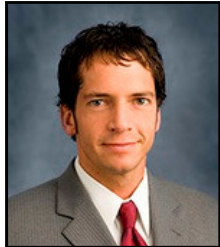




Products Liability Perspectives



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Notes From the Editors

Welcome to this year's First Edition of *Products Liability Perspectives*. As we move forward in 2008, we look back to 2007 and the cases and legislation that have impacted the products liability landscape this past year both domestically and abroad. We hope that ALFA clients and members alike find this "Year in Review" informative and useful. We also look forward to working with ALFA

clients and members to publish articles on cutting edge products liability topics in upcoming editions of *Perspectives*. Please contact us if you would like to submit an article or suggest a topic for future editions. Please also mark your calendars now for the 2008 Product Liability Practice Group Seminar, which will take place November 12-14, 2008, in Laguna Niguel, California. We hope to see you there.

-Steve Hamilton & Bryan Martin

ALABAMA

ALABAMA CLARIFIES TIRE FAILURE DISCOVERY REQUIRED

Ex Parte Cooper Tire & Rubber Co.,
2007 Ala. LEXIS 229 (Ala. Oct. 26, 2007)

Alabama's Supreme Court has greatly simplified for its trial judges the proper scope of discovery in products cases. Rejecting a tire manufacturer's attempts to constrain discovery to: (a) only those tread separations involving the particular tire involved in the case, (b) those occurring only inside the jurisdiction of Alabama, (c) and those happening within the preceding five years, the Court effectively unsealed confidentiality orders

from other States' litigation and swept aside the defendant's attempt to restrict discovery to a single tire model. The Court noted that the manufacturer's design changes were pretty uniformly implemented across all radial tire model lines so that tread separation data on any other model radial tire was likely to have plain relevance. The Court rejected any attempt to wall off data discovered and used in other States to prove substantially similar tread separation claims. The Court also rejected "excessive cost/prejudice" protestations, noting (a) that the data sought had already been produced in several other tread separation cases and (b) that, as a matter of practicality, the manufacturer would undoubtedly be able to perform an "e-discovery" type production without new resort to a manual examination of voluminous records.

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ALABAMA

SUMMARY JUDGMENT
FOR REVOLVER COMPANY AFFIRMED

Burleson v. RSR Group Florida, Inc.,
2007 Ala. LEXIS 195 (Ala. Sept. 21, 2007)

The decedent bought a single-action revolver from a dealer who bought it from Defendant distributor. The revolver had a manual safety that, if engaged, would prevent the revolver from discharging under any foreseeable circumstances. The decedent was hanging the revolver in its holster on a gun rack when it fell from the holster and discharged upon impact with a desk. The discharged round struck and killed the decedent.

The decedent's estate sued the distributor under the Alabama Extended Manufacturer's Liability Doctrine, Ala. Code § 6-5-500 *et seq.* The trial court granted the Defendant distributor's motion for summary judgment. On appeal, the decedent's estate contended the revolver was defective because it was designed without an internal passive safety device that would prevent the revolver from discharging regardless of whether the manual safety was engaged. Defendant distributor argued the decedent was contributorily negligent because he failed to engage the manual safety and he was

putting the revolver away with a cartridge chambered directly in line with the hammer and the firing pin.

The Alabama Supreme Court first set forth the law on contributory negligence. In Alabama, contributory negligence is a complete defense. While it is normally a question for the jury, it may be found as a matter of law where all reasonable persons must reach the same conclusion. To prove contributory negligence as a matter of law, the defendant must show the plaintiff put himself in danger's way and that the plaintiff had a conscious appreciation of the danger at the moment the incident occurred.

Here, there was evidence the decedent was safety conscious and had repeatedly stressed the danger of storing a firearm in a loaded condition. On the other hand, there was also uncontradicted evidence the decedent was storing a firearm with a cartridge in line with the hammer and firing pin and without the manual safety engaged. The Court held the decedent placed himself in danger's way by attempting to store the revolver without the manual safety engaged and with a cartridge chambered in line with the hammer and firing pin. The Court further held the decedent's awareness of the importance of never storing a loaded firearm showed that he should have had a conscious awareness of the danger in which he placed himself. Therefore, the Court affirmed summary judgment for the Defendant distributor.

ALABAMA

DEALERSHIP'S MOTION TO COMPEL
ARBITRATION AFFIRMED

Ritter v. Grady Auto. Group, Inc.,
2007 Ala. LEXIS 83 (Ala. May 18, 2007)

This action arises out of Jennifer Ritter's purchase of a new 2003 BMW 745Li automobile from Grady Automotive, in Alabama. Shortly after her purchase of the vehicle, Mrs. Ritter was involved in an automobile accident during which none of the air bags deployed, and allegedly the seatbelts did not function correctly. Mrs. Ritter alleged that she suffered injuries as a result of the BMW's failure to protect her during the collision. She sued Grady Automotive, BMW, and fictitiously named defendants, alleging misrepresentations, manufacturing defects, defective design, negligent and/or wanton installation of the air-bag and seatbelt systems, breach of contract, and breach of warranties. Mr. Ritter also filed a loss of consortium claim against all defendants.

Grady Buick Company, Inc. ("Grady Buick") responded to the complaint for Grady Automotive Group, Inc. maintaining it was incorrectly named in the complaint. Additionally, Grady Buick moved to compel arbitration based on the arbitration agreement Mrs. Ritter signed at the time she purchased the BMW. The trial court granted the motion to compel arbitration.

The Ritters first argued Grady Buick could not compel arbitration as it was not a party to the purchase contract and it was not a named party in the action. The Ritters claimed they actually named Grady Automotive in the Complaint, and likewise, they contended Grady Automotive was named on the purchase contract. The Court

refused to review this issue because the Ritters first raised it on appeal.

The Ritters next argued the arbitration agreement did not apply because the purchase contract contained a merger clause. In Alabama, a merger clause creates a presumption that the writing is a final and complete agreement of the parties. The Ritters argued the separate arbitration agreement was not mentioned in the purchase contract and therefore did not apply to this case due to the merger clause. But in Alabama, a merger clause does not bar evidence of contemporaneous collateral agreements between the parties. There are three requirements for an agreement to be beyond the scope of a merger clause: (1) the agreement must in form be a collateral one; (2) it must not contradict express or implied provisions of the written contract; and (3) it must be one that parties would not ordinarily be expected to embody in the writing. The Court held the arbitration agreement met all three requirements for a collateral agreement. As such, the arbitration agreement was a collateral agreement, distinct from the purchase contract, and therefore, the merger clause in the purchase contract did not invalidate the arbitration agreement.

Finally, the Ritters argued the arbitration agreement did not apply to Mr. Ritter's loss-of-consortium claim because he did not sign the agreement, and he was therefore not bound by the terms. The Court held he was not allowed to rely on the contract between his wife and the dealership when it worked in his advantage and then repudiate it when it did not. As such, Mr. Ritter's claim was subject to the arbitration agreement.

In sum, the Ritters failed to show the arbitration agreement did not apply to the circumstances of their case. Accordingly, the Alabama Supreme Court affirmed the trial court's order compelling arbitration of the Ritters' claims.

ALABAMA

SUMMARY JUDGMENT UPHELD FOR MANUFACTURERS OF PART OF A STEEL PRODUCTION PROCESS

Tanksley v. ProSoft Automation, Inc.,
2007 Ala. LEXIS 96 (Ala. June 1, 2007)

Robert Tanksley ("Plaintiff") was injured while working as a welder at a steel mill operated by the United States Steel Corporation. He and his co-workers were working on a "pickle line." A pickle line is a process where a continuous strip of flat steel passes through various equipment including several pinch rollers. While working to repair a part of the pickle line, Plaintiff was pulled in between two rollers on the steel strip resulting in injuries requiring the amputation of his right leg below the knee and the toes of his left foot. Plaintiff sued several defendants under the Alabama Extended Manufacturer's Liability Doctrine ("AEMLD"), however, only the defendant manufacturers remained on appeal. The remaining manufacturers were Rockwell, Danieli Corporation, PROSOFT, Inc., and PROSOFT Automation, Inc..

