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Effect of the Automobile Safety Act on Automobile Manufacturer's Duty of Design

Two recent cases involving a manufacturer's duty with respect to design have been decided in the federal courts of appeals. Consideration of these cases in light of the recently-passed Automobile Safety Act indicates that the automobile manufacturer's common law duty of design will be substantially redefined.

I. MANUFACTURER'S DUTY IN GENERAL

A manufacturer is under a duty to exercise due care to assure that his product will be safe for the purpose for which it was intended.¹ This duty requires that the manufacturer make tests to determine the propensities and dangers of his product.² However, the courts have drawn a distinction between negligence in manufacturing and negligence in design.³ An example of negligence in the manufacture of a product would be the use of a defective part in the wheel joint of an automobile which caused the wheel to fly off when the car was driven. In contrast, the wheel might be put together perfectly, using the best material available, but if, pursuant to a new design, the wheel is attached at an angle which later causes the driver to lose control at high speeds, negligence in the automobile's design would be at issue.

Through the years, some courts have been hesitant to find the manufacturer liable for negligence in design.⁴ In part, this hesitancy results from court reluctance to allow a jury of laymen to pass on the testimony of ex-

¹ *Hatch v. Ford Motor Co.*, 163 Cal. App. 2d 393, 329 P.2d 605 (1958); *Waterman v. Liederman*, 16 Cal. App. 2d 483, 60 P.2d 881 (1936). Prior obstacles to placing liability on manufacturers for harm caused by defective products, such as privity of contract, have been steadily reduced in recent years. The landmark cases are *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916) (negligence); *Henningson v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69 (1960) (implied warranty); *Greeman v. Yuba Power Prods., Inc.*, 59 Cal. 2d 57, 377 P.2d 897 (1962) (strict liability).

² *Walton v. Sherman-Williams Co.*, 191 F.2d 277 (8th Cir. 1951); *Chapman Chem. Co. v. Taylor*, 215 Ark. 630, 222 S.W.2d 820 (1949); *Ebers v. General Chem. Co.*, 310 Mich. 261, 17 N.W.2d 176 (1945).

³ See, e.g., *Norton v. Harrelson*, 278 Ala. 85, 176 So. 2d 18 (1965).

⁴ See, e.g., *Thomas v. Jerominek*, 8 Misc. 2d 517, 170 N.Y.S.2d 388 (Sup. Ct. 1957), in which the plaintiff alleged that her automobile was constructed in an unsafe manner in that the door and window knobs were indistinguishable. The court held that the plaintiff had failed to state a claim upon which relief could be granted because she complained "of nothing which relates to the existence of a latent defect. . . ." *Accord*, *Amason v. Ford Motor Co.*, 80 F.2d 265 (5th Cir. 1935). This case also involved a suit based upon defective design of rear-hinged doors. The court emphasized that the plaintiff had "not charged that any defective material was used in constructing the car or that any part of it broke." *Id.* at 266. See also *Ford Motor Co. v. Wolber*, 32 F.2d 18 (7th Cir. 1929); *Reusch v. Ford Motor Co.*, 196 Wash. 213, 82 P.2d 556 (1938); *Foster v. Ford Motor Co.*, 139 Wash. 341, 246 Pac. 945 (1926); *cf.*, *Carpini v. Pittsburgh & Weirton Bus Co.*, 216 F.2d 404 (3d Cir. 1954).

perts in the field. It also reflects a fear that allowing recovery in this broad area would open the floodgates of litigation.⁵ However, in recent years there has been a noticeable increase in the number of design negligence suits,⁶ a development not altogether startling in light of the heavy burden of proof facing the plaintiff in a negligent manufacturing case.

To prove negligent manufacture, the plaintiff must establish, first, that the injury he has suffered was caused by a defective product,⁷ and second, that the defect existed when the product left the hands of the defendant.⁸ To be sure, the plaintiff's burden may be lessened by his proving elements of *res ipsa loquitur* and thus placing on the manufacturer the burden of introducing evidence to show that he was not negligent in manufacturing the product.⁹ However, the practical difficulties of tracing a product's history from the time it left the maker's hands still leaves many plaintiffs without remedy.¹⁰

If the plaintiff can prove that the manufacturer's design was negligent, he has established not only fault but also the fact that the defect existed when the product left the maker's hands.¹¹ Charges of negligent design most frequently include hidden dangers,¹² the use of materials of inadequate strength,¹³ and failure to add a needed safety device.¹⁴ When considering

⁵ Noel, *Manufacturer's Negligence of Design or Directions for Use of a Product*, 71 YALE L.J. 816 (1962).

