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Automobiles - Liability of Manufacturers or Sellers - Automobile Manufacturer's Liability for Negligent Design

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RECENT CASES

AUTOMOBILES—LIABILITY OF MANUFACTURERS OR SELLERS—AUTOMOBILE MANUFACTURER'S LIABILITY FOR NEGLIGENT DESIGN—The plaintiff instituted this action to recover damages for personal injuries received by him when the automobile in which he was riding was struck in the rear by an automobile manufactured by the defendant and being driven at a speed exceeding one hundred miles per hour. The plaintiff alleged that the defendant was negligent in its design and manufacture of an automobile which was capable of being driven at such a dangerous speed. The plaintiff appealed from dismissal of the action for failure to state a claim upon which relief might be granted. The Court of Appeals, Seventh Circuit, with one dissenting opinion, *held* that the automobile manufacturer was not liable on the theory that the manufacturer had a duty to design an automobile incapable of causing injury through foreseeable misuse for a purpose for which the automobile was never supplied. *Schemel v. General Motors Corp.*, 384 F.2d 802 (7th Cir. 1967), *cert. denied*, 390 U.S. 945 (1968).

Beginning with the landmark case, *MacPherson v. Buick Motor Co.*,[1] courts have held that a manufacturer is liable for loss caused by the negligent *construction* of an automobile.[2] But in a number of situations the automobile which is involved in the accident is made as intended and no defect in construction exists. The automobile may be functioning perfectly after the accident. In this type of case the plaintiff has attempted to show that loss was caused by a negligent *design*.[3] Here, too, in *Schemel* the plaintiff was not alleging that some defect existed in the construction of the automobile which prevented the driver from operating it at a lesser speed. For example, there was no allegation that the accelerator stuck or that a defect in the brakes caused the accident. Obviously, if the plaintiff can show negligence in design he not only has established the requisite fault but also that the defect existed when the automobile left the manufacturer's hands. Whereas if it is alleged that a particular item was defective in its construction, the plaintiff may be defeated for lack of proof that the alleged

1. 217 N.Y. 382, 111 N.E. 1050 (1916).

2. Necaise v. Chrysler Corp., 335 F.2d 562 (5th Cir. 1964); Ford Motor Co. v. Mathis, 322 F.2d 267 (5th Cir. 1963); Duckworth v. Ford Motor Co., 320 F.2d 130, 132 (3rd Cir. 1963); Northern v. General Motors Corp., 2 Utah 2d 9, 268 P.2d 981 (1954).

3. Larsen v. General Motors Corp., 391 F.2d 495 (8th Cir. 1968); General Motors Corp. v. Muncy, 367 F.2d 493 (5th Cir. 1966), *cert. denied*, 386 U.S. 1037 (1967); Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966) *cert. denied*, 385 U.S. 836 (1966).

defect did not arise after some use (or misuse) while in the hands of the ultimate consumer.[4]

The court in *Schemel* relies primarily on its previous decision in *Evans v. General Motors Corp.*[5] in which recovery was denied because the use of the automobile was improper. The plaintiff's decedent was killed when the left side of the automobile collapsed on him after a collision with another automobile. The plaintiff alleged that their automobile was designed with an "X" frame which did not have side frame rails to protect a driver involved in a side impact collision. The court in *Evans* made the following observation:

> The intended purpose of an automobile does not include its participation in collisions with other objects despite the manufacturer's ability to foresee the possibility that such collisions may occur.[6]

Clearly, a collision is not an intended purpose of an automobile. The underlying policy which the court in *Evans* seems to be promoting is that an automobile manufacturer discharges his duty if he produces a product designed to meet normal uses and he is not required to anticipate abnormal uses. *Evans* refuses to extend the responsibility of the manufacturer. The court states that the manufacturer need not make its automobile "accident proof."[7]

Following *Evans*, the Eighth Circuit Court of Appeals in *Larsen v. General Motors Corp.*[8] reversed and remanded a decision of a Minnesota United States District Court which had given judgment for General Motors Corporation. In *Larsen* the plaintiff received personal injuries while driving a Chevrolet Corvair. A head-on collision caused a severe rearward thrust of the steering mechanism into the plaintiff's head. Liability was asserted against General Motors Corporation on an alleged design defect in the steering assembly.[9] General Motors, relying on *Evans*, contended that it had no duty to produce a vehicle in which it would be safe to collide. The court, however, expanded the duty of the automobile manufacturer. The court delcared the duty to be one of reasonable care in the design of its vehicle and to avoid subjecting the user to an *unreasonable risk* of injury in the event of a collision.[10] The