Rockwell manufactured the control panel for the pickle line. Plaintiff contended the control panel was defective, however, he failed to produce any evidence showing the product was defective. In Alabama, to establish liability under the AEMLD, a plaintiff must show:

1. he suffered injury or damage to himself or his property by one who sells a product in a defective condition unreasonably dangerous to the plaintiff as the ultimate user or consumer, if
 - a. the seller is engaged in the business of selling such

a product, and

- b. it is expected to and does reach the user or consumer without substantial change in the condition in which it was sold.

It is not enough to present evidence of injury. A plaintiff must show the product was somehow defective or unreasonably dangerous. The Alabama Supreme Court ultimately held Plaintiff failed to present substantial evidence as to any genuine issue of material fact and affirmed summary judgment in Rockwell's favor.

Danieli manufactured the pickle line. An essential element of an AEMLD claim is proof the product reached the consumer without substantial change in the condition in which it was sold. Danieli presented enough evidence to show the pickle line had been substantially altered since it was originally designed and installed and that those alterations caused Plaintiff's injuries. The Court held Plaintiff failed to show the existence of a genuine issue of material fact, and the trial court did not err in entering summary judgment for Danieli.

Finally, Plaintiff alleged PROSOFT, Inc. was liable for his injuries under the AEMLD because it failed to provide pinch-point guards or a means of locking out the pickle line. Similarly, Plaintiff alleged he was entitled to recover against PROSOFT Automation under the AEMLD as the successor in liability to PROSOFT, Inc. The PROSOFT defendants presented substantial evidence indicating there were several mechanisms in the pickle line that, if used correctly, would have prevented Plaintiff's injuries. Plaintiff, on the other hand, did not have substantial evidence indicating the failure to include a pinch-point guard on the pickle line constituted a defect. As such, the Court held the trial court did not err granting summary judgments for the PROSOFT defendants.

ARIZONA

DISTRIBUTOR OF DEFECTIVE PRODUCT CANNOT BE HELD LIABLE FOR INSURANCE COMPANY'S LOSS

State Farm Ins. Companies v. Premier Manufactured Systems, Inc.,
172 P.3d 410 (Ariz. 2007)

An insurer hoping to recover money it paid to an insured cannot hold the distributor of a defective product wholly liable for its loss, the Arizona Supreme Court ruled, even though the manufacturer of the product was no longer in business. An insured of State Farm discovered in 2001 that a leak in his water filtration system had damaged his home and belongings. State Farm paid the homeowner more than \$19,000 to cover the loss. The system was manufactured by Worldwide Water Distributing, and the insured bought it from Premier Manufactured Systems.

Hoping to recoup the claim money it had paid, State Farm sued Premier and Worldwide, alleging that each was strictly liable for distributing a defective product. State Farm argued that Worldwide and Premier were jointly and severally liable for 100 percent of the homeowner's damages. Under the model of joint-and-several liability, each party that contributed to an injury can be held liable for the total amount of damages.

Premier responded that under the state's Uniform Contribution Among Tortfeasors Act, known as UCATA, Ariz. Rev. Stat. §§ 12-2501-2509, liability must be allocated between it and Worldwide. Worldwide failed to respond to the complaint, and the Superior

Court entered a default judgment against it. State Farm and Premier then entered into a stipulated judgment, which stated that the leak had been caused by either a design or manufacturing defect in one of the system's canisters.

The judgment provided that Worldwide was 75 percent at fault and Premier 25 percent and that Premier was liable to State Farm "only to that extent" for the damages caused by the leak. Because Worldwide had gone out of business and had no insurance coverage, State Farm could therefore recover only 25 percent of its insured's damages. For purposes of appeal the stipulation preserved State Farm's argument that liability of the two defendants should have been combined.

The Arizona Court of Appeals affirmed, holding that under Section 12-2506, the liability of Premier and Worldwide was several only and that fault must be allocated between them. The court rejected State Farm's argument that such an allocation would violate Article 18, Section 6 of the state constitution.

The Arizona Supreme Court affirmed the ruling. Rejecting State Farm's argument that the 1987 amendment to UCATA that abolished joint-and-several liability was not intended to apply to a distributor of a defective product, the state high court said the statute actually specified that it did apply to product liability, except in particular cases.

The Supreme Court held that no exceptions applied in the case because State Farm did not show that:

- Worldwide and Premier were acting in concert;
- One of the parties was the agent or servant of the other; and

- One party's liability for the fault of the other arose out of a duty created by the Federal Employers Liability Act, 45 U.S.C. § 51.

The first and third exceptions clearly did not apply, the Supreme Court held. The second exception also was inapplicable because no

ARIZONA

COURT REVERSES DRUG MANUFACTURER'S DISMISSAL HOLDING THE PLAINTIFF'S CLAIMS WERE NOT BARRED BY THE WRONGFUL LIFE DOCTRINE AND ISSUES OF FACT EXISTED PRECLUDING RELIEF UNDER THE LEARNED INTERMEDIARY DOCTRINE

Myers ex rel. Myers v. Hoffman-La Roche, Inc., 170 P.3d 254 (Ariz. Ct. App. October 2, 2007)

Kristin Myers, minor child, alleged strict product liability and breach of express and implied warranties against Hoffman, manufacturer of Accutane, an anti-acne drug. Kristin's mother took Accutane while pregnant with Kristin and she was born with significant birth defects. Hoffman moved for dismissal claiming the complaint was a wrongful life suit which is not permitted in Arizona. Hoffman also asserted the warnings and instructions were adequate under the learned intermediary doctrine. The trial court granted Hoffman's motions to dismiss. The Arizona Court of Appeals determined the suit was not barred by the wrongful life doctrine and that there were fact issues regarding the warnings and instructions for Accutane.

The Court found Hoffman was aware as of the early 1980's that if a mother takes Accutane during pregnancy it can cause birth defects. Hoffman's program emphasized abortion in pregnancies where Accutane had been used. Hoffman did not focus on pregnancy prevention because it would substantially reduce sales of the drug. Hoffman's pregnancy prevention program was put in the instructions to the prescribing physician and on the patient consent form, labels, and scripts the physician should read to the patient. By the 1990's, Hoffman was aware of almost 2,000 cases of pregnancies affected by Accutane.

The Court further found that Kristin's mother's physician, Dr. Fredenberg, failed to require additional pregnancy testing. Hoffman's instruction program was fundamentally flawed and allowed

conventional principal-agent or master-servant relationship existed between Worldwide and Premier. The court held that "Premier simply purchased the defective canister from Worldwide and then incorporated it into its water filtration system. The mere purchase of a product from a supplier does not establish a master-servant or principal-agent relationship between the buyer and seller."

Accutane to be prescribed by physicians, including dermatologists, who lacked training in family planning matters or birth control. Kristin's mother should not have been prescribed Accutane and only received this prescription due to the defendants' negligence. Kristin sought damages for *in-utero* damages caused by Hoffman, but it was not a wrongful life claim.

The Court distinguished this suit from a wrongful life suit in that a wrongful life suit alleges the negligence caused a child to be born and prevented the mother from aborting the pregnancy. In the case at bar, Myers alleged Hoffman should have known its pregnancy prevention program was ineffective, and made claims for damages caused by the defendants' negligence in permitting a mother to take Accutane despite the risk associated with pregnancy.

Hoffman further defended that the learned intermediary doctrine absolved their responsibility to warn of pregnancy and birth complications. The learned intermediary doctrine relieves the manufacturer from a legal duty to warn a consumer where adequate warnings are provided to the prescribing physician. Significantly, Myers' complaint asserted that it would be impossible to provide adequate instructions to dermatologists about pregnancy prevention counseling absent additional training. It alleged Hoffman unreasonably relied on dermatologists without pregnancy counseling to instruct dermatology patients regarding pregnancy prevention and birth control.