⁶ *Ibid.*

⁷ Williams v. Coca-Cola Bottling Co., 285 S.W.2d 53 (Mo. App. 1955); Geisness v. Scow Bay Packing Co., 16 Wash. 2d 1, 132 P.2d 740 (1942).

⁸ Kruper v. Proctor & Gamble Co., 160 Ohio St. 489, 117 N.E.2d 7 (1954); Cudaky Packing Co. v. Baskin, 170 Miss. 834, 155 So. 217 (1934); Williams v. Paducah Coca-Cola Bottling Co., 343 Ill. App. 1, 98 N.E.2d 164 (1951).

⁹ The plaintiff is not required to eliminate with certainty all other possible causes or inferences, which would mean that he must prove a civil case beyond a reasonable doubt. All that is needed is evidence from which reasonable men can say that on the whole it is more likely than not that there was negligence associated with the cause of the event. Shahinian v. McCormick, 59 Cal. 2d 554, 381 P.2d 377 (1963). Where no such balance of probabilities in favor of negligence can reasonably be found, *res ipsa loquitur* does not apply. Owen v. Beauchamp, 66 Cal. App. 2d 750, 152 P.2d 756 (1944). However, even though there is negligence in the air, it is still necessary to bring it home to the defendant; and in any case where it is clear that it is at least equally probable that the negligence was that of another, the court must direct the jury that the plaintiff has not proved his case. Emmons v. Texas & Pac. Ry., 149 S.W.2d 167 (Tex. Civ. App. 1941), *error dismissed*. See also Prosser, *The Procedural Effect of Res Ipsa Loquitur*, 20 MINN. L. REV. 241 (1936).

¹⁰ For a discussion of the burden of proof in a negligent manufacturing case as affected by *res ipsa loquitur* see Note, 17 Sw. L.J. 669, 670 (1963).

¹¹ Noel, *Recent Trends in Manufacturer's Negligence as to Design, Instructions or Warnings*, 19 Sw. L.J. 43, 46 (1965).

¹² Campo v. Scofield, 301 N.Y. 468, 95 N.E.2d 802 (1950), is the leading case espousing the "latent defect test." The case was discussed favorably in Evans; *cf.*, Noel, *Manufacturer's Negligence of Design or Directions for Use of a Product*, 71 YALE L.J. 873 (1962). For other cases involving hidden dangers see, Calkins v. Sandven, 129 N.W.2d 1 (Iowa 1964); Matthews v. Lawnlite Co., 88 So. 2d 299 (Fla. 1956).

¹³ Goullon v. Ford Motor Co., 44 F.2d 310 (6th Cir. 1930); Employers' Liab. Assur. Corp., Ltd. v. Columbus McKinnon Chain Co., 13 F.2d 128 (W.D.N.Y. 1926).

¹⁴ Smith v. Hobart Mfg. Co., 302 F.2d 570 (3d Cir. 1962); Texas Bitulithic Co. v. Caterpillar Tractor Co., 357 S.W.2d 406 (Tex. Civ. App. 1962) *error ref. n.r.e.*; Blissenbach v. Yanko, 90 Ohio App. 557, 107 N.E.2d 409 (1951).

such charges, the courts normally define the manufacturer's duty as one of reasonable care under the circumstances.¹⁵ It is conceded that a manufacturer need not insure that his product, from a design viewpoint, is incapable of producing injury.¹⁶ A manufacturer performs his duty as to design when the manufactured article is safe for the use for which it was intended.¹⁷ In general, courts attempt to balance the likelihood and gravity of harm against the burden of precaution which would be effective to avoid the harm.¹⁸

In considering the proof necessary to show a breach of duty in design, courts hold a manufacturer to have the knowledge and skill of an expert.¹⁹ A manufacturer's utilizing a design customarily employed by others in the industry indicates that the required expert knowledge and skill have been employed;²⁰ however, evidence to that extent does not necessarily establish due care,²¹ nor is extensive safe use always conclusive.²² Evidence is admissible as to the necessity and feasibility of changes in design which would enhance the safety factor,²³ but evidence that the manufacturer altered his design following the occurrence of an injury is usually excluded.²⁴ Whether or not representations of the product's safety²⁵ or warnings about the proper use²⁶ were made should also be given consideration in determining whether a manufacturer designed its product negligently.

