

No. _____

In The
Supreme Court of the United States

JOYCE D. HUTTON and DEREK BELL,

Petitioners,

v.

HYUNDAI MOTOR COMPANY
and HYUNDAI MOTOR AMERICA,

Respondents.

**On Petition For Writ Of Certiorari
To The Mississippi Supreme Court**

PETITION FOR WRIT OF CERTIORARI

RALPH E. CHAPMAN
CHAPMAN, LEWIS & SWAN PLLC
P.O. Box 428
Clarksdale, Mississippi 38614
Telephone: (662) 627-4105
ralph@chapman-lewis-swan.com

*Attorney for Petitioners
Joyce D. Hutton and
Derek Bell*

QUESTION PRESENTED

Did the Mississippi Supreme Court violate the due process rights of the Petitioners under the Fourteenth Amendment of the Constitution of the United States by reversing and rendering the trial court's jury verdict in favor of the Petitioners.

PARTIES TO THE PROCEEDING

Petitioners Joyce D. Hutton and Derek Bell were the plaintiffs in the state court proceeding and appellants in the appeal to the Mississippi Supreme Court. Respondents Hyundai Motor America and Hyundai Motor Company were the defendants in the trial court proceeding and the appellees in the appeal to the Mississippi Supreme Court.

RELATED CASES

Hyundai Motor America and Hyundai Motor Company v. Joyce D. Hutton and Derek Bell, No. 2015-CA-01013 Mississippi Supreme Court, Judgement entered September 16, 2021, Rehearing denied December 2, 2021.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING.....	ii
RELATED CASES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
PETITION FOR A WRIT OF CERTIORARI	1
OPINION BELOW	1
JURISDICTION.....	1
STATUTES AND CONSTITUTIONAL PROVI- SIONS INVOLVED.....	1
INTRODUCTION AND STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION.....	4
CONCLUSION.....	9

APPENDIX

Opinion of The Mississippi Supreme Court (Sep- tember 16, 2021).....	App. 1
Verdict Form	App. 69
Decision Letter of The Mississippi Supreme Court.....	App. 72

TABLE OF AUTHORITIES

	Page
CASES	
<i>Cleveland Bd. of Ed. v. Loudermill</i> , 470 U.S. 532 (1985)	4
<i>Cohens v. Virginia</i> , 19 U.S. 264 (1821)	4
<i>Dixon v. State</i> , 519 So.2d 1226 (Miss. 1988)	8
<i>In Ford Motor Co. v. Cockrell</i> , 211 So.2d 833 (Miss. 1968)	7
<i>Ford Motor Co. v. Dees</i> , 223 So.2d 638 (Miss. 1969)	7
<i>General Motors Corporation v. Pegues</i> , 738 So.2d 746 (Miss. 1999)	6, 7
<i>In re Murchison</i> , 349 U.S. 133 (1955)	4
<i>Investor Resource Services, Inc. v Cato</i> , 15 So.3d 412 (Miss. 2009)	6
<i>Logan v. Zimmerman Brush Co.</i> , 455 U.S. 422 (1982)	4
<i>Maranatha Faith Center, Inc. v. Colonial Trust Co.</i> , 904 So.2d 1004 (Miss. 2004)	4
<i>University of Mississippi Medical Center v. Pounder</i> , 970 So.2d 141 (Miss. 2007)	6
STATUTES	
Judiciary Act of 1789	4
Miss. Code Ann. § 11-7-7	4
28 U.S.C. § 1254(1)	1

PETITION FOR A WRIT OF CERTIORARI

Joyce D. Hutton and Derek Bell petition for a writ of certiorari to review the opinion of the Mississippi Supreme Court in the case.

OPINION BELOW

The Mississippi Supreme Court's opinion is found as Appendix 1. The Mississippi Supreme Court's denial of the petitioners' motion for rehearing was denied without opinion on December 2, 2021.

JURISDICTION

The Mississippi Supreme Court entered its opinion on September 16, 2021. The Mississippi Supreme Court denied the petitioners' motion for rehearing on December 2, 2021. The petitioners timely filed this petition for a writ of certiorari. This Court has jurisdiction under 28 U.S.C. § 1254(1).

**STATUTES AND CONSTITUTIONAL
PROVISIONS INVOLVED**

This case does not involve interpretation of statutory provisions. This case involves interpretation of the

due process clause of the Fourteenth Amendment of the Constitution of The United States.

INTRODUCTION AND STATEMENT OF THE CASE

The issue presented is did the Mississippi Supreme Court violate the due process rights of the petitioners guaranteed by the Fourteenth Amendment by reversing and rendering a judgment of the trial court.