The Court determined that warnings about possible harmful effects of a medication are not the same as good directions on how to safely use the product to avoid the harm. Therefore, the adequacy of the manufacturer's instructions is partly dependent on the user's expertise in utilizing the instructions. In this matter, a dermatologist was determined to be incapable of being a learned intermediary with regard to pregnancy counseling, and this was a question of fact that prevented dismissal. Even where the Court could conclude the warnings Hoffman gave to Dr. Fredenberg were adequate, it would not dispose of the claim based solely on the learned intermediary doctrine.

CALIFORNIA

COURT REVERSES AIRBAG MODULE MANUFACTURER'S SUMMARY JUDGMENT

Gonzalez v. Autoliv ASP, Inc., 154 Cal. App. 4th 780 (2007)

On January 30, 2003, Guadalupe Gonzalez, a passenger in a 1998 Ford Taurus, suffered injury to her right eye as a result of a car accident. She sued among other defendants, Autoliv ASP, Inc., the airbag module manufacturer ("Autoliv"), under negligence, strict products liability, and breach of warranty causes of action. She contended the airbag deployed with excessive and dangerous force causing damage to her eye. She also contended the airbag should not have deployed in the low speed collision.

Autoliv moved for summary judgment arguing: "(1) Autoliv as a component part manufacturer is not liable for any design, manufacturing, or failure to warn defect in a finished product that Autoliv did

not design, manufacture, package, or sell; (2) The undisputed evidence establishes that Autoliv's component part is not defective; and (3) Plaintiff has failed to produce sufficient evidence to create a triable issue of fact as to the existence of any defect in Autoliv's component part that caused her injury." The trial court granted Autoliv's motion.

On appeal, the Court first addressed the strict products liability defective design theory. Under California law:

[A] product is defective in design either (1) if the product has failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner, or (2) if in light of the relevant factors ... the benefits of the challenged design do not outweigh the risk of danger inherent in such design. *Barker v. Lull Engineering Co.*, 573 P.2d 443 (Cal. 1978). [I]n evaluating the adequacy of a product's design pursuant to this latter standard, a jury may consider, among other

relevant factors, the gravity of the danger posed by the challenged design, the likelihood that such danger would occur, the mechanical feasibility of a safer alternative design, the financial cost of an improved design, and the adverse consequences to the product and to the consumer that would result from an alternative design. *Id.* at p. 431. [O]nce the plaintiff makes a prima facie showing that the injury was proximately caused by the product's design, the burden should appropriately shift to the defendant to prove, in light of the relevant factors, that the product is not defective.

The Court held that although Autoliv established that its airbag performed in accordance with its intended design, Autoliv failed to offer evidence that the benefits of the design outweighed the risk of danger inherent in the design.

The Court next addressed Autoliv's argument that it was a component manufacturer who had no role in designing the finished product and therefore was not liable. The Court stated Autoliv did not fully and correctly set forth the component part manufacturer

doctrine under California law. The Court stated under California law a component part manufacturer who had no role in designing the finished product can only avoid liability if it also supplied a non-defective component part. The Court then reversed summary judgment as to the strict products liability theory concluding Gonzalez provided sufficient evidence to allow a jury to conclude a design feature of Autoliv's airbag caused her injury.

The Court then affirmed Autoliv's summary judgment motion as to the remaining theories of liability. First, with regard to the manufacturing defect theory, the Court found Gonzalez failed to present any evidence the subject airbag module performed differently from other identical airbag modules. Further, Gonzalez did not dispute the airbag module deployed as it was designed to do. Second, with regard to the failure to warn theory, the Court held Gonzalez failed to identify any particular risk known to Autoliv for which it should have provided a warning. Third, with regard to the negligence theory, the Court held Gonzalez failed to identify any specific negligent conduct by Autoliv. Finally, with regard to the breach of warranty theory, the Court held Gonzalez consented to the dismissal of this theory.

GEORGIA

VACCINE ACT DOES NOT PREEMPT STATE CLAIM; BATES CONTROLS

Ferrari v. American Home Products Corp.,
286 Ga. App. 305 (2007)

In 1986, Congress enacted the Vaccine Act to prevent manufacturers from leaving vaccine production or significantly increasing their prices, while at the same time compensating victims of vaccine-related injuries quickly. The Vaccine Act creates a no-fault compensation system for victims of certain vaccine-related injuries and requires injured parties to file a petition in the vaccine court. Within the vaccine act are restrictions that expressly convey Congress' intent to supersede, or preempt, state tort law standards and create legal protections that apply in any civil action brought against a vaccine manufacturer.

Plaintiffs, Marcelo and Carolyn Ferrari, individually and on behalf of their minor son, Stefan Ferrari, sued nine children's vaccine manufacturers, nine thimerosal manufacturers, and one rhogam manufacturer for alleged neurological damage to their son caused by vaccines containing thimerosal preservative, which in turn contained mercury. The Ferraris alleged their son's neurological damage was caused by the mercury, which is toxic to humans. (The Ferraris also sued Georgia Power, claiming that mercury emissions from its power plants also injured their son.) The Ferraris asserted claims under Georgia law for strict liability and negligence and al-

leged that the vaccine defendants negligently researched, manufactured, tested or failed to test, warned or failed to warn, and failed to recall thimerosal-containing vaccines.

The Defendants filed answers denying liability and moved for summary judgment in their favor, claiming that the Vaccine Act preempted the Ferraris' claims. The trial court found that the preemption doctrine applied and granted partial summary judgment to the vaccine defendants on the Ferraris' design defect claims, their failure-to-warn claims to the extent that they alleged a failure to warn the plaintiffs or the general public, and their breach of warranty claims to the extent they asserted that the vaccines were defectively designed.

Only a handful of courts had addressed the scope of the preemption clause found in the Vaccine Act, and they concluded, after examining the legislative history of the Vaccine Act, that the issue of whether side effects are "unavoidable" could not be litigated in civil actions. However, in 2005, the United States Supreme Court in *Bates v. Dow Agros*, changed the traditional preemption analysis in two ways: (1) there is no longer a rebuttable presumption against preemption, but a duty to accept the reading of an express preemption statute that disfavors preemption; and (2) preemption analysis ends with an examination of the statutory language alone. Under *Bates*, legislative history should no longer be examined to discern Congressional intent when an express preemption clause has two plausible alternative readings. The Court held that because two plausible, alternative readings of the Vaccine Act existed, the trial court erred by finding that the Ferraris' design defect claims were preempted.

ILLINOIS

ILLINOIS COURT CLARIFIES AVAILABLE DESIGN DEFECT PROCEDURES

Mikolajczyk v. Ford Motor Co., 870 N.E.2d 885 (Ill. App. 2007)

Before striking down a \$25 million loss of society verdict, an Appellate Court in Illinois took the occasion to declare that Plaintiffs in design defect cases in Illinois are still free to proceed under either the "consumer expectations" or "risk-utility" tests or both. The Court so held notwithstanding defendant's contentions that the

holding in *Blue v. Environmental Engineering, Inc.*, 215 Ill. 2d 78, 828 N.E.2d 1128 (2005), seemed to suggest that the risk-utility test was to be the exclusive test in design defect cases involving complex products. The Court declared *dicta* the subject language from *Blue* and noted that the Illinois Supreme Court has not yet jettisoned the consumer expectations test nor expressly replaced it with the view of the Restatement (Third) of Torts. Therefore, Plaintiffs may proceed under either theory, or both, for the time being. (Note: The Illinois Supreme Court typically gives retrospective effect to its rulings; if that Court were to say *Blue* was intended to foreclose the consumer expectations test, such a holding would work a revision in many pending design defect cases.)

