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### SOCKET ADAPTOR MAKER MAY BE LIABLE FOR "CONSTRUCTION DEFECT" REGARDLESS OF SPECS

***Watson v. Snap-On Tools, Inc.*, 2006 WL 1476036 (W.D. La. 5/24/06)**

On May 23, 2003, James Watson was securing component parts on an engine using a ¾ torque wrench equipped with a ¾ to ½ inch socket adaptor manufactured by Snap-On Tools. The adaptor allegedly broke during use, causing Watson to fall and injure himself. Watson sued Snap-On, and others, alleging that the adaptor was unreasonably dangerous pursuant to the Louisiana Product Liability Act. During discovery, both sides obtained expert opinions regarding the cause of the break.

The parties' experts agreed that the adaptor broke because of miniscule cracks in its makeup that were aggravated over time until they caused the failure on the day of the accident. The experts disagreed, however, as to the origin of the crack(s), and the aggravating factors which eventually caused the break. Defendant's two experts differed on whether the initial crack was a normal part of the manufacturing process or originally incurred through misuse of the adaptor, but, importantly, both experts agreed that the initial crack was aggravated by misuse. Plaintiff's expert, on the other hand, found no evidence of misuse, and opined that the crack formed as a result of the manufacturing process.

The origin of the crack and the nature of the aggravating factors were facts central to the case because the plaintiff had abandoned every theory of recovery under the LPLA *except* that the wrench was unreasonably dangerous in construction or composition as provided in La. R.S. 9:2800.55. Thus, in order to recover, plaintiff would be required to prove that at the time the product (here, the socket adaptor) left the manufacturer's control, it "deviated in a material way from the manufacturer's specifications or performance standards for the product or from otherwise identical products manufactured by the same manufacturer." *Id.*

Snap-On filed a motion for summary judgment, and the court was faced with what it called a "classic 'battle of the experts.'" The issue, as the court saw it, was that the manufacturer had, apparently, never addressed these types of microscopic cracks in any product specifications or performance standards it used. Thus, there was no objective standard to help the court determine whether issues of material fact actually existed. The parties agreed that the ASME standard torque rating of 4,500 pounds per square inch should apply, but beyond that there was no agreement as to which standards or specifications should apply.

The defendant argued that "performance standards" as used in La. R.S. 9:2800.55 refers to the *manufacturer's* performance standards. Thus, a manufacturer who has no written product specifications or performance standards cannot be liable under that statute unless the product differs from the same manufacturer's other identical products. Accordingly, irrespective of the differing expert opinions, the defendant argued that summary judgment should be granted because there was no evidence that the adaptor differed in any material way from identical Snap-On products. The court did not agree, finding that the competing expert testimony created a genuine issue of material fact, and it denied the defendant's motion for summary judgment.

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The court reasoned that the defendant's preferred construction of the statute would lead to the absurd result of rewarding manufacturers who neglect to, or deliberately choose not to, record their product specifications or performance standards. A manufacturer should not be allowed to point to the absence of identifiable standards or specifications as a defense to liability under the LPLA. As the court noted, "[t]hat just cannot be the legislature's intention."

—*Emily E. Eagan*

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**SURPRISE AIR BAG DEPLOYMENT DOESN'T WARRANT INFERENCE OF DEFECT**

***Edwards v. Ford Motor Co.*, 2006-101 (La.App. 3 Cir. 6/21/06), ___ So.2d ____**

Sean Edwards leased a 1999 Ford pick-up truck and drove it for several months without incident. One day, Edwards stopped at his shop, leaving the truck running while he left the vehicle to open the shop door. When he returned to the truck, hopped in the front seat, and shut the truck door, the air bag deployed, injuring him.

Edwards sued Ford, arguing that a defect caused the air bag to inflate unexpectedly. The trial judge ruled in favor of Edwards, using the doctrine of *res ipsa loquitur*—literally, the thing speaks for itself. While the trial judge could not determine what specifically caused the accident, she assumed that there must have been some defect in the truck for the accident to have occurred.

The Third Circuit Court of Appeals disagreed and reversed the trial court, holding that *res ipsa loquitur* could not be applied in this case because the defendant, Ford, had offered a plausible explanation of how the accident could have happened without any fault on its part. Specifically, Ford's experts inspected the vehicle and found that a large amperage fuse was missing from the fuse panel of the truck. Such an alteration was typical of changes that are sometimes made by vehicle owners in order to wire a radio or other electronic equipment. This aftermarket alteration could have caused overloading of the fuse panel which provided power to the air bag system. Accidental deployment of the air bag could have been a result of the overloading.
The Third Circuit addressed the *res ipsa loquitur* doctrine in the following colorful description:

> [P]lausible, well-developed theories absolving a defendant of liability must be addressed or alternative theories proposed. For to do otherwise is to ignore the elephant in the living room and grant recovery for simply experiencing a strange accident. This is not the purpose of *res ipsa loquitur*. That doctrine is a vehicle by which negligence may be inferred, not a sword that blindly carves out a recovery. Plaintiff failed to offer direct evidence or plausible theories in contradiction of defendant's largely uncontradicted explanation in the instant matter.

In light of Ford's plausible theory of how the accident could have happened without any manufacturing defect, plaintiff was not entitled to judgment against Ford.

—*Madeleine Fischer*

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## GROCERY STORE NOT RESPONSIBLE FOR COLLAPSE OF DISPLAY CHAIR

***Lewis v. Albertson's Inc*., 41,234 (La.App. 2 Cir. 6/28/06), ___ So.2d ____**

Magalene Lewis felt ill while shopping at an Albertson's grocery store, and sat down to rest in a chair on display. The chair could not bear her weight and collapsed. Lewis sued the chair manufacturer and Albertson's.

Affirming the trial court's summary judgment in favor of Albertson's, the Second Circuit found that because Albertson's was only the seller and not the manufacturer of the chair, Albertson's could only be liable for the chair's collapse if it were shown that Albertson's was aware of a defect in the chair before the accident. Given the testimony of Albertson's manager that he watched the chair being assembled and noted no problems in the chair at that time, there was no reason to hold Albertson's liable for Lewis's injuries.

—*Madeleine Fischer*

*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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