *See* 420 S.C. at 20, 800 S.E.2d at 485 ("Regardless of the theory under which a plaintiff chooses to bring a crashworthiness claim, the heart of the doctrine remains the same—manufacturer liability for enhanced injuries following a foreseeable collision."). Rather, this Court's holding was driven by public policy concerns specific to using the cause of the collision, which is presumed in a crashworthiness case, to reduce a manufacturer's liability if it does not design its vehicles to provide reasonable protection to occupants in ordinary, foreseeable accidents. The Court found that the crashworthiness doctrine, by addressing only enhanced injuries—that is, those that would not have occurred but for the alleged defect, already "allocates fault to a manufacturer for damages *it alone caused*." 420 S.C. at 19, 800 S.E.2d at 485 (emphasis added). That is not the case when evidence presented at trial and found by the jury demonstrates that the plaintiff's actions were also a proximate cause of the enhanced injuries. When such evidence is present, application of comparative fault to damages for

the enhanced injury satisfies the Court's concern that automakers should not be relieved of responsibility for designing safe vehicles, while adhering to the core tort law principle that a party is not liable for harm it did not cause.

A jury in a crashworthiness case is fully capable of determining whether an unreasonable product design was a cause of the plaintiff's enhanced injuries and whether there were other causes of the enhanced injury, including the plaintiff's own negligence. It can then apportion a percentage of responsibility among those causes. In accordance with *Donze*, courts can instruct juries that conduct that caused the initial collision is not considered in this analysis.

This Court should confine *Donze's* holding as it was written and as it was intended: a manufacturer's liability for enhanced injuries caused by the product and not by the accident itself are not reduced by the victim's fault in causing the accident itself. Accordingly, the Court should find that South Carolina law requires allocation of fault in crashworthiness cases where the jury determines that the plaintiff's own conduct contributed to the enhanced injury for which he or she seeks to recover. The alternative would impose unwarranted liability on automakers for injuries that did not result from a flaw in a vehicle's design and, contrary to the state's comparative fault law and sound public policy, absolve plaintiffs of the consequences of their own negligence.

II. AUTOMAKERS SHOULD NOT BE SUBJECT TO LIABILITY WHEN A PERSON CHOOSES TO TAKE HIS OR HER OWN LIFE FOLLOWING AN AUTOMOBILE ACCIDENT

Following a suicide, the decedent's family may understandably feel comforted by a belief that others are to blame for their loved one's death; and a lawsuit may result. If this Court does not adhere to the traditional rule that suicide is a superseding cause that ends the causation chain, or creates a broad exception to that rule, then automakers may find

themselves subject to unwarranted liability when a person chooses to commit suicide at some point following an automobile accident.

A. Tort Law Limits Liability for Suicide to Rare Cases in Which Suicide Naturally Results from a Tortious Act or Where a Special Relationship Creates an Affirmative Duty to Prevent Suicide

The traditional rule is that the injured party's voluntary act of suicide is an independent superseding event that is unforeseeable as a matter of law. *See* Victor E. Schwartz et al., Prosser, Wade & Schwartz's Torts: Cases and Materials 357 (13th ed. 2015). The act of suicide breaks the chain of causation from the tortfeasor's negligent conduct. The U.S. Supreme Court applied this principle in the first reported wrongful death action seeking recovery after a suicide. In that case, which involved a person injured in a train collision who subsequently committed suicide, the Court held that the suicide "was not a result naturally and reasonably to be expected from the injury received on the train. It was not the natural and probable consequence, and could not have been foreseen in the light of the circumstances attending the negligence of the officers in charge of the train." *Scheffer v. R.R. Co.*, 105 U.S. 249, 252 (1881). Rather, the Court held that "[t]he proximate cause of the death of *Scheffer* was his own act of self-destruction." *Id.*

Other early cases reached a similar result. As this Court recognized in *Scott v. Greenville Pharmacy*, 212 S.C. 485, 494, 48 S.E.2d 324, 328 (1948), proximate cause is ordinarily lacking with regard to a suicide. "[S]o many elements may enter into a suicide that it is impossible to say that it was the natural and probable consequence of the negligence," the court observed. *Id.* "In order to reach such a conclusion, we would have to eliminate entirely all those elements of feeling, temperament, disposition, emotional disorders, background and lack of self-control, which might of themselves have been sufficient to bring about the tragic result. . . ." *Id.* There, the court held that a pharmacy

could not foresee suicide as a natural and probable consequence of selling barbiturates to the decedent without a prescription. *See id.*