ILLINOIS

AUTO MANUFACTURER AWARDED SUMMARY JUDGMENT AFTER SEATBELT EXPERT PRECLUDED

Shawgo v. General Motors Corp.,
2007 U.S. Dist. LEXIS 58102 (S.D. Ill. Aug. 9, 2007)

This is a personal injury lawsuit that arises out of a motor vehicle accident. The plaintiff, Shawgo, was ejected from her 1999 Chevrolet Cavalier and sustained serious injuries. In the lawsuit, Shawgo alleges that her vehicle was manufactured by GM with a defective and unreasonably dangerous seat belt. Shawgo asserts claims based on negligence, breach of implied warranty, breach of express warranty, and strict product liability. Testing on the seat belt in the vehicle at issue was not feasible, so Shawgo only pursued a theory of design defect.

Shawgo intended to call Dr. Anil V. Khadiikar to opine on the alleged defective seat belt. Dr. Khadiikar is an automotive engineer with an impressive curriculum vitae peppered with degrees, professional affiliations, employment experience, and publications. However, his experience and education were not at issue. Instead, GM moved to bar Dr. Khadiikar's testimony because his testimony was

unreliable and his opinions were not generally accepted.

Dr. Khadiikar's opinions regarding the product boiled down to three: (1) the subject seat belt had a tendency to false latch and falsely latched at the time of the accident; (2) there was some combination of false latch and inadvertent release of the seat belt at the time of the accident; and (3) an inadvertent release occurred at the time of the accident.

The admissibility of expert testimony is governed by *Daubert v. Merrell Dow Pharmaceuticals, Inc.* and the *Federal Rules of Evidence* 702. The court held that Dr. Khadiikar was not able to say with certainty which of the three possible failures mentioned above occurred in this case and he did not identify a defective mechanism in the seat belt. Dr. Khadiikar was also unable to produce or cite any authority that supported his data or methodology.

The Court held that Dr. Khadiikar's testimony was barred because his opinions were nothing more than subjective beliefs and unsupported conjecture that failed to rise to the level of reliability required under standards set forth in *Daubert* and its progeny. Because Shawgo was unable to prove that GM's product was defective, Shawgo's warranty claim failed and summary judgment was granted in favor of GM.

INDIANA

AUTO MANUFACTURER'S AIRBAG WARNINGS ADEQUATE ABSOLVING IT AND ITS DEALER FROM FAILURE TO WARN LIABILITY

Ford Motor Co. v. Rushford, 868 N.E.2d 806 (Ind. 2007)

Plaintiff, Marilyn Rushford, and her husband purchased a Ford vehicle from a dealership. Plaintiff was only four feet eleven inches tall. Ford included warnings regarding the vehicle's passenger-side airbag in the owner's manual as well as the passenger-side visor. Specifically, these warnings admonished the passenger to "sit as far away from the air bag module as possible." Important for purposes of the present case, the dealership did not inform Plaintiff of these warnings and Plaintiff did not read them.

Shortly after purchasing the vehicle, the Rushfords were in an accident, the passenger-side airbag deployed, and plaintiff was injured. Plaintiff brought suit against Ford and the dealership alleging strict liability and negligent failure to warn. Specifically, Plaintiff

alleged the airbag warnings were inadequate as they failed to address the fact that a passenger of Plaintiff's size could be injured by the airbag. Both Defendants moved for summary judgment. The trial court denied the motions and certified its opinion for interlocutory review. The Court of Appeals granted Ford's motion finding that Ford had discharged its duty to warn with the owner's manual and visor warnings. However, the Court of Appeals affirmed the trial court's ruling with regard to the dealership. While Plaintiff did not appeal, the dealership did. Further, after the Court of Appeals' ruling regarding Ford, Plaintiff conceded the adequacy of Ford's airbag warnings.

Before the Supreme Court of Indiana, Plaintiff argued that she did not read the airbag warnings and that the dealership should have advised her to do so given her height. The Court rejected this argument holding that where a product is not modified or altered by the seller and where the seller provides the buyer with the manufacturer's adequate warnings the seller's duty to warn is discharged. Thus, the Supreme Court reversed the trial court order denying the dealership's motion for summary judgment and remanded instructing summary judgment for the dealership.

MINNESOTA

THREE-YEAR-OLD SUES PARENTS FOR NEGLIGENCE THROUGH EXCEPTION TO "SEAT BELT GAG RULE"

Harrison v. Harrison, 733 N.W.2d 451 (Minn. 2007)

Plaintiff, Ted Harrison, Jr., was a passenger in a motor vehicle driven by Amy Harrison, Ted's mother. As Ted was only three years old, Mrs. Harrison restrained him in a child car seat. Another vehicle struck the Harrison's vehicle and Ted was thrown from his child car seat and injured. The manufacturer of the child car seat was sued on Ted's behalf. The suit alleged defective design. Ted settled with the manufacturer at the beginning of trial. In a separate negligence action, Ted, by his guardian ad litem, sued his parents

("the Harrison's") alleging negligent installation and maintenance of his child car seat. The parties filed motions for summary judgment. In the Harrison's motion, they relied upon Minnesota's "seat belt gag rule," Minn. Stat. § 169.685(4)(a) (2006). Ted relied upon an exception to that rule. The trial court granted summary judgment to Ted, and the Court of Appeals affirmed. The Harrison's appealed to the Supreme Court of Minnesota.

Minnesota's "seat belt gag rule" provides that:

proof of the use or failure to use seat belts or a child passenger restraint system . . . or proof of the installation or failure of installation of seat belts or a child passenger restraint system . . . shall not be admissible in evidence in any litigation involving personal injuries . . . resulting from the use or operation of any motor vehicle. *Minn. Stat. § 169.685(4)(a)*.

Despite this prohibition, Ted argued that his case fell squarely within an exception to the rule which states that the rule “does not affect the right of a person to bring an action for damages arising out of an incident that involves a defectively designed, manufactured, installed or operating seat belt or child passenger restraint system.” *Minn. Stat. § 169.685(4)(b)*. Specifically, evidence pertaining to such use or installation is not prohibited.

The Harrison’s countered arguing that the exception only pertained to products liability cases as the statute used the phrase “defectively . . . installed.” Therefore, according to the Harrison’s,

the exception could not be relied upon in a negligence action. The Supreme Court of Minnesota, focusing on the plain meaning of the statute, rejected this argument.

Alternatively, the Harrison’s argued that the exception requires all claims regarding defective installation to be brought together because the statute uses the term “an action for damages.” Again, the Supreme Court of Minnesota rejected the Harrison’s argument as the statute did not explicitly require joinder of all possible claims. The Supreme Court therefore affirmed judgment for Ted.

MISSOURI

COURT AFFIRMS SUMMARY JUDGMENT FOR LEAD PAINT MANUFACTURERS REJECTING “MARKET SHARE” LIABILITY

City of St. Louis v. Benjamin Moore & Co.,
226 S.W.3d 110 (Mo. 2007)

The City of St. Louis brought a public nuisance action against several lead paint manufacturers to recover expenses incurred in assessing, abating and remediating lead paint in buildings within the city. The City, however, was unable to connect any specific manufacturer to the lead paint found within such buildings. The manufacturers sought summary judgment arguing that product identification was necessary. The City argued that it need only

show that the manufacturer had “substantially contributed to the lead paint problem in the city.” Deeming the City’s evidence “market-share evidence,” the trial court granted the manufacturers’ motion for summary judgment. The Supreme Court of Missouri affirmed. It relied on its previous rejection of market-share liability in a personal injury action involving prescription drugs. In the present case, the Court held that product identification was necessary even in a public nuisance action as without it there would be a great risk of “exposing defendants to liability greater than their responsibility and may allow the actual wrongdoer to escape liability entirely.” The Court also rejected the City’s argument that a lesser burden for causation was in order as the action was brought by the government on behalf of the public’s health. The Chief Justice filed a dissenting opinion to which two justices joined arguing that product identification was not necessary in a public nuisance action.

