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Products Liability
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Court Finds Plaintiff Met Burden, Reverses Directed Verdict In Rollover Action

Garcia v. Brown,
38,825 (La.App. 2 Cir. 11/24/04) ___ So.2d ___

Plaintiff David Garcia sued Ford Motor Company, among others, for damages sustained when the 1989 Escort driven by Mr. Garcia rolled over, causing the roof to crush inward and, causing serious spinal cord injuries to the plaintiff. Plaintiff alleged that the Escort was unreasonably dangerous in design. After the plaintiff rested his case, the court granted Ford's motion for directed verdict, concluding that the plaintiff had not met his burden of proof. On appeal, the Second Circuit reversed, holding that there was ample evidence presented from which a juror could have found in favor of the plaintiff, making a directed verdict inappropriate. The Second Circuit remanded the matter for a new trial.

Garcia was injured when the 1989 Ford Escort he was driving rolled over, crushing the roof inward 10 to 11 inches. This caused Garcia's spinal cord injury resulting in permanent quadriplegia. Garcia brought this action against Ford based on the Louisiana Products Liability Act. In particular, Garcia's claims rested on the section of the LPLA which provides:

A product is unreasonably dangerous in design if, at the time the product left its manufacturers control:

> 1) There existed an alternative design for the product that was capable of preventing the claimant's damage; and,
>
> 2) The likelihood that the product's design would cause claimant's damage and the gravity of that damage outweighed the burden on the manufacturer of adopting such alternative design and the adverse effect, if any, of such alternative design on the utility of the product. An adequate warning about a product shall be considered in evaluating the likelihood of the damage when the manufacturer has used reasonable care to provide the adequate warning to users and handlers of the product.

La. R.S. 9:2800.56. In essence, whether a design is unreasonably dangerous involves a cost-benefit analysis: If the potential damage is minimal, and the burden of adopting the alternative design is large, then even if such alternative design exists, the product will not be unreasonably dangerous under the Act.

It is the plaintiff's burden to prove that an alternative design that would have prevented the damage existed and was known to the manufacturer at the time the product left its control. The plaintiff must also present sufficient proof that the likelihood and gravity of his injuries outweighed the burden

and cost to the manufacturer of adopting the alternative design. In this case, the plaintiff presented two experts who testified that strengthening one of the pillars of the roof structure could have prevented the damage. One expert testified that the pillar could be strengthened by extending a reinforcement. The current design used a four inch reinforcement, and plaintiff's expert testified that if that reinforcement were extended, Garcia's injuries could have been prevented. Plaintiff's second expert testified that by adding some extra steel to the pillar, a change that would cost Ford $15 to $25 per car, it could be strengthened enough to prevent the type of injury suffered by Garcia. Moreover, this expert testified that Ford had both the knowledge and the means to implement this alternative design at the time the 1989 Escort left their control.

The trial court found this evidence insufficient, and granted the directed verdict. The trial court believed that the evidence presented by plaintiff's experts was "untested, unengineered and ... mere speculation." In granting the motion for directed verdict, the trial court relied on a Louisiana Fourth Circuit opinion, *Seither v. Winnebago Industries, Inc.*¸ 02-2091 (La. App. 4 Cir. 07/02/03), 853 So. 2d 37, in which the alternative design proposed by the plaintiff had no engineered drawings, analysis or testing. (*See* $1,182,000 CDC VERDICT REVERSED FOR LACK OF "ALTERNATIVE" EVIDENCE, August 2003, Vol. 31.) The Second Circuit disagreed, finding Garcia's case more akin to the facts in *Morehead v. Ford Motor Company,* 29,399 (La. App. 2 Cir. 05/21/97), 694 So. 2d 650 in which the steering column collapsed, causing injury, and the plaintiff's proposed alternative design was supported by testimony and evidence. This is the key to the holding. A plaintiff cannot meet his burden simply by proposing an alternative design. That design must be supported by the evidence – it must be viable. The *Garcia* court found support for plaintiff's alternative design, and thus held that the evidence presented was sufficient to allow the case to continue to the jury.