This was a products liability suit arising out of an automobile accident involving a 2005 Hyundai Santa Fe which occurred on December 17, 2005 in Bolivar County, Mississippi. The petitioners Joyce Hutton and Derek Bell, were both seriously and permanently injured during the rollover accident. The petitioners brought suit in the Circuit Court of Bolivar County, Mississippi alleging this severe accident caused their injuries. Petitioner Derek Bell was operating the Hyundai Santa Fe in a southerly direction on and along Mississippi Highway No. 61 in Bolivar County, Mississippi. Petitioner Joyce Hutton was riding as a front seat guest passenger. The accident occurred around 9:15 a.m. as Bell and Hutton were traveling to Greenville to Christmas shop. They had just left Cleveland city limits minutes before and had been on the road only a short while. Bell heard a noise and immediately thereafter the vehicle began to pull to the left as Bell applied his brakes. The vehicle then continued to pull to the left and off the highway. Before the

vehicle rolled over, Bell attempted to steer the vehicle to the right in an attempt to stop the car from going into the median and northbound traffic of Highway 61.

At trial, the petitioners were able to prove to the jury that the combination of the defective and deficient design rendered this Hyundai Santa Fe defective and unreasonably dangerous. The trial began on October 6, 2014 and lasted for ten (10) days when a verdict for \$193,000.00 was rendered for the Plaintiff Joyce Hutton and \$2,000,000.00 for Plaintiff Derek Bell. See Verdict Form, Appendix 69. Hyundai appealed the verdict and judgment from the trial to the Mississippi Supreme Court. Nearly two years after the appeal was filed and fully briefed by all parties, on October 19, 2017, the Mississippi Supreme Court suspended the Rules of Appellate Procedure and stayed the appeal. Almost six years after the appeal was filed, on September 16, 2021, the Mississippi Supreme Court reversed and rendered in favor of Hyundai. See Opinion of the Mississippi Supreme Court, attached hereto as Appendix 1. From the Mississippi Supreme Court's September 16, 2021 decision reversing and rendering an eleven-one jury verdict in favor of the Appellees, the Appellees timely filed their Motion for Rehearing. On December 2, 2021, the Mississippi Supreme Court denied the motion for rehearing without comment. See Decision Letter from The Mississippi Supreme Court Clerk, attached hereto as Appendix 72.

REASONS FOR GRANTING THE PETITION

In *Cohens v. Virginia*, 19 U.S. 264 (1821), the Supreme Court reaffirmed its right under the Judiciary Act to review all state court judgments under the Judiciary Act of 1789 in cases arising under the federal Constitution or a law of the United States. In this case, the petitioners would state unto the Court that the Mississippi Supreme Court denied the petitioners their due process rights by reversing and rendering the trial court's verdict of \$1,869,310.59. In *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532 (1985), this Court held that petitioners' federal constitutional claim depends on their having had a property right. The property right of the petitioners is their cause of action against respondent Hyundai. Under Mississippi law, a chose in action is a property right. Under Miss. Code Ann. § 11-7-7, the Mississippi Supreme Court concluded the statute was reasonably interpreted as meaning "a chose in action may be treated the same as other personal property." *Maranatha Faith Center, Inc. v. Colonial Trust Co.*, 904 So.2d 1004, 1007 (Miss. 2004). Therefore the petitioners have a property right which has been taken without due process.

The basic element of due process is the opportunity to be heard by a neutral decision-maker. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982). A "fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955). In reversing and rendering the lower court's verdict, the Mississippi Supreme Court acted as a

non-neutral decision-maker by ignoring Mississippi's own well established law.

At trial, the petitioners designated as experts, Charles Miller and John Rinker. Miller was an auto mechanic with years of experience in ABS and accepted as an expert in every other State he testified in over his career. Rinker was a mechanical engineer with a Ph.D. in metallurgy with years of experience in metallurgy, mechanical engineering, and in designing. The Mississippi Supreme Court erroneously concluded that neither Miller nor Rinker were qualified to render an opinion on the Hyundai anti-lock braking system because Miller was not a designer of ABS and Rinker performed no independent tests other than observe Miller. Neither conclusion of the Mississippi Supreme Court was consistent with the facts of current Mississippi law.

It is important to note that Miller was designated and accepted as an auto mechanic by the trial court. Miller was familiar with how an ABS system works and has many times diagnosed and repaired a faulty ABS. Miller has been working on brakes as a mechanic since the early 1970's, and he has designed braking systems for race cars. Miller also has been trained by an ABS company on how to test anti-lock brake systems, how to service ABS and the various parts that were needed to be repaired. Miller has tested anti-lock braking systems. He has been qualified as an expert in State and Federal Courts in Florida, Georgia, Louisiana, Texas, Mississippi, Kentucky, California, Michigan

and New York. This was the first court in the United States to disqualify him!

Unlike the Mississippi Supreme Court's Opinion, Rinker did not merely observe Miller. Instead, following well established and reliable engineering and metallurgy procedures, Rinker examined the police photographs of the accident scene, thoroughly examined the subject Santa Fe vehicle, took numerous photographs and participated in testing the vehicle's brake system. Likewise, Rinker's opinion was based upon his expertise as a Ph.D. metallurgist and as a mechanical engineer.

However, the Mississippi Court concluded that only a design expert could testify about an ABS system. That is contrary to well established law in Mississippi. A witness need not be a specialist in any particular profession to testify as an expert. *University of Mississippi Medical Center v. Pounder*, 970 So.2d 141, 146 (Miss. 2007). "The scope of the witness's knowledge and experience, and not any artificial classification, governs the question of admissibility." *Investor Resource Services, Inc. v Cato*, 15 So.3d 412, 416 (Miss. 2009). The Mississippi Supreme Court's holding that Miller could not testify because he was not a designer of ABS is contrary to well established law in Mississippi. An auto mechanic, Benny Spencer, was allowed to testify about a broken axle in a products liability case despite the defendant, General Motors, objection that only an accident reconstructionist could offer such testimony. *General Motors Corporation v. Pegues*, 738 So.2d 746, 752 (Miss. 1999) (it is this Court's opinion

that Spencer was fully qualified to testify as an expert in auto mechanics, and that his testimony did not require him to be qualified as an expert in accident reconstruction). The Court in *Pegues* then noted, “Spencer’s opinions go to credibility, not admissibility.” *Id.* In *Ford Motor Co. v. Dees*, 223 So.2d 638, 641 (Miss. 1969), a manager of an automotive repair shop was accepted as an expert on the construction and operation of a steering mechanism of a pickup truck. The Mississippi Supreme Court held, “We feel that Alvin Doyle was qualified by his thirty years experience as part owner and manager of a large automotive repair shop to testify as an expert on the construction and working of the steering mechanism of a pickup truck and also the manner in which the cab was bolted to the chassis.” *Id.* at 641. In *Ford Motor Co. v. Cockrell*, 211 So.2d 833 (Miss. 1968) a mechanic, Edward Wallace, was qualified and accepted as an expert about a defect in a truck’s electrical system. According to the Mississippi Supreme Court in *Cockrell*, “we feel that Wallace was qualified as an expert witness.” *Id.* at 838.

The Mississippi Supreme Court’s holding that only a design “expert” could testify as to defects in ABS indicates that the Mississippi Supreme Court was not a neutral decision maker. This violates the petitioners’ due process rights and that their property, i.e., a chose in action, was taken without due process.

This decision is glaringly at odds with the actual proof. Hyundai’s only accident reconstruction expert, GEOFF GERMANE “reconstructed” the accident with the accident vehicle traveling in the opposite direction

of actual travel from which he made and rendered his various calculations, conclusions and opinions. He testified that his report was wrong and unreliable numerous times. The Supreme Court's opinion nevertheless accepted his expertise and version of events and opinions while disallowing Plaintiff's experts, Miller and Rinker. Not satisfied with his report, Germane created a new photograph, never disclosed before trial, where he claimed for the first time at trial, that he could see that the "Tone Ring" was not dislodged after the accident! Although the Plaintiffs objected to this newly created photographic evidence, the trial court allowed the evidence and testimony. All photos had previously been the subject of microscopic analysis by Plaintiff's experts and others. This created photo was shown to each juror and 11 jurors rejected this created evidence as not proving anything.

The Supreme Court accepted this testimony from Hyundai's expert, Germane, and acted as fact finders to establish that this was a fact – when it was not. Even more glaring is that none of Defendant's other experts saw this evidence, testified to this "fact" or even agreed to it, or endorsed it. Under well established Mississippi law, when evidence is conflicting, the jury is the sole judge of the weight of the evidence and the credibility of the witnesses. *Dixon v. State*, 519 So.2d 1226, 1228 (Miss. 1988) Nevertheless, the Mississippi Supreme Court ignored Mississippi law, usurped the Jury as the sole judge of credibility of the witnesses, and became the judge of the credibility of the witnesses by accepting Germane and rejecting Miller and Rinker.

Therefore, denying the Plaintiffs a fair trial. This example is only one of the many which demonstrates that Petitioners' right to due process were not only denied but were trampled. The Petitioners are Constitutionally entitled to a fair trial and their due process rights.

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

RALPH E. CHAPMAN
CHAPMAN, LEWIS & SWAN PLLC
P.O. Box 428
Clarksdale, Mississippi 38614
Telephone: (662) 627-4105
ralph@chapman-lewis-swan.com