MISSOURI

WRONGFUL DEATH VERDICT AGAINST CIGARETTE MANUFACTURER UPHELD DESPITE DISMISSAL OF DECEDENT’S SIMILAR PERSONAL INJURY CLAIM BEFORE HER DEATH; COMPARATIVE FAULT INSTRUCTION ALLOWED DESPITE MANUFACTURER’S WITHDRAWAL OF IT AS A DEFENSE

Smith v. Brown & Williamson Tobacco Corp.,
2007 Mo. App. LEXIS 1144 (Mo. Ct. App. July 31, 2007)

Barbara Smith began smoking in 1942 at about the age of fifteen. Ms. Smith smoked cigarettes manufactured by Brown & Williamson Tobacco Corp. (“B&W”). In 1990, a physician informed her that smoking would kill her if she did not quit. Ms. Smith quit that year. Nonetheless, in 1992, Ms. Smith was diagnosed with lung cancer. Ms. Smith brought suit against B&W in 1996. B&W was granted summary judgment as to her negligence and strict liability claims. Ms. Smith died from a heart attack in 2000. Subsequently, her remaining claims were dismissed with prejudice.

In 2003, her survivors (“Plaintiffs”) brought suit against B&W under the Missouri Wrongful Death Act to recover damages for her death. Her death was attributed to smoking. The complaint alleged negligence, strict liability, fraudulent concealment and conspiracy. Initially, B&W pled comparative fault as an affirmative defense. However, after completion of discovery, B&W withdrew this defense. The case went to trial in January 2005. Despite B&W’s withdrawal of comparative fault as a defense, the jury received a comparative fault instruction. The jury found for B&W on the fraudulent concealment and conspiracy claims. However, with

regard to the negligence and strict liability claims, it returned a verdict for Plaintiffs awarding \$2 million in compensatory damages. The jury found Ms. Smith 75% at fault; therefore, compensatory damages were reduced to \$500,000 by the trial court. The jury also awarded Plaintiffs \$20 million in punitive damages. B&W appealed.

On appeal, B&W argued that Plaintiffs were precluded from asserting claims for strict liability and negligent failure to warn as Ms. Smith had already lost on these claims in her personal injury action. Because Ms. Smith would have been precluded from asserting them again, B&W argued Plaintiffs should have been precluded from asserting them as well. The Missouri Court of Appeals followed the minority position in holding that a decedent’s personal injury action during the decedent’s lifetime for injuries resulting from the same cause as her death does not preclude a wrongful death action by the decedent’s survivors. Rationale for adopting this position includes the fact that damages for personal injury and damages for wrongful death differ. Further, the court noted a “logical inconsistency” in finding that something the decedent does during his or her lifetime can be said to bar a cause of action which has not yet accrued and which may never accrue.

B&W also took issue with the comparative fault instruction. B&W argued it withdrew the comparative fault defense so it could present evidence rebutting *prima facie* elements of Plaintiff’s claims, in the hope it would avoid liability altogether. The court held that despite B&W’s withdrawal of comparative fault as an affirmative defense it was not error for the trial court to give the instruction where there was substantial evidence at trial of comparative fault.

Ultimately, the Court remanded the case for a new trial on punitive damages. Otherwise, the jury verdict was affirmed.

NEBRASKA

RENTAL TRUCK COMPANY OWED DUTY TO WARN THIRD-PARTY USERS OF POTENTIAL DANGERS; COMPANY SUBJECT TO PERSONAL JURISDICTION IN NEBRASKA

Erickson v. U-Haul Int'l, Inc., 738 N.W.2d 453 (Neb. 2007)

Plaintiff's parents rented a truck from a local rental truck company (U-Haul Center of N.W. Omaha) to assist with their move from Iowa to Nebraska. The truck was licensed in Kentucky. Plaintiff's parents attempted to move the truck in reverse while the loading ramp was deployed. Plaintiff was thrown off balance and injured when the truck unexpectedly lurched forward before going backwards. In granting summary judgment for the local rental truck company, the court found that the company owed no duty to the Plaintiffs. The trial court also sustained the parent company's (U-Haul International, Inc.) special appearance because the parent company did not satisfy the minimum contact requirements for the court to have jurisdiction.

On appeal two issues were raised. First, whether absent any special relationship between a lessor of a vehicle and a third party, the lessor had any duty to protect the third party from injury. Second, whether the parent company of the local rental truck company had sufficient minimum contacts with Nebraska to make exercise of personal jurisdiction fair and reasonable.

The Supreme Court of Nebraska found that under § 388 of the Restatement (Second) of Torts, a supplier has a common-law duty to warn expected users that a chattel may be dangerous, and that this duty extends to third persons, not just to those in privity of contract with the supplier of the chattel. Though the Court had not previously applied §388 to a lessor, it found it persuasive that other jurisdictions had ruled a lessor of chattels owed a duty to warn expected users. The defendant in turn argued that a recent Nebraska statute preempted a lessor's liability for leasing a chattel.

However, the Court found that the lack of a statutory duty did not prevent recognition of a common law duty.

Using the test in the Restatement, the Court found the following:

1. the family was using the truck for moving -- its intended use;
2. the defendant had a regular practice of providing handbooks and warning labels on the trucks, which implied that the truck was dangerous for its intended use and the defendant knew of the danger;
3. nothing in the record suggested Plaintiff would realize the dangerous condition absent a warning; and
4. the defendant could expect that persons other than the lessee would help in the move, and therefore, use the truck.

Based upon these findings the Court held that the trial court erred in sustaining the local rental truck company's motion for summary judgment.

With regard to the jurisdictional issues, the Court analyzed the relationship between the rental truck company, a Nebraska corporation, and the much larger Nevada parent corporation that acted as a clearinghouse for the rental truck company and for similar trucking companies throughout the country. The parent corporation provided several services for the smaller companies, including accounting, auditing, the use of company stationery and the use of its trademark. The Court noted that the larger parent company had reached out beyond its borders and negotiated with a Nebraska corporation, and had invoked the benefits and protections of the laws of Nebraska. Thus, the Court held that the trial court had erred in granting the parent company's special appearance and held there were sufficient contacts with Nebraska to warrant a Nebraska court's exercise of personal jurisdiction.

NEW JERSEY

CLAIMS BY GOVERNMENTAL ENTITIES AGAINST MANUFACTURERS AND DISTRIBUTORS OF LEAD-BASED PAINT CONSTITUTE PRODUCT LIABILITY CLAIMS AND ARE NOT WITHIN THE ENVIRONMENTAL TORT EXCLUSION OF NEW JERSEY'S PRODUCT LIABILITY ACT

In re Lead Paint Litigation, 924 A.2d 484 (2007)

More than two dozen New Jersey municipalities including Newark, Jersey City, and Camden brought fraud, public nuisance, conspiracy, unjust enrichment and indemnification claims for costs relating to lead paint in public and private housing and public buildings. The cases were consolidated under the name *In Re Lead Paint Litigation* in New Jersey State court in 2001.

The trial court granted defendant manufacturers' motion to dismiss the case in November 2002. The court held that the suit conflicted with the New Jersey legislature's decision to assign the responsibility for maintaining properties with lead paint to landlords. The court also noted: "New Jersey public nuisance law does not allow liability to be imposed on manufacturers who place lawful products in the stream of commerce and exercise no further control

over such products." The Plaintiffs appealed to the Appellate Division of the New Jersey Superior Court. The Appellate Division affirmed the trial court's decision on all counts except public nuisance. The defendant manufacturers appealed the Appellate Division's reversal of the trial court's dismissal of the public nuisance claims filed by Plaintiff municipalities.

The Supreme Court of New Jersey reversed the appellate court decision and held that Plaintiffs' public nuisance claim was inconsistent with the established guidelines of public nuisance law. The Court stated:

Indeed, the suggestion that Plaintiffs can proceed against these defendants on a public nuisance theory would stretch the theory to the point of creating strict liability to be imposed on manufacturers of ordinary consumer products which, although legal when sold, and although sold no more recently than a quarter of a century ago, have become dangerous through deterioration and poor maintenance by the purchasers.

The Court was obviously concerned with a potential flood of litigation, stating "we cannot help but agree with the observation that, were we to find a cause of action here, 'nuisance law would

become a monster that would devour in one gulp the entire law of tort.” The Court also noted that New Jersey state laws provide other avenues to seek reimbursement for costs associated with lead paint and that any other ruling would run counter to the legislature’s pronouncements on both lead paint abatement programs and products liability law.