A New York court applied this principle in a case involving an automobile accident where a city tow truck operator caused serious injuries to a driver, who, nine months later, committed suicide. *See McMahon v. City of New York*, 141 N.Y.S.2d 190, 192 (N.Y. Super. Ct. 1955), *aff'd*, 3 A.D.2d 713 (N.Y. App. Div. 1957). His family attributed his depression to injuries sustained in the accident. *See id.* The court dismissed the action, finding that when a person injured in an automobile accident is "depressed . . . but sane nevertheless" and later commits suicide "[t]he defendants' acts are not the proximate cause of the suicide and they may not be charged with the death of the decedent." *Id.*

Courts and tort scholars continue to recognize that it is rare that a wrongful death action will lie for a suicide, because the suicide is a superseding act that ends causation. *See* W. Page Keeton, Prosser & Keeton on Torts § 44, at 310-11 (5th ed. 1984). Where a person "is sane, or if the suicide is during a lucid interval, when he is in full command of his faculties, but his life has become unendurable to him by reason of his injury, it is agreed in negligence cases that his voluntary choice is an abnormal thing, which supersedes the defendant's liability." *Id.* at 311 (compiling cases). South Carolina courts and those of other states continue to follow these principles. *See Crolley v. Hutchins*, 300 S.C. 355, 357-58, 387 S.E.2d 716, 718 (Ct. App. 1989) ("One does not expect a person to attempt suicide as a natural and probable result of being served a drink while intoxicated."); *see also Turcios v. DeBruler Co.*, 32 N.E.3d 1117 (Ill. 2015) (holding allegation defendant knew or should have known constructive eviction of family would cause severe emotional distress did not give rise to wrongful death action after tenant took his own life).

Some courts have recognized narrow exceptions to this general rule—that suicide is a superseding cause that ends the causation chain. These exceptions are highly limited, rooted in foreseeability, and consistent with this Court's jurisprudence. *See Scott*, 212 S.C. at 494-95, 48 S.E.2d at 328 (recognizing the question is whether the tortfeasor should have "reasonably foreseen and anticipated" that suicide would follow from its actions). Cases permitting liability for suicide generally fall in two categories.

The first category involves cases in which the suicide is so closely tied to the tortious conduct that suicide can be said to flow directly from the defendant's actions. For example, Prosser recognized that wrongful death liability for a suicide may occur in a situation in which a person "hurt[s] himself during unconsciousness or delirium brought on by the injury." Prosser & Keeton, *supra*, at 311. In such a case, the suicide is an involuntary act that is a direct result and normal consequence of the defendant's act. *Id.* at 310-11. If a person after being injured in a car accident "went into an uncontrollable frenzy and literally walked in front of a truck" a claim against the person who caused the accident would be viable as stemming from an "uncontrollable impulse." Victor E. Schwartz, *Civil Liability for Causing Suicide*, 24 Vand. L. Rev. 217, 228 (1971). That rare type of situation is illustrated in *Fuller v. Preis*, 322 N.E.2d 263 (N.Y. 1974), where a person who had no history of mental illness or suicidal tendencies sustained head injuries in an automobile accident that sparked a post-convulsive psychosis that led to his suicide. Most courts have limited this "irresistible impulse" exception to cases in which the decedent acts in such a frenzy as a direct result of the injury-causing event. *See* Prosser, Wade & Schwartz's Torts, *supra*, at 357-58. They do not interpret this exception in the manner that Plaintiffs suggest here.

Also falling into this first category are situations in which a person's suicide stems from actions that constituted an intentional tort, such as rape, torture, or blackmail. *See* Prosser & Keeton, *supra*, at 311 n.97 (citing cases); *see, e.g., R.D. v. W.H.*, 875 P.2d 26 (Wyo. 1994) (permitting claim alleging stepfather caused suicide where he had sexually abused decedent, provided her with firearm from which she attempted suicide, and then later provided her with prescription narcotics with which she killed herself). In such cases, courts have essentially found that a person's egregious conduct willfully, recklessly, or knowingly pushed a person toward suicide.

The second category of cases in which courts have found the potential for liability consists of those in which a special relationship between the defendant and the decedent creates an affirmative duty to *prevent* suicide. *See* Margot O. Knuth, *Civil Liability for Causing or Failing to Prevent Suicide*, 12 Loy. L.A. L. Rev. 967, 995-99 (1979) (distinguishing actions for failure to prevent suicide, which are viable in certain circumstances, from actions for causing suicide, which are rarely viable and require a showing of a foreseeable risk of suicide and should be limited to suicides that are "truly involuntary"). For example, in some cases, courts have found that pharmacists and psychiatrists, as well as hospitals, prisons, and schools may be subject to liability depending on their level of control over the decedent and knowledge of his or her mental state or condition. *See* Schwartz, 24 Vand. L. Rev. at 237-55.

