ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

MELISSA VARELA v. FCA US LLC, LVN MOTORS LLC, AND PV HOLDING CORP.
CV-20-0157-PR

PARTIES:

Petitioners: FCA US LLC, LVN Motors LLC, and PV Holding Corp. (collectively, "Chrysler")

Respondent: Melissa Varela ("Varela")

Amici Curiae in Support of Petitioner Chrysler:
PLAC and Alliance for Automotive Innovation
Nissan North America
Amici Curiae in Support of Respondent Varela:
Arizona Association for Justice/Arizona Trial Lawyers Association
Center for Auto Safety and Consumers for Auto Reliability and Safety

FACTS:

On August 7, 2015, a 2014 Jeep Grand Cherokee rear-ended Varela's car at high speed, injuring her and killing her four-year-old daughter who was properly restrained in the back seat. The Jeep was not equipped with automatic emergency braking (AEB) systems. AEB systems are comprised of three technologies using forward-looking sensors to detect and respond to likely crashes: forward-collision warning (FCW), crash-imminent braking (CIB), and dynamic brake support (DBS). The manufacturer of the Jeep, Chrysler, offered versions of all three AEB technologies in a system called "FCW+." Chrysler offered its 2014 Jeep Grand Cherokee vehicle with five trim levels. AEB technologies were standard on the two most expensive models, optional on two other models, and not available at all on the least expensive model. The driver who collided with Varela's car drove one of the middle models but had not purchased the option package that included AEB.

Varela sued Chrysler, alleging negligence and product liability (defective design). Varela claimed the Jeep would not have collided with her car, or would not have collided with as much force, if it had been equipped with the AEB technologies.

On Chrysler's motion, the superior court dismissed Varela's lawsuit based on the legal doctrine of "implied obstacle preemption," relying upon a previous case, *Dashi v. Nissan North America, Inc.*, 247 Ariz. 56 (App. 2019), rev. denied (Ariz. Jan. 7, 2020). Plaintiff appealed.

In its opinion reversing the superior court on appeal, the Arizona Court of Appeals first noted that "obstacle preemption" occurs when a state common-law liability claim "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of a federal law or regulation. *Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 330 (2011) (citation omitted). "Implied obstacle preemption," a subcategory of obstacle preemption, may occur when the National Highway Transportation Safety Administration NHTSA opts not to regulate an automotive technology, and a court infers from that decision that the NHTSA intended to preempt state common-law liability claims. *Dashi*, 247 Ariz. at 57 ¶ 1.

However, in this case, the Court of Appeals noted that, when a consumer group petitioned NHTSA "to initiate a rulemaking to issue a safety standard requiring that light vehicles be equipped" with AEB technologies, the NHTSA denied the petition, but their denial was no rejection of AEB. To the contrary, the agency's written decision endorsed AEB as a powerful means of improving roadway safety but asserted that, given the huge strides automakers already had made in developing and installing AEB technologies, it did not need to issue a formal rule to further promote AEB. Indeed, NHTSA observed that a formal rulemaking process might cause a delay of three years or more before AEB technologies would be standard in new cars. That being the case, and given its limited resources, the agency concluded it should devote its rulemaking energies to other initiatives, including even more advanced motor-vehicle technologies.

Given these facts, the Court of Appeals held that the specifics of plaintiff's claims—particularly in light of NHTSA's explanation for declining to undertake AEB rulemaking—controlled the analysis of whether the agency's denial of the rulemaking petition deserved preemptive effect, or was more akin to NHTSA actions that previous cases held did not preempt common-law claims.

The Court of Appeals determined that, on the specific facts of record, it could not conclude that NHTSA's decision impliedly preempted plaintiff's contention that Chrysler should have installed that same technology on the Jeep at issue here. This was particularly true because NHTSA's refusal to commence an AEB rulemaking in 2017 was premised primarily on the agency's conclusion that automakers were moving forward so quickly with AEB that it did not need to issue a formal rule to compel them to do so. *Automatic Emergency Braking*, 82 Fed. Reg. at 8394-95.

The Court of Appeals concluded that NHTSA's refusal to undertake an AEB rulemaking in 2017 did not impliedly preempt plaintiff's common-law claims. "Implied obstacle preemption" was therefore inapplicable to this case. The judgment of the Superior Court in favor of Chrysler was reversed, and the case was remanded to the superior court for further proceedings in Varela's lawsuit. Chrysler filed a Petition for Review to the Arizona Supreme Court, which granted review on the issue set forth below.

ISSUE:

> "Does the implied obstacle preemption doctrine apply under the facts here to preclude Plaintiff's claims?"