4. *See generally* Noel, *Recent Trends in Manufacturers' Negligence as to Design, Instructions, or Warnings*, 19 SW. L. J. 43 (1965).
5. *Supra* note 3.
6. Evans v. General Motors Corp., *supra* note 3, at 825.
7. Evans v. General Motors Corp., *supra* note 3, at 824.
8. *Supra* note 3.
9. The plaintiff alleged that the design and placement of the steering shaft exposed the driver to an unreasonable risk of injury. In effect, the shaft acted as a spear aimed at a vital part of the driver's anatomy. The plaintiff contended that because of the design defect he received injuries that he would not have otherwise received. Or in the alternative, he alleged that his injuries would not have been as severe.
10. Larsen v. General Motors Corp., *supra* note 3, at 502.

court in *Larsen* circumvented *Evans* by stating that while automobiles are not made for the purpose of colliding with one another, this is a frequent and inevitable contingency of normal automobile use.[11]

It is interesting to note that in *Evans* and *Larsen* the facts are quite similar; yet, two different results are reached. The facts are similar since in both cases it was not contended by the plaintiff that the alleged design defect *caused* the accident. In both, the cause of the accident was a collision and the alleged design defect only increased the severity of the injuries.

Commencing with the year 1957 many automobiles were produced with extreme and exaggerated tail fins on which certain unfortunate pedestrians became impaled. No duty was found owing to the pedestrians by the automobile manufacturers for this alleged negligent design.[12] In the area of non-automobile design litigation, however, the manufacturers have been held liable for harm caused by the product when it is used not for its intended purpose but for some other purpose which the manufacturer might have reasonably foreseen.[13]

Certainly, it is also foreseeable that the automobile manufacturer's product may be driven into bodies of water. Then under the plaintiff's reasoning in *Schemel* the manufacturer would have a duty to equip its automobiles with pontoons.[14] In the instant case it is also foreseeable that irresponsible motorists will operate their vehicles at unlawful and excessive speeds, but the court refuses to confer a duty upon the defendant manufacturer to design its automobiles with governors.

While the courts have been willing to protect users of automobiles from negligent construction,[15] this willingness to protect has not extended into the area of negligent design.[16] Cases in which

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11. *Id.* at 502.

12. Kahn v. Chrysler Corp., 221 F.Supp. 677 (S.D. Tex. 1963); Hatch v. Ford Motor Co., 163 Cal. App.2d 393, 329 P.2d 605 (Ct. App. 1958). Both cases involved minors colliding with a parked automobile. In *Hatch* the minor collided with the radiator ornament; in *Kahn*, the minor collided with the rear tail fin. Both courts denied liability as a matter of law for the alleged negligent design.

13. Blohm v. Cardwell Mfg. Co., 380 F.2d 341 (10th Cir. 1967) (collapsible mobile derrick rig); Spruill v. Boyle-Midway Inc., 308 F.2d 79 (4th Cir. 1962) (furniture polish); Phillips v. Ogle Aluminum Furniture, Inc., 106 Cal. App.2d 650, 235 P.2d 857 (Ct. App. 1951) (Chair); *cf.* Brown v. General Motors Corp., 355 F.2d 814 (4th Cir. 1966), *cert. denied*, 386 U.S. 1036 (1966) (bulldozer).

14. This was one of General Motors' arguments in the *Evans* case. While this particular breach of duty has not yet been alleged, interestingly enough, a year after *Evans* was decided, an unsuccessful plaintiff in a lower court brought an action against General Motors on the theory that it had a duty to design an automobile that would be fireproof after a collision. Shumard v. General Motors Corp., 270 F.Supp. 311 (S.D. Ohio 1967).

15. *Supra* note 2.

16. Evans v. General Motors Corp., *supra* note 3; General Motors Corp. v. Muncy, *supra* note 3. *Contra* Larsen v. General Motors Corp., *supra* note 3.

plaintiffs have had more success in negligent design litigation have involved not automobiles but other various "motor vehicles."[17]

The courts perhaps feel a reluctance to let a jury comprised of laymen evaluate and judge the product design conceived and produced by experts in the field. If this is so, the argument is not particularly cogent as juries have decided other cases involving expert testimony and presumably have reached a just result. If the courts are reluctant to find the manufacturer liable for fear of the burden of increased cost to the manufacturer, that cost would no doubt be passed on to the ultimate consumer anyway through the increased prices of automobiles.[18]

The feeling on the part of some courts is that if liability for negligence in design is to be extended this is a responsibility for the legislature to assume.[19] Indeed the legislature has assumed some of this responsibility. In 1966 the President signed into law the National Traffic and Motor Vehicle Safety Act.[20] The stated purpose of the Act is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents.[21] The Act empowers the Secretary of Commerce[22] to prescribe appropriate and objective motor vehicle standards.[23] Compliance with the standards by the manufacturer, however, will not settle the question of common law liability[24] but the violation of these minimum standards might be evidence of failure to use due care. That Congress contemplated the problem of automobile design is clearly reflected in Section 1391 of the Act.[25] The judiciary will be faced with the question of negligent design in any case in which the prescribed standards are not met; also, in any case in which the standards are perhaps inadequate.