II. THE RECENT DECISIONS

In *Evans v. General Motors Corp.*²⁷ the plaintiff's husband was killed when his 1961 Chevrolet station wagon was struck broadside by another car. The car driven by the deceased was equipped with an "X" frame, and

¹⁵ See Annot., 76 A.L.R.2d 91, 94 (1961).

¹⁶ *Pass v. Firestone Tire & Rubber Co.*, 242 F.2d 914 (5th Cir. 1957); *Stevens v. Durbin-Durco, Inc.*, 377 S.W.2d 343 (Mo. 1964).

¹⁷ *Odekirk v. Sears, Roebuck & Co.*, 274 F.2d 441 (7th Cir.), *cert. denied*, 362 U.S. 974 (1960); *McCready v. United Iron & Steel Co.*, 272 F.2d 700 (10th Cir. 1959).

¹⁸ *Conway v. O'Brien*, 111 F.2d 611, 612 (2d Cir. 1940) (L. Hand, J., for the majority); 2 HARPER & JAMES, TORTS § 28.5, at 1542 (1956).

¹⁹ *Wright v. Carter Prod., Inc.*, 244 F.2d 53 (2d Cir. 1957); *Braun v. Roux Distrib. Co.*, 312 S.W.2d 758 (Mo. 1958); *Martin v. Bengue, Inc.*, 25 N.J. 359, 371, 136 A.2d 626, 632 (1957).

²⁰ *Amason v. Ford Motor Co.*, 80 F.2d 265 (5th Cir. 1935); *Watts v. Bacon & Van Buskirk Glass Co.*, 18 Ill. 2d 226, 163 N.E.2d 425 (1959).

²¹ *Carpini v. Pittsburgh & Weirton Bus Co.*, 216 F.2d 404 (3d Cir. 1954).

²² *Beadles v. Servel, Inc.*, 344 Ill. App. 133, 100 N.E.2d 405 (1951).

²³ *Boeing Airplane Co. v. Brown*, 291 F.2d 310 (9th Cir. 1961).

²⁴ *Cox v. General Elec. Co.*, 302 F.2d 389 (6th Cir. 1962); *Northwest Airlines, Inc. v. Glenn L. Martin Co.*, 224 F.2d 120 (6th Cir. 1955); *Tyson v. Long Mfg. Co.*, 249 N.C. 557, 107 S.E. 170 (1959); Annot., 50 A.L.R.2d 882, 898. A policy behind these holdings is a recognition by the courts that to admit such evidence would discourage manufacturers from formulating and marketing products with improved safety features in light of impending litigation.

²⁵ *Crist v. Art Metal Works*, 230 App. Div. 114, 243 N.Y. Supp. 496 (1930).

²⁶ *Blitzstein v. Ford Motor Co.*, 288 F.2d 738 (5th Cir. 1961); *Dayton v. Harlene Frocks, Inc.*, 274 App. Div. 1015, 86 N.Y.S.2d 614 (1948), *aff'd*, 299 N.Y. 609, 86 N.E.2d 176 (1949). *But see Foster v. Ford Motor Co.*, 139 Wash. 341, 246 Pac. 945 (1926).

²⁷ 359 F.2d 822 (7th Cir.), *cert. denied*, 385 U.S. 836 (1966).

the plaintiff contended that the defendant-manufacturer's failure to utilize a perimeter frame, prevalent in other cars then on the market, created an unreasonable risk of harm to the occupants of the automobile. The defendant argued that although automobile collisions were foreseeable, there is no duty to design and manufacture a car in which it would be safe to collide, as this is not the intended purpose of an automobile. The lower court dismissed for failure to state a claim upon which relief could be granted. The Seventh Circuit, affirming, agreed with the defendant's argument and held that because the intended purpose of an automobile does not include its participation in collisions, the defendant had no duty to use a perimeter frame.²⁸ In the court's view, an automobile is built for travel and not for colliding with other vehicles or objects.²⁹ The court seemingly would find that a manufacturer need not provide the public with such rudimentary safety equipment as seat belts, safety glass, padded dashboard, or a recessed steering wheel.