NEW YORK

MANUFACTURER OF SURGICAL DEVICE HAS NO DUTY TO WARN OF RISKS NOT IDENTIFIED BY THE MOST CURRENT KNOWLEDGE AVAILABLE REGARDING THE POTENTIAL RISKS ASSOCIATED WITH THE PRODUCT

Mulhall v. Hannafin, 841 N.Y.S.2d 282 (2007)

The Plaintiff injured her shoulder while pulling a heavy box from an overhead shelf. After being diagnosed with a torn labrum, Plaintiff underwent arthroscopic surgery performed by defendant surgeon. The procedure involved insertion of a fixation device manufactured by the defendant manufacturer. Shortly after the initial procedure, Plaintiff began to experience loss of range of motion in her shoulder.

Plaintiff commenced an action against the surgeon and the hospital alleging medical malpractice and lack of informed consent and sued the manufacturer of the fixation device alleging design defect, manufacturing defect, failure to warn, breach of warranty, negligence and strict liability claims. Defendant manufacturer moved for summary judgment and all claims except for the failure to warn claim were dismissed. With respect to the failure to warn claim, the trial court, in denying summary judgment, found that the manufacturer, because of the lack of a supporting affidavit from an expert or one of the manufacturer’s representatives, had not made a sufficient showing of the adequacy of its warning to warrant summary judgment. The manufacturer appealed.

On appeal, the Court noted that under New York law, the manufacturer’s duty is to warn the medical community of the product’s risk, not the patient. Furthermore, the Court stated that whether or not the failure to warn is based on a negligence or strict liability theory, the manufacturer’s duty is to warn only of those dangers it

NEW YORK

COURT DECLINES TO RECOGNIZE INDEPENDENT TORT FOR THIRD-PARTY NEGLIGENT SPOILIATION OF EVIDENCE

Ortega v. City of New York, 2007 N.Y. LEXIS 2715 (2007)

Plaintiffs, a vehicle owner and passenger, were severely burned when their vehicle burst into flames the day after being inspected and serviced. The vehicle was towed from the scene of the fire at the direction of city police. The passenger by means of a special proceeding obtained a court order to inspect the vehicle and prevent its destruction or alteration. The vehicle, however, was destroyed before it could be inspected. Plaintiffs brought an action against the city, claiming negligent spoliation and civil contempt. Plaintiffs did not file a personal injury action against the manufacturer of the vehicle or the service station that had inspected the van.

The Court decided that the claims of the government entities against manufacturers and distributors of lead-based paint constitute product liability claims. Further, in a 4-2 opinion, the majority found that the manufacturers’ sale and distribution of lead-based paint did not constitute actionable conduct for the purposes of a public nuisance action.

knows or those dangers that are reasonably foreseeable.

The Court considered the evidence that the manufacturer never received any reports of adverse effects from use of the device, other than reports that brought about revisions to the warning on the packaging in 1997—well before Plaintiff’s initial injury. The Court thus held that notwithstanding the motion court’s views on the lack of a supporting affidavit, the manufacturer had established that its motions were not deficient in any way.

The manufacturer having met its burden of showing it adequately warned physicians, the burden shifted to Plaintiff to create a material issue of fact by showing the warnings were deficient. Plaintiff had to show the manufacturer had either actual or constructive knowledge that the type of injuries allegedly sustained by the Plaintiff could result from use of the device, thus creating a duty to warn.

The Court found that Plaintiff’s proffer of an unidentified expert, who made no mention either to the record or to any other source to support his conclusions, did not meet her burden. Plaintiff’s expert made mention only by way of allusion to “numerous articles, studies and reports” which he claimed should have alerted the manufacturer to the risk.

Finally, the Court found that Plaintiff’s case also failed because Plaintiff had not established that her injuries were proximately caused by a failure to warn. Plaintiff offered no evidence that had there been a different warning either the surgeon or the patient would have considered an alternative device or procedure. In fact, the record showed that Plaintiff testified she chose not to read the consent forms warning against the risks, because they would not have dissuaded her, due to the severe pain in her arm. Upon this evidence, the trial court’s denial of summary judgment on the failure to warn claim was reversed.

As a result of the City’s negligence in allowing the vehicle to be destroyed, Plaintiffs contended they were precluded from recovering damages from the individuals who were ultimately responsible for their injuries. Plaintiffs moved for summary judgment on both causes of action. The City opposed the motion and sought dismissal of the actions. The trial court denied Plaintiffs’ motion for summary judgment on both causes of action. Although negligent spoliation of evidence was determined to be a cognizable claim, Plaintiff owner’s claim was dismissed because Plaintiff owner was not a party to the proceeding that resulted in the preservation Order; therefore, Plaintiff owner was not able to establish a duty owed to her. Passenger’s motion for summary judgment was denied because there were triable issues of fact. The Court also dismissed the contempt cause of action stating it should be adjudicated by the Court that issued the preservation Order within the context of the previous special proceeding, not the commencement of a separate action.

Plaintiffs only appealed the denial of their summary judgment

motions and/or the dismissal of the negligent spoliation claims. The Appellate Division held that Plaintiffs' "negligent spoliation of evidence" cause of action was not a viable cause of action. Thus, Plaintiffs' claims were dismissed.

On appeal, the New York Court of Appeals held that New York did not recognize a claim for third-party negligent spoliation of evidence. The court declined to recognize a separate, independent tort arising from negligent spoliation of evidence noting that under New York law, a party already has several remedies available when evidence is destroyed. The Court acknowledged the importance of discouraging the destruction of evidence, stating that "destruction

of evidence by parties with a duty of preservation simply cannot be condoned, especially when that duty is imposed by court order." The Court, however, concluded that existing remedies, such as contempt sanctions under Judiciary Law § 773 by the court issuing the preservation order were adequate to deter spoliation and adequately compensate victims. If a spoliation tort was adopted, the Court was concerned that a claim would be recognized that could not be proved without resort to multiple levels of speculation as plaintiffs would have to prove that breach of the duty to preserve the evidence had damaged their underlying action.

OHIO

DISCOVERY RULE DOES NOT TOLL STATUTE OF LIMITATIONS FOR LATENT DEFECT

Baxley v. Harley-Davidson Motor Co. Inc.,
172 Ohio App. 3d 517 (2007)

The plaintiff-appellant, Charles Baxley, was injured while riding his Harley-Davidson motorcycle. Baxley alleged that the accident was caused by an electrical malfunction that made the vehicle lose power, suddenly stop, and then lurch forward. Baxley's foot was lodged between the running board and the exhaust pipe when the vehicle lurched forward. The vehicle then fell over, injuring Baxley's leg, ankle, and foot. Baxley had the vehicle evaluated by the dealership and they found no evidence of a malfunction.

More than two years later, however, Baxley received a recall

notice from Harley-Davidson warning of a possible electrical shortage that could cause a "quit-while-riding" incident. Baxley filed a complaint against Harley-Davidson three years after the incident had occurred.

The trial court dismissed Baxley's case, holding that Baxley's complaint was barred by the two-year statute of limitations governing products liability claims. Baxley claimed that the discovery rule applied and therefore his complaint was timely.

Baxley argued that his claim did not accrue until he received the recall notice. The Ohio Court of Appeals held that the discovery rule generally applies in cases of latent injury and not in cases of possible latent defects. The court further held that the period begins to run as soon as the plaintiff has constructive knowledge of the facts, rather than the actual knowledge of their legal significance. The court reasoned that there was no latent injury and the causal link was obvious, thus the court held that the discovery rule did not apply and affirmed the judgment of the trial court.