Automakers do not fall into either of these categories, both of which are predicated on the foreseeability of a suicide directly resulting from a defendant's behavior. Manufacturers have not engaged in conduct intended to bring about severe emotional distress that results in suicide. They have no knowledge of an individual driver's mental

condition, cannot refuse to sell cars to individuals with such challenges, and have no special relationship with such individuals that creates an affirmative duty to prevent a specific person's suicide. To the contrary, imposing liability on automakers for suicides that follow injuries sustained in automobile accidents sidesteps basic concepts of duty and proximate causation. The Court should hold that such claims are not viable as a matter of law.

B. Imposing Liability on Automakers for Suicide is Contrary to Sound Public Policy

Subjecting automakers to liability for suicides where injuries stemming from a motor vehicle accident play a part in a person's decision to end his or her life is contrary to sound public policy.

Despite the best efforts of automakers to develop increasingly safe products, motor vehicle accidents lead to thousands of deaths and millions of injuries each year.[1] The vast majority of accidents stem from driver error, such as distracted driving, falling asleep at the wheel, and speeding.[2] Automakers have made, and continued to make, significant advances in incorporating new safety enhancements into vehicles that protect passengers and save lives.[3]

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[1] *See* Nat'l Highway Traffic Safety Admin., 2015 Motor Vehicle Crashes: Overview 4 (Aug. 2016), https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812318 (indicating about 35,000 fatal accidents and 2.4 million non-fatal crashes resulting in injuries in 2015).

[2] *See* Nat'l Highway Traffic Safety Admin., Critical Reasons for Crashes Investigated in the Motor Vehicle Crash Causation Survey 2 (Feb. 2015), https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812115 (finding 94% of automobile accidents stem from driver error).

[3] *See* Nat'l Highway Traffic Safety Admin., Lives Saved by Vehicle Safety Technologies and Associated Motor Vehicle Safety Standards, 1960 to 2012, at x, xiv (2015), https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812069 (referring to the 81% percent reduction in the fatality rate per vehicle between 1960 and 2012 as a "revolution in vehicle safety" stemming, in part, from vehicle safety technologies).

Advances in protective technology, however, have not rendered vehicles accident-proof and cannot ensure the safety of occupants in every situation. Motor vehicle accidents continue to occur and, in some instances, inevitably result in serious injuries imposing lifelong limitations. Pain or limitations from such injuries may be among many factors that contribute to a person's decision to commit suicide, which is the tenth leading cause of death in the United States.[4]

As families look for answers and seek to place responsibility for a loved one's death, they may, as here, look to automakers. Automakers, however, should not be subject to liability for the serious societal problems of mental illness or depression, or the result of pain and suffering stemming from car accidents.

There is no need for South Carolina to recognize a special "uncontrollable impulse" exception to the general rule that suicide breaks the causal chain for wrongful death claims. Following traditional rules of foreseeability and proximate causation appropriately limits the circumstances under which a person may be liable for the suicide of another.

CONCLUSION

For these reasons, the Alliance of Automobile Manufacturers, Inc. respectfully requests that this Court answer "no" to the first question certified by the United States Court of Appeals for the Fourth Circuit, concluding that South Carolina law does not recognize an "uncontrollable impulse" exception. In so doing, the Court should find that

[4] *See* Am. Found. for Suicide Prevention, Suicide Statistics, https://afsp.org/about-suicide/suicide-statistics/ (last visited Aug. 28, 2018) (citing Centers for Disease Control and Prevention (CDC) Data & Statistics Fatal Injury Report for 2016). Moreover, for every suicide, there are twenty-five suicide attempts. *See id.*

liability must be evaluated based on foreseeability, specifically whether suicide was the "natural and probable consequence" of a defendant's tortious conduct.

The Court should answer "yes" to the second question and hold that the comparative fault of the plaintiff in causing his enhanced injuries in crashworthiness cases is properly considered and reduces his or her recovery.

Respectfully submitted,

Steve A. Matthews (S.C. Bar 3689)
Counsel of Record
HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201
(803) 779-3080

Victor E. Schwartz (*pro hac* motion filed)
Cary Silverman (*pro hac* motion filed)
Phil Goldberg (*pro hac* motion filed)
SHOOK, HARDY & BACON L.L.P.
1155 F Street, NW, Suite 200
Washington, D.C. 20004
(202) 783-8400

Attorneys for *Amicus Curiae*

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