Only four days after the Seventh Circuit's decision in *Evans* the Sixth Circuit gave its interpretation of the duty owed by an automobile manufacturer in product design. In *Gossett v. Chrysler Corp.*³⁰ the hood of the plaintiff's truck became disengaged, flew up, and obscured his vision. As a result, he failed to make a turn and was seriously injured. The plaintiff alleged, *inter alia*, that Chrysler was negligent in designing a hood latch which could be distorted manually when closing the hood.³¹ Using language similar to that found in *Evans*, the court stated that the manufacturer had a duty to use reasonable care under the circumstances to design his product to make it safe for the use for which it was intended, but not accident or fool-proof.³² The court pointed out that the latch functioned

²⁸ The court also refused to infer duty from the fact that some of its automobiles and some of its competitor's automobiles are made with side rail frames, or from expert opinions that perimeter frames are safer in a collision.

²⁹ For another court's construction of the "use" of an automobile see *Bird v. Ford Motor Co.*, 15 F. Supp. 590 (W.D.N.Y. 1936), in which the court stated: "The purpose of shatterproof glass was to protect against conditions arising out of the ordinary use of an article, and it may be urged with considerable force that in this day accidents arise out of the ordinary use of an automobile." See also, *Bahlman v. Hudson Motor Car Co.*, 290 Mich. 683, 288 N.W. 309, 311 (1939).

³⁰ 359 F.2d 84 (6th Cir. 1966).

³¹ The type of latching mechanism used by Chrysler in this truck, and all of its trucks for the past twenty-five years, was known as a "dove tail" latch. Testimony disclosed that when the hood was being closed it was possible to hold the device used for the release of the "tongue or tooth" so that the latch would go outside the hole for which it was designed to enter.

³² The Fifth Circuit, applying Texas law, espoused a similar test of the automobile manufacturer's duty of safety in design in the recently-decided case of *Muncy v. General Motors Corp.*, 367 F.2d 493 (5th Cir. 1966). There the plaintiff, a pedestrian, was severely injured when struck by a runaway automobile. In her petition the plaintiff alleged that the defendant's automobile ignition was negligently designed in that the key could be removed without turning off the engine. In denying recovery, the Fifth Circuit adopted the test of duty in design set forth by the Texas court of civil appeals in *Muncy v. General Motors Corp.*, 357 S.W.2d 430 (Tex. Civ. App. 1962). The Texas court cited RESTATEMENT (SECOND), TORTS § 395 (1965) as the applicable test of the defendant's duty. This section requires that the product be used lawfully and in a manner and for a purpose for which it was manufactured. The court gave two reasons for holding that the plaintiff

perfectly for the purpose for which it was intended, and only when mis-used did it function improperly; consequently there was no negligence in the design of the hood latch.³³ In dicta, however, the court indicated that the manufacturer's duty includes a duty to design the product so that it will fairly meet any emergency of use which *reasonably* can be anticipated.³⁴ The latter language seems a bit more protective than the language in *Evans*, although it probably did not soothe Mr. Gossett.

The majority in *Evans* summarily distinguished *Ford Motor Co. v. Zahn*³⁵ as a case involving a defectively-manufactured product. In that case the plaintiff brought suit against the automobile manufacturer for injuries sustained as the result of slamming his head against the jagged edge of a defective ashtray. The plaintiff was thrown forward when the driver had to stop suddenly in order to avoid striking another vehicle. Although Ford conceded there was a duty of reasonable care in design and manufacture of its product, it argued that it was not bound to foresee that another car would "suddenly dart" out of a side road and cause the sudden application of brakes. In rejecting this contention, the Eighth Circuit responded in part:

[T]he jury could properly consider as a circumstance that in this era of fast moving automobiles, emergencies arise frequently which require the sudden application of brakes which in turn throw the occupants of the automobile forward and against the dashboard. The record reveals that defendant was fully conscious of the necessity of guarding against injuries resulting from such occurrences. . . . [Intervening causes] should not eliminate from the case the duty of the automotive manufacturer.³⁶