North Dakota, in a case decided in 1965, recognized a plaintiff's claim for negligence in construction against a truck-tractor manufacturer.[26] In another case involving a suit against the manufacturer

17. Carpini v. Pittsburgh & Weirton Bus Co., 216 F.2d 404 (3rd Cir. 1954) (bus); Clark v. Zurich Truck Lines, 344 S.W.2d 304 (Mo. Ct. App. 1961) (truck); *but see* Gossett v. Chrysler Corp., 359 F.2d 84 (6th Cir. 1966) (truck).

18. *See generally* 52 IA. L. REV. 956 (1966-1967).

19. Evans v. General Motors Corp., *supra* note 3, at 824; Shummard v. General Motors Corp., *supra* note 14, at 313.

20. 80 Stat. 718, 15 U.S.C. § 1381-1425 (Supp. II, 1967).

21. 15 U.S.C. § 1381 (Supp. II, 1967).

22. 15 U.S.C. § 1395 (Supp. II, 1967), *as amended*, 49 U.S.C. § 1652 (f) (1) (Supp. II, 1967). The Secretary of Transportation now carries out the provisions of the Act through the National Traffic Safety Bureau.

23. 15 U.S.C. § 1392 (a) (Supp. II, 1967).

24. 15 U.S.C. § 1397 (c) (Supp. II, 1967).

25. 15 U.S.C. § 1391 (Supp. II, 1967). "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 occuring as a result of the *design*, construction or performance of motor vehicles . . . ."

26. Lang v. General Motors Corp., 136 N.W.2d 805 (N.D. 1965). Plaintiff purchased a new 1960 Chevrolet 2½ ton truck tractor from one of the defendant manufacturer's dealers. Plaintiff alleged negligence in the manufacture and construction of the vehicle and also breach of warranty. The North Dakota Supreme Court said that plaintiff's

of a potato harvesting machine, the court does indicate in its opinion that the duty of a manufacturer extends to product design.[27]

Automobile design reflects a basic public policy question. The design of a complex product such as an automobile takes into account safety of operation. However, this safety objective competes with other public demands of the manufacturer's product. These demands are economy, style, and speed and performance. It seems that if Schemel's case had gone to the jury that causation would have been extremely difficult to prove. Arguably, the driver of the automobile manufactured by General Motors Corporation could be considered an intervening force cutting off the chain of causation. Perhaps it would be desirable to restrict the speed and performance capabilities of an automobile as suggested by the plaintiff in *Schemel*. However, it is doubtful that the judiciary will ever impose the duty. Clearly, the legislature has not chosen to do so.[28]

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LIMITATION OF ACTIONS—PHYSICIANS AND SURGEONS—MALPRACTICE—Two doctors performed a Caesarean section operation on the plaintiff, and left a surgical sponge inside her body. Believing she had a tumor, the plaintiff underwent surgery more than four years later, and the sponge was then discovered. The plaintiff filed suit for malpractice against the doctors, but the District Court, Lubbock County, granted defendant's motion for a summary judgment based on the two-year Statute of Limitations. This judgment was affirmed on appeal. The Supreme Court of Texas, two judges dissenting,[1] reversed the judgments of the trial and appellate courts, and remanded the cause for trial. The court held that the Statute of Limitations does not commence to run until the cause of action is discovered, rather than when the negligence occurred. *Gaddis v. Smith*, 417 S.W.2d 577 (Tex. 1967).

The primary question raised in this case is whether the Statute of Limitations regarding a malpractice action begins to run at the time of the operation, or at the time the negligent act is dis-

complaint did state a cause of action on either a theory of negligence or implied warranty. The main issue in the case, however, concerned the manufacturer's defense of privity of contract which the court did not allow.

27. Lindenberg v. Folson, 138 N.W.2d 573 (N.D. 1965).

28. 33 Fed. Reg. 6465-6470 (1968). Some of the recent safety standards have to do with the following: door latches, hinges, and locks; windshield wiping and washing systems; windshield defrosting and defogging systems; headlamp concealment devices; and hood latch systems.

1. Griffin and Walker, J. Griffin stated that to adopt the discovery doctrine would lead to hopeless confusion and destroy the "cut-off" point which the legislature had already established. He felt that the court had no right to pass legislation to change the Statute of Limitations.