



# FBT Successfully Defends Ford before the Indiana Supreme Court

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**Categories:**

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**Client:** Ford Motor Company

**Case citation:** (Cause No. 94S00-1007-CQ-348) (Green v. Ford Motor Co., — N.E.2d —, 2011 WL 400343, Ind. 2011)

**Client role:** Defendant

Frost Brown Todd successfully represented Ford Motor Company before the Indiana Supreme Court establishing that the Indiana Products Liability Act requires the finder of fact to apportion fault to the person suffering physical harm in a crashworthiness case alleging enhanced injuries.

The plaintiff was involved in a crash which left him permanently injured. The plaintiff claimed his Ford SUV was defective and unreasonably dangerous because Ford negligently designed the vehicle's restraint system and the allegedly defective restraint system had enhanced his injuries. Ford argued that the plaintiff's product liability claims are subject to Indiana's comparative fault act and, therefore, any fault by the plaintiff in causing the crash should be considered and allocated by the jury. The District Court certified the issue for resolution by the Indiana Supreme Court.

In this case, Indiana's Supreme Court began by discussing the history of the crashworthiness doctrine, concluding that it merely expands the proximate cause requirement and holds manufacturers liable for enhanced injuries. The identification of and distinction between the "risk of driving" and the "risk of injury" is a preview of the first collision and second collision concepts that guided application of the crashworthiness doctrine from its adoption in Indiana up to this case.

## Outcome

The Court concluded that the fact that a plaintiff claims only enhanced injuries from a second collision does not preclude the

jury from “considering evidence of all relevant conduct of the plaintiff reasonably alleged to have contributed to cause the injuries”—including causing the crash itself. In considering such evidence, the jury must conclude that the conduct of the plaintiff constituted a proximate cause of his injuries in order to allocate fault to the plaintiff.

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