The dissent in *Evans* placed great reliance on *Zahn* and found sufficient duty to enable the plaintiff at least to present his case to the jury. In taking notice of the mushrooming highway death rate³⁷ and the congressional hearings³⁸ taking place on this subject, the majority was criticized for what

failed to bring her case within the terms of that section. *First*, by not taking the car out of gear and turning off the engine, the driver failed to use the car in the manner and for the purpose for which it was intended, and there was no showing that the car was dangerous if used properly. *Second*, the plaintiff's conduct was unlawful in that it violated TEX. REV. CIV. STAT. ANN. art. 6701d, § 97 (1965), which expressly provides that no person shall permit a vehicle to stand unattended without first stopping the engine and effectively setting the brake thereon.

³³ The court also reversed for improper instructions given the jury by the lower court, 359 F.2d at 86. Apparently, the distinction between negligence in manufacturing and negligence in design was overlooked by the plaintiff. In this regard, see note 3 *supra* and accompanying text.

³⁴ A similar test of duty was stated by the court in *Davlin v. Henry Ford & Son, Inc.*, 20 F.2d 317 (6th Cir. 1927). In that case the deceased was killed when the seat of the tractor on which he was riding gave way. Allegations of negligence in design and manufacture were at issue, but the court granted the defendant summary judgment.

³⁵ 265 F.2d 729 (8th Cir. 1959).

³⁶ *Id.* at 732.

³⁷ According to the *National Health Survey*, there are about 4,500,000 people injured in vehicular accidents annually, and, of these, approximately 200,000 suffer some permanent disability. O'Connell, *Taming the Automobile*, 58 Nw. U.L. Rev. 299, 302 (1963).

³⁸ S. REP. NO. 1301, 89th Cong., 2d Sess. 3 (1966).

the dissent felt was a failure to face the realities of the problem at hand. Citing a number of leading cases in Indiana law,³⁹ the dissent recognized that the laws of this nation of necessity are not static but must adapt when necessary to meet the justified needs of the people. The dissent charged the manufacturer with a duty to use such care in automobile design that reasonable protection is given passengers against death and injury from accidents which are expected and foreseeable by the driver despite careful use.⁴⁰

III. NATIONAL TRAFFIC AND MOTOR VEHICLE ACT OF 1966

During the pendency of both *Evans* and *Gossett*, the United States Congress was debating the need for federal motor vehicle safety standards. On September 9, 1966, the President signed into law the National Traffic and Motor Vehicle Act of 1966,⁴¹ the stated purpose of which is to reduce traffic accidents and the resulting deaths and injuries. The most poignant observation to be made in comparing the act with *Evans* and *Gossett* is the similarity between the definition of duty as stated in the dissenting opinion in *Evans* and what Congress has deemed "motor vehicle safety." Section 102(1) provides:

"Motor vehicle safety" means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of the *design*, construction or performance of motor vehicles and is also protected against unreasonable risk of death or injury to persons in the event accidents do occur, and includes nonoperational safety of such vehicles.⁴²

This definition of motor vehicle safety indicates congressional recognition of the duty of an automobile manufacturer to take reasonable steps to protect passengers from death or injury in the event accidents occur, notwithstanding the fact that accidents may not be within the purview of an automobile's intended purpose. Since January 31, 1967, the automobile

³⁹ *Dagley v. Armstrong Rubber Co.*, 344 F.2d 245 (7th Cir. 1965) (negating the requirement of privity in warranty cases); *Greeno v. Clark Equip. Co.*, 237 F. Supp. 427 (N.D. Ind. 1965) (eliminating the requirement of privity in product liability cases); *Elliot v. General Motors Corp.*, 296 F.2d 125 (4th Cir. 1961), *cert. denied*, 369 U.S. 860 (1962) (eliminating privity in Indiana negligence actions).