SOUTH CAROLINA

COURT ALLOWS SPORTS AGENT TO TESTIFY AS AN EXPERT ON COLLEGE SOCCER PLAYER'S EXPECTED EARNING CAPACITY

Simo v. Mitsubishi Motor North America, Inc.,
245 Fed. Appx. 295 (4th Cir. 2007)

Chefik Simo was a passenger in a 2000 Mitsubishi P45 Montero Sport when the vehicle rolled over. Simo suffered severe injuries. At the time of his accident, Simo was an 18-year-old freshman on the varsity soccer team at Furman University in Greenville, South Carolina. Simo instituted an action in federal district court alleging claims of strict tort liability and negligence against Mitsubishi Motors. Simo claimed that the Montero Sport was unreasonably dangerous because its center of gravity was too high, causing it to roll over in certain circumstances on flat, dry pavement (to roll over untripped). Simo presented two experts, David Bilek and Michael Gilbert, who testified in support of his claim.

Simo also presented testimony that he was the top soccer recruit in the country the year he entered college and among the best players on the United States' "Under-20" national team. Although Simo undertook arduous rehabilitation efforts in an attempt to resume his soccer career, he was forced to terminate his comeback. Simo further offered extensive testimony regarding earnings that he lost as a result of the accident. In particular, Simo offered the expert testimony of Patrick McCabe, a former collegiate and profes-

sional soccer player, and then-current FIFA-licensed soccer agent. McCabe testified that Simo was destined to become one of the top American players of his generation before his accident. McCabe estimated that Simo's career earnings likely would have fallen within the range of \$3 million to \$10 million. Finally, economist Ken McCoin provided expert testimony concerning the concept of present value of the earnings that McCabe had projected.

After Simo's claim for negligent failure to warn, and his request for punitive damages were dismissed, the jury returned a verdict in Simo's favor for \$7 million in compensatory damages. Mitsubishi argued that the district court erred because Simo failed to present sufficient evidence that an alternative feasible design existed for the Montero Sport and the district court improperly admitted the testimony of McCabe and McCoin.

Under South Carolina law, a plaintiff must show: (1) he was injured by the product; (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user; and (3) that the product at the time of the accident was in essentially the same condition as when it left the hands of the defendant.

The Court held Simo presented sufficient evidence of an alternative design and the district court was within its discretion in admitting McCabe's and McCoin's testimony. The court held the district court reasonably accepted that a soccer player's value can be reliably estimated by the personal observations and experience of a person whose job requires him to evaluate players' abilities and determine their value. While neither McCabe nor anyone else could predict with certainty what the future would have held for Simo, South Carolina damages law did not require such certainty.

SOUTH DAKOTA

TRIAL COURT ABUSED DISCRETION BY EXCLUDING EXPERT BASED ON EXPERT'S INEXPERIENCE AS A LITIGATION WITNESS AND UNFAMILIARITY WITH INAPPLICABLE WARNING STANDARDS

Burley v. Kytec Innovated Sports Equip., Inc.,
737 N.W. 2d 397 (S.D. 2007)

Plaintiff, Kylie Burley, was injured while using a track and field training device called an Overspeed Trainer manufactured and sold by Defendant Kytec. The high school track coach found the instructions were not useful, so he assembled the device and tested it to see if the cord would release as discussed in the instructions. The coach modified the release hook, which caused the cord ring to snap back, injuring Ms. Burley's arm. She brought a product liability and breach of warranty action against Kytec, alleging negligent warning, design construction, as well as strict liability for defective design and failure to warn.

Ms. Burley offered the opinions of Dr. Jan Berkhout, an ergonomist. The trial court determined expert testimony was necessary for a negligent warning claim and for a strict liability claim, so all negligence and strict liability claims were dismissed. The trial court excluded Dr. Berkhout's opinions, holding he lacked knowledge, skill, training, and qualifications to offer expert opinions. Their reasoning was that Dr. Berkhout had no specific training or education related to product instruction or design of warnings, and had no prior experience related to athletic equipment. Plaintiff appealed.

The Appellate Court began by noting the admissibility of expert testimony is governed by SDCL 19-15-2 (Rule 702), which requires an expert witness to be qualified before offering testimony. Dr. Berkhout had taught graduate level courses dealing with instructions and warnings. He published articles on computer assisted instruction and advised doctoral students writing dissertations on subjects involving operating manuals which included warnings and instructions. He was also overseeing a project on manufacturer's instructions for assembling tree stands for hunters.

While acknowledging Dr. Berkhout had no experience in drafting instructions or warnings for sports equipment, the Appellate Court determined his background in ergonomics and his academic experience amounted to sufficient understanding in the instruction and warning arena to render opinions beyond just sports equipment, noting the trial court set the bar "too high." The Appellate Court noted the South Dakota Rules of Evidence should be applied liberally and that proponents of expert testimony need not prove the expert's opinion is correct during a *Daubert* hearing, just that it is based on usable foundation; other deficiencies can be questioned through cross examination.

The Appellate Court upheld the trial court's determination that Plaintiff failed in her burden to demonstrate causation with respect to the negligent design and manufacture of the release hook, but remanded the Plaintiff's strict liability and negligence claims. The Court concluded Dr. Berkhout was qualified under *Daubert*, and on remand the trial court was instructed to determine whether his opinions were reliable. If Dr. Berkhout's opinions were found to be reliable, then the strict liability and negligent claims could go forward.

TEXAS

DRESSER-RAND FAILS TO PRESERVE ERROR FOR REVIEW AS TO THE ECONOMIC LOSS RULE

Equistar Chemicals v. Dresser-Rand Co.,
2007 Tex. LEXIS 409 (Tex. 2007)

Appellant Equistar purchased two gas compressors from Appellee Dresser-Rand in the mid 1970's. Dresser-Rand upgraded the compressors by increasing the impellers from 42" to 44" in 1989, but these larger impellers failed several times in the early 1990's. Equistar commissioned Dresser-Rand to trim one of the 44" impellers (purchased in 1991 from Dresser-Rand) back to 42" and install it on one of the gas compressors. Dresser advised operating the machine at a higher speed to achieve the same output as the 44" impeller. The trimmed impeller failed in 1999, causing major damage to the compressor and adjacent equipment. Dresser-Rand replaced the 42" impeller with another 42" impeller, but it also failed. Equistar sought damages for the cost of repair and replacement of all damaged equipment, including interruption of business, and alleged causes of action including negligence, strict liability for manufacturing, marketing, and design defects in addition to breach of implied warranty of merchantability. The jury assigned 80% responsibility to Dresser-Rand, and awarded damages. The trial court instructed the jury it should consider only the cost of repairs to the equipment to restore it to the condition it was in immediately before the incident. Dresser-Rand did not object to the damage question, but did raise objections to the legal and factual sufficiency of the evidence.

The economic loss rule applies where a product fails and the

damage is limited to the product itself. There can still be tort recovery where a defective product causes physical harm to the user or consumer or other property of the user or consumer in addition to the product itself. The Court of Appeals determined the no evidence objections by Dresser-Rand preserved error as to the economic loss rule and that Equistar's claims for damages were barred by limitations. The Court determined that the compressor was the subject of a sale contract between the parties, that damage to the compressor itself was an economic damage recoverable only through a breach of contract action, and that tort actions would be barred by limitations where based on the original sale of the compressor in 1975. The Court of Appeals also determined that Equistar's claim for business interruption damages was contractual and was barred by limitations.

Equistar appealed to the Supreme Court of Texas, asserting that Dresser-Rand had failed to preserve error for review as to the economic loss rule, and that the Court of Appeals improperly made an election of remedies for Equistar. Dresser-Rand asserted that error as to the economic loss rule was preserved by its motion for judgment notwithstanding the verdict, that the Court of Appeals properly applied the economic loss rule, and that the jury's findings on negligence and design, marketing, and manufacturing defects were not supported by sufficient evidence, and that Equistar's claims for tort were barred by limitations and the statute of repose.

