

PUBLIC JUSTICE E-LERT

AMERICA'S PUBLIC INTEREST LAW FIRM

June 10, 2011

Most drivers don't spend a lot of time thinking about what material goes into car windows; that's the auto maker's job. But in the event of an accident, those windows could mean the difference between life and death.

Late last week, we made it easier for personal injury victims to hold car makers accountable for failing to use the safest type of window materials in the side windows of passenger vehicles. In [Bernal v. Daewoo](#), an Arizona federal district court rejected a car maker's argument that federal law "preempts" -- i.e., totally bars -- tort claims alleging that a car was defective because its side windows were made of tempered glass, which shatters on impact, rather than laminated glass, which holds together in the event of a crash, thereby preventing passenger ejections.



This ruling signals a potentially major shift in the law of auto safety preemption. A host of courts have disagreed about whether window-glazing claims are preempted, creating a deep split of authority on this point. But the tide may have turned when the U.S. Supreme Court decided [Williamson v. Mazda](#) this spring, a seminal ruling that rejected federal preemption in a case involving a different -- but similar -- auto safety standard. **We believe that *Williamson* removes any doubt that window-glazing claims are not preempted by federal law -- and the *Bernal* court agreed, signaling that the law in this area will increasingly favor auto-injury victims.**

We are fighting this exact same issue in [Priester v. Ford](#), which is back before the South Carolina Supreme Court. In a ruling issued before *Williamson*, the South Carolina Court had found window-glazing claims preempted by federal law. We got that decision vacated by the U.S. Supreme Court, which then ordered the state high court to reconsider its decision in light of *Williamson*.



A 1997 Ford F-150

Last week we filed our opening brief on behalf of Mary Priester, whose son was killed in 2002 after being ejected from the window of a 1997 Ford F-150. There, we wrote that the federal regulation at

issue -- Federal Motor Vehicle Safety Standard 205 -- is "nothing more than a minimum federal safety standard" that "permits manufacturers to improve the safety of their vehicles by installing additional protections." We believe that there is nothing about this regulation that could possibly be undermined by Ms. Priester's lawsuit -- in fact, this lawsuit will actually **further** federal objectives by creating an incentive for auto makers to make their cars safer.

To read our full brief in *Priester*, [click here](#).

To read the decision in *Bernal*, [click here](#).

Thanks to Public Justice [Senior Attorney Leslie Brueckner](#) and [Budd-Kazan Attorney Matthew Wessler](#) for their work on both *Bernal* and *Priester*. On *Bernal*, Julio Zapato of Phoenix, Ariz., is lead trial counsel. On *Priester*, Leslie and Matt are working with Mary Priester's trial counsel, Darrell Johnson, Jr., and James Richardson, Jr., both of South Carolina.

And thank you for your continued support of our work. All of us at Public Justice -- and plaintiffs like Manuel and Paula Bernal and Mary Priester -- appreciate it so much.

Arthur Bryant

Executive Director

Public Justice and the
Public Justice Foundation