The plaintiff was also required to present evidence that the alternative design could survive the cost-benefit analysis set out in La. R.S. 9:2800.56(2): specifically, the frequency of accidents such as his own, the economic costs of such accidents and the extent to which the alternative design would alleviate the risk. Plaintiff submitted statistical data on rollover crashes as well as expert testimony on the correlation between roof crush and injuries to those inside the car. Given all of this evidence, the Second Circuit reversed the directed verdict and remanded the case for a new trial.

Holding that Garcia presented sufficient evidence to meet his burden of proof does not mean that Garcia will win the case when it is retried. As the court points out, "the determination of what weight and credibility to give to each expert's testimony is within the discretion of the jury." The jury might decide that neither expert was particularly credible. Based on that, they may find in favor of Ford. The Second Circuit's holding is simply that Garcia has presented enough evidence to get his case to the jury; whether the jury sides with him or not is entirely within their discretion. This case gives a baseline by which the sufficiency of the evidence presented by a plaintiff may be judged. Such a determination is always largely factual in nature, but *Garcia* gives an idea, at least, of what will be sufficient and what might not be enough.

- Emily E. Eagan

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Welding On Fuel-Containing Generator Not A Reasonably Anticipated Use

Taylor v. United Technologies Corp.,
2004 WL 2830848 (5th Cir. 12/10/94) (not designated for publication)

In this unpublished case the United States Fifth Circuit found that an experienced welder who was injured while welding on a generator that contained fuel misused the product, entitling the generator manufacturer to summary judgment.

The plaintiff undertook to repair a crack in the generator without first washing out the inside of the fuel tank or ventilating it. When he began to weld, the generator exploded because diesel fuel remained in the tank.

Plaintiff sued the generator manufacturer arguing its product was unreasonably dangerous because the drainage plug was located on the side of the generator, three-fourths of an inch from the bottom, rather than at the bottom of the generator. He claimed it was impossible to fully drain all fuel

from the tank.

The trial court held that well accepted industry standards provide in great detail proper methods of washing and ventilating fuel-containing vessels before welding. The manufacturer had every reason to anticipate that anyone repairing the generator would adhere to these standards and would use common sense to fully clean and ventilate any fuel-containing vessel before welding on it. The trial court granted summary judgment to the manufacturer holding that the plaintiff's use of the generator was not a reasonably anticipated one. The Fifth Circuit affirmed.

The concept of "reasonably anticipated use" under the LPLA encompasses all reasonably foreseeable uses and misuses. If a plaintiff cannot establish that his use of a product was a "reasonably anticipated use" he cannot recover under any of the four substantive theories offered by the LPLA (defect in construction, design, or warning, or breach of express warranty). Since a showing that the product was not in "reasonably anticipated use" totally bars recovery under the LPLA, the possibility of urging this defense should be investigated in every product liability case.

- Stacie M. Hollis

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Pump Manufacturer Dismissed On Summary Judgment

Curol v. Energy Resource Technology, Inc.,
2004 WL 2786186 (E.D.La. 12/01/04)

Plaintiff, Roger Curol, was injured at work when a two piece ball valve failed. Third-party defendant, Kimray, Inc. filed a motion for summary judgment seeking a dismissal of the third-party complaint filed by Energy Resource Technology ("ERT"). Kimray contended that the undisputed facts demonstrated that its product did not proximately cause plaintiff's injury. Kimray's unopposed statement of undisputed facts established that: 1) plaintiff was injured while in the process of removing a Kimray glycol pump on an offshore platform; 2) the proximate cause of plaintiff's injury was not the pump, but instead, the failure of the ball valve which was located in the vicinity of the pump; and 3) Kimray did not manufacture, design, produce, sell or install the ball valve which caused plaintiff's injury. Because ERT did not come forward with any evidence that demonstrated that there was a genuine issue of material fact regarding Kimray's product or conduct, ERT did not carry the burden of establishing that Kimray was liable to ERT for any amounts payable by ERT to the plaintiff. Accordingly, the court granted Kimray's motion for summary judgment and dismissed ERT's complaint.

For more information regarding this case, see our article in the December 2004 E*Zine: EAST'N DIST. REJECTS LAST MINUTE ATTEMPT TO ADD BALL VALVE MANUFACTURER TO CASE.

- Michelle D. Craig

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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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