The Court of Appeals determined Dresser-Rand's no evidence objections in directed verdict and post-trial motions subsumed the economic loss rule because if tort claims were unavailable, Equistar's cause of action that accrued at the time of sale would have been barred by limitations. Equistar had the burden to show damages to support a judgment in its favor regarding the gas compres-

sor, and Dresser-Rand was not required to specifically assert the economic loss rule as an affirmative defense. The jurors were instructed to consider only the cost of repair and restore Equistar's facility to the condition it was in immediately prior to the compressor failing. Dresser-Rand had a duty to object to the jury question at the time if it believed the question posed an improper measure of damages such that it would allow the jury to award tort and contract damages in one question. Dresser-Rand did not object to the jury question, so any such objection was waived. Therefore, a no evidence objection was ineffective in making the trial court aware

that the economic loss rule should have been applied to bar Equistar's tort damages.

The Supreme Court determined the Court of Appeals erred in concluding Dresser-Rand preserved error as to the economic loss rule, it affirmed the Court of Appeals determination that evidence was legally sufficient regarding the jury's tort liability decision and the tort claims were not barred by limitations. The statute of repose defense was waived.

TEXAS

TRIAL EVIDENCE INSUFFICIENT TO ESTABLISH MANUFACTURER'S BRAKE PADS WERE A SUBSTANTIAL FACTOR IN CAUSING PLAINTIFF'S ASBESTOSIS

Borg-Warner Corp. v. Flores,
232 S.W. 3d 765 (Tex. 2007)

Flores was a retired brake mechanic who developed asbestosis. During his thirty-five year career, Flores used Borg-Warner brake pads on five to seven of the roughly twenty brake jobs he performed per week. The Borg-Warner brake pads contained seven to twenty-eight percent asbestos fibers. Grinding the brake pads generated clouds of dust that Flores inhaled while working in an eight by ten-foot room. Flores' experts opined that Borg-Warner brake pads caused Flores' asbestosis due to the asbestos dust he inhaled while grinding the brake pads. Flores' pulmonologist noted that Flores' lungs showed scarring associated with asbestos fibers. Flores' expert, as to exposure level, noted that research involving the brake industry showed that "levels of exposure [to asbestos fibers] . . . could be significant," and pointed to OSHA studies and warnings regarding increased levels of asbestos exposure among brake mechanics. Yet, Flores' experts conceded that "everyone is exposed to asbestos in the ambient air" and that they did not research Borg-Warner's brake pads in particular to determine whether grinding them resulted in an increased risk of exposure to asbestos. The jury found for Flores, apportioning thirty-seven percent of the liability for his asbestos-related injury to Borg-Warner.

The Corpus Christi Court of Appeals, applying the "any expo-

sure" test announced in *Celotex Corp. v. Tate*, affirmed, finding that the Plaintiff presented evidence that (1) the brake products contained asbestos fibers, (2) the brake products, when ground, could emit dust containing respirable asbestos fibers, which could cause asbestosis, and (3) the Plaintiff suffers from asbestosis. Based on those findings, the court concluded that there was more than a scintilla of evidence on causation. Borg-Warner petitioned the Supreme Court for review, which reversed and rendered judgment for Borg-Warner.

In so doing, the Supreme Court considered what a plaintiff must show to establish that a particular defendant's product was a "substantial factor" in causing plaintiff's injury in a toxic tort case. The court specifically rejected the premise that "if there is sufficient evidence that the Defendant supplied any of the asbestos to which the Plaintiff was exposed, then the Plaintiff has met the burden of proof." Instead, the court held that the Plaintiff must introduce evidence that the Defendant's conduct or product was a "substantial factor" in bringing about the Plaintiff's injuries.

"Substantial-factor" causation requires that a Plaintiff provide the "quantitative information necessary to support causation under Texas law." Specifically, a Plaintiff must present the following: (1) evidence of approximate dose to which the plaintiff was exposed; (2) defendant-specific evidence relating to what percentage of dose is attributed to the defendant's product; and (3) evidence that the defendant-specific dose is of a sufficient amount to cause the alleged injury. Because Plaintiff could not make this showing, the court held there was insufficient evidence that Borg-Warner brake pads were a substantial factor in causing Plaintiff's asbestosis. Judgment was therefore rendered for the manufacturer, Borg-Warner.

TEXAS

MANUFACTURER OF COMPONENT PART CONVEYOR HAS NO DUTY TO WARN OF DANGERS ASSOCIATED WITH LARGER CONVEYOR SYSTEM

Ranger Conveying & Supply Co. v. Davis,
2007 Tex. App. LEXIS 5899 (2007)

Appellant, Ranger, sought review of a judgment entered in favor of Appellee, Davis, for injuries Davis sustained after a 580-pound bale of paper pulp fell from a clamp truck owned by Davis' employer, Pasadena Paper, which impaled his hand on a conveyor-belt spike manufactured by Ranger. Ranger appealed the judgment, contending the trial court erred in denying Ranger's motion for JNOV because "Ranger did not owe or breach any duty to Davis" or owe a duty to Pasadena Paper "to formulate facility policies."

The Ranger Conveyor System was a custom component to a larger system designed to aid in the carrying of bales of raw material into a hydropulper machine after binding wires are cut and re-

moved from the bales. The design of the Ranger conveyor included spikes to hold the bale up and away from the conveyor's surface so that employees could more easily cut and remove the wire surrounding the bale before it entered the hydropulper. At the time of the accident, one worker would use a clamp truck to move six bales at a time with only the bottom bales secured by the clamp truck. The unsecured bales tumbled off and one impacted Davis, pinning his arm to a conveyor belt spike. Davis sued Ranger, alleging a design defect and a marketing defect in failing to provide adequate warnings of the Ranger Conveying equipment's dangers.

Ranger did not place warning labels on the conveyor system instructing workers to avoid the area at the interface of the conveyor and clamp truck due to the falling hazard, nor did it provide Pasadena Paper with instructions or warnings that employees should be kept away from that area. Additionally, Ranger did not provide Pasadena Paper with an operator's manual, safety sheets, or safety training to the workers who would be working on the conveyor system. Ranger acknowledged that it was responsible for designing a safe conveyor, and it contended that it complied with that request by installing the emergency stop cord on the conveyor.

Ranger cited *USX Corp. v. Salinas*, 818 S.W.2d 473, (Tex. App.1991) to support its assertion that the hazard arose from the operations at the plant and not from a risk of harm inherent in the product. The Court of Appeals concluded that Ranger had no duty to warn about the interface area of Pasadena Paper's clamp truck and Ranger's conveyor because (1) the jury determined there was no design defect in the conveyor itself, which was what Ranger was

hired to design, produce, and install, and (2) the interface area was part of the larger system that included the loading of bales with the use of the clamp truck, and Ranger was not hired to and did not participate in the integration of the conveyor into the larger system. Thus, the court reversed and rendered a take nothing judgment in favor of Ranger.

UTAH

WHERE PRODUCT COMPLIES WITH GOVERNMENT SAFETY STANDARDS, MANUFACTURER IS ENTITLED TO REBUTTABLE PRESUMPTION OF NON-DEFECTIVENESS; UTAH RECOGNIZES "ENHANCED INJURY" THEORY OF LIABILITY

Egbert v. Nissan North America, Inc., 167 P.3d 1058 (Utah 2007)

Plaintiff parents were involved in a serious car accident. The mother, who was pregnant at the time, was ejected through the shattered windshield and sustained serious injuries. Her child was born prematurely by emergency c-section following the accident and had a serious brain injury. Plaintiffs claimed that the child's brain injury was proximately caused by the accident, and brought a products liability action in federal court against defendant manufacturer based on the failure to use laminated glass in the windshield.

The Federal District Court for the District of Utah certified two questions for the Utah Supreme Court:

1. In a product liability case where a manufacturer's product complies with applicable government safety standards, should the jury be instructed that a presumption of non-defectiveness has arisen under Utah Code Ann. § 78-15-6 (3)? If so, should the instruction require clear and convincing evidence of a defect to rebut the presumption, or is proof by a preponderance of the evidence sufficient for rebuttal?

2. Does Utah recognize the "enhanced injury" theory of liability outlined in § 16(a) of the Restatement (Third) of Torts: