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**DRI Files Amicus Brief with Kentucky Supreme Court in *Nissan Motor Company v. Maddox***

*Case Involves Appropriateness of Punitive Damages When Product Exceeded Government Safety Standards*

**CHICAGO – (November 12, 2014)**—DRI – The Voice of the Defense Bar has filed an amicus brief with the Commonwealth of Kentucky Supreme Court in the case of *Nissan Motor Company Ltd. v. Maddox*, a case involving a fatal head-on collision caused by a drunken driver who struck a Nissan Pathfinder. DRI’s Center for Law and Public Policy filed the brief in support of Nissan’s position.

In the accident, the drunk driver who caused the accident was killed. Of the two occupants in the Pathfinder, the driver, who weighed 170 pounds sustained foot and rib injuries. The passenger, Amanda Maddox, who weighed 240 pounds, suffered significant and extensive internal injuries and multiple fractures. Maddox claimed that the seat belt load limiter, designed to reduce chest injuries by spooling extra webbing in a crash, experienced excessive spooling, allowing her to “submarine” under the seat belt, causing the extensive injuries. Maddox claimed that safety tests were done on out-of-date 170 pound crash dummies that didn’t reflect the weight gains of Americans in recent years.

Nissan maintains that the 2001 Nissan Pathfinder met or exceeded all applicable government safety standards. In fact, the Pathfinder was given a five-star front passenger safety rating by the government’s New Car Assessment Program (NCAP) and the National Highway Traffic Safety Administration. The load limiter, which is not required by government standards, was added by Nissan as an added measure of protection.

The jury found in favor of Maddox and, in addition to the compensatory award, assessed \$2.5 million in punitive damages against Nissan. The award was affirmed by the Kentucky Court of Appeals. The Kentucky Supreme Court granted discretionary review as to punitive damages. In Kentucky, punitive damages may be assessed for “gross negligence,” which has been defined as “outrageous” conduct and “wanton or reckless disregard for the safety of other persons... There must be an element of malice or willfulness or such an utter and wanton disregard of the rights of others as from which it may be assumed the act was malicious or willful.”

In its brief, DRI argues that “When a manufacturer complies with government safety regulations, voluntarily submits its product for even more stringent government safety and passes those tests with flying colors, those acts are fundamentally inconsistent with the sort of “intolerable conduct” that warrants punitive damages. Punitive damages require clear and convincing evidence of a specific intent to injure the plaintiff, or of wanton or reckless disregard for the lives, safety, or property of others. As a

general matter, compliance with safety regulations proves that a defendant acted with regard for the safety of others. That is true even if a plaintiff later claims that the product is defective because it could have been made safer for that particular plaintiff. The defendant's conduct increased the safety for the majority of the population."

DRI brief authors Virginia Hamilton Snell of Wyatt Tarrant & Combs, LLC in Louisville, Kentucky, and Curt Cutting and Eric S. Boorstin of Horvitz & Levy LLP in Encino, California are available for interview or for expert comment through DRI's Communications Office.

To read DRI's brief in its entirety, [click here](#).

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*For more than fifty years, DRI has been the voice of the defense bar, advocating for 22,000 defense attorneys, commercial trial attorneys, and corporate counsel and defending the integrity of the civil judiciary. A thought leader, DRI provides world-class legal education, deep expertise for policy-makers, legal resources, and networking opportunities to facilitate career and law firm growth. For more information, log on to [www.dri.org](http://www.dri.org)*