⁴⁰ It is interesting to note that RESTATEMENT (SECOND), TORTS §§ 395, 398 (1965) are given as an apparent basis for the dissent's test of duty in *Evans*, whereas the *Gossett* court quoted the same § 398 as the basis for its holding. Section 398 states in full:

A manufacturer of a chattel made under a plan or design which makes it dangerous for the uses for which it is manufactured is subject to liability to others whom he should expect to use the chattel or to be endangered by its probable use for physical harm caused by his failure to exercise reasonable care in the adoption of a safe plan or design.

⁴¹ Pub. L. No. 89-563, 89th Cong., 2d Sess. (Sept. 9, 1966). Section 108(a)(1) limits the application of the federal standards to those automobiles manufactured after January 31, 1967.

⁴² Pub. L. No. 89-563, 89th Cong., 2d Sess. § 102(1) (Sept. 9, 1966). (Emphasis added.)

manufacturer must comply with the specifically enumerated vehicle safety standards to be administered through the National Traffic Safety Agency operating under the auspices of the Commerce Department.⁴³ The act provides for civil penalties up to \$1,000 per violation with the maximum civil penalty not to exceed \$400,000 for any related series of violations.⁴⁴

The act states that no state shall have authority either to establish or to continue in effect any safety standard applicable to the same aspect of performance of the vehicle or item of equipment which is not comparable to the federal standard.⁴⁵ However, any state may establish a *higher* standard of performance than that required by the otherwise applicable federal standard.⁴⁶ In sum, the entire act implies that Congress intended to treat failure to comply with the minimum safety standards as a breach of the manufacturer's duty of design and that the federal standards would dictate the minimum standard of care.⁴⁷

IV. CONCLUSION

The automobile manufacturer's duty to incorporate in its design reasonably adequate safety features to protect passengers in the event of an accident has been recognized by Congress and presumably will be given effect by the courts in personal injury litigation. Moreover, *Evans* has been modified so that a manufacturer now has a duty to provide automobile passengers with reasonable protection in event of accident.⁴⁸ However, a manufacturer may still escape liability if the plaintiff is unable to establish that the violation was the proximate cause of his damage.⁴⁹

⁴³ The first group of regulations was announced January 31, 1967, and presumably will take effect with the 1968 model cars. A second set of rules, possibly broader and more demanding than the first, will be announced January 31, 1968, most likely to take effect with the 1969 models.

⁴⁴ Pub. L. No. 89-563, 89th Cong., 2d Sess. § 109(a) (Sept. 9, 1966).

⁴⁵ Pub. L. No. 89-563, 89th Cong., 2d Sess. § 103(d) (Sept. 9, 1966).

⁴⁶ *Id.*

⁴⁷ In discussing the effect of this act on state law, the Senate concluded that the states should be free to adopt standards comparable to the federal standards but that state standards would be deemed preempted if they differed from federal standards applicable to the same aspect of the vehicle or item of vehicle equipment. See S. REP. NO. 1301, 89th Cong., 2d Sess. (June 23, 1966).

⁴⁸ There are three groups of cases denying liability for consequences resulting from violations of statutes or ordinances: *first*, when the statute was not designed to protect the interest invaded or to protect it from the particular hazard which produced the injury. *Gorris v. Scott*, L.R. 9 Ex. 125 (1874) (where a statute requiring animals on shipboard to be fenced was designed to prevent disease, not to prevent animals from being washed overboard); *second*, when the statute obviously was intended to protect only an interest of the state, or the community at large, e.g., public peace, rather than any particular class or individual. For example, if a railroad violates a statute by running a train on Sunday, a private individual (*i.e.*, the owner of a cow killed on the track) cannot base an action upon that violation alone, without other evidence of negligence. *Tingle v. Chicago, B. & Q.R.R.*, 60 Iowa 333, 14 N.W. 320 (1882); *cf.*, *Platz v. City of Cohoes*, 89 N.Y. 219, 42 Am. Rep. 286 (1882); *third*, when the wrongfulness of the defendant's act has no causal relation to the consequences which befell the plaintiff. *St. Louis, B. & M.R.R. v. Price*, 269 S.W. 422 (Tex. Comm'n App. 1925); *Arrelano v. Jorgenson*, 52 Cal. App. 622, 199 Pac. 855 (1921); *Martin v. Herzog*, 228 N.Y. 164, 126 N.E. 814 (1920).

⁴⁹ See third exception in note 48 *supra*.