

## Ninth Circuit Shatters Summary Judgment Order in Sunroof Defect Suit

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Earlier this month, the U.S. Court of Appeals for the Ninth Circuit reversed a district court order granting summary judgment to Ford Motor Company in a products liability suit. The case concerned an alleged manufacturing defect in Ford's panoramic sunroofs (PSRs), which causes them to shatter without warning. Ford began manufacturing vehicles with PSRs in 2007. Shortly after these vehicles hit the market, Ford began receiving complaints from customers claiming that the PSRs were shattering spontaneously. Nevertheless, Ford continued to add PSRs to its other model lines, including its Escape compact crossover vehicles (starting with the 2013 model). Although Ford has continued to receive complaints about the shattering PSRs, it does not appear that any serious injuries have occurred as a result, and neither Ford nor the National Highway Traffic Safety Administration (NHTSA) has issued a recall.<sup>[1]</sup>

In 2012, Jessica and Jacob Beaty purchased a 2013 Ford Escape with a PSR. Five years later, the PSR spontaneously shattered while Jessica was driving on the freeway, causing glass to fall on her and her daughter. The Beatys sued Ford, claiming fraudulent concealment and breach of Washington's Consumer Protection Act (CPA). After discovery, Ford moved for summary judgment, arguing that (1) because the 2013 Escape was the first model in the line to have PSRs, it could not have known of—let alone concealed—the defect at the time of the Beatys' purchase; and (2) due to the very low shatter rate (<.05% over the life of the vehicle), the defect would not have been material to the average consumer.<sup>[2]</sup>

The district court agreed with both arguments, granting Ford's motion for summary judgment. The court rejected the Beatys' contention that Ford's awareness of issues with the PSRs in its other model lines raised a triable issue of fact over whether Ford was on notice of the alleged defect with the PSRs in the 2013 Ford Escape. The court noted that Ford had presented un rebutted evidence that there were significant differences between the Escape PSRs and PSRs in other vehicles, and that some of the more-similar models had extremely low shatter rates.<sup>[3]</sup>

The district court also rejected the Beatys' contention that the alleged defect was material. Although it agreed with the Beatys that "a 'material fact' is one 'to which a reasonable person would attach importance' in determining her course of action in a given transaction," the court accepted Ford's argument that the relevant factors were the same as those NHTSA uses to determine whether to issue a recall, namely, (1) "the *severity* of the harm it threatens," (2) "the *frequency* with which that harm occurs;" and (3) "the economic, social, and safety *consequences* of reducing

the risk.”<sup>[4]</sup> Because of the very low shatter rate and the lack of serious injuries, the court concluded—as a matter of law—that the average consumer would not find it important in deciding whether or not to purchase a Ford Escape.<sup>[5]</sup>

On appeal, the U.S. Court of Appeals for the Ninth Circuit reversed. The court held that there was a genuine issue of fact concerning whether Ford was on notice about the risk that the PSRs in the 2013 Ford Escape would shatter without warning. It explained that, under Washington law, a pre-sale complaint to a manufacturer is circumstantial evidence of such awareness. Moreover, unlike the district court, the Ninth Circuit did not find the fact that the 2013 Escape was the first model in the line to have PSRs to be dispositive of the issue. The court explained that the relevant inquiry was *not* whether the PSRs in the Ford Escape were substantially similar to the PSRs in the other models but rather whether the *alleged defects* were substantially similar. With that framework in mind, the court concluded that the Beatys’ had presented sufficient evidence that the features causing the PSRs to shatter in the other models—“size, thickness, curvature, connection to the vehicle’s unibody frames, and use of ceramic paint”—were also present in the Escape’s PSRs notwithstanding other differences.<sup>[6]</sup>

The Ninth Circuit also held that a reasonable juror could conclude that the very low risk of a spontaneously shattering sunroof would be material to consumers. Noting that the Beatys’ claims arose under state law, the court found that the district court had erred by applying NHTSA’s factors for determining materiality. Under Washington law, the court explained, materiality “does not require a risk to safety, much less an ‘unreasonable’ one.” Furthermore, the court explained that the relevant transaction was not the purchase of the vehicle but rather the purchase of the PSR—a “luxury accessory for which consumers pay a premium of between one thousand and several thousand dollars.” A reasonable consumer, the court reasoned, might find a tiny failure rate to be important in determining whether to pay extra for a swanky yet superfluous sunroof.<sup>[7]</sup>

*Beaty* provides two important takeaways for product manufacturers. First, the decision demonstrates that a manufacturer’s awareness of a defect occurring in one product line might be sufficient to constitute pre-sale knowledge of a defect in another product line if the two products have common features relating to the alleged defect. Second, *Beaty* shows that if the alleged defect occurs in a “luxury accessory” for which consumers pay extra, courts may assess materiality with respect to the decision to purchase the product with the accessory vs. the product without it (rather than the decision to buy the product at all), which may result in a lower standard of materiality.

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[1] *Beaty v. Ford Motor Co.*, No. C17-5201RBL, 2020 WL 639408, at \*1 (W.D. Wash. Feb. 11, 2020), *rev’d and remanded*, No. 20-35141, 2021 WL 1235844 (9th Cir. Apr. 2, 2021); *Beaty v. Ford Motor Co.*, No. 20-35141, 2021 WL 1235844, at \*1 (9th Cir. Apr. 2, 2021).

[2] *Beaty*, 2020 WL 639408, at \*1; *Beaty*, 2021 WL 1235844, at \*1.

[3] *Beaty*, 2020 WL 639408, at \*3.

[4] *Id.* at \*5 (emphasis in original).

[5] *Id.* at \*5–6.

[6] *Beaty*, 2021 WL 1235844, at \*1–2.

[7] *Id.* at \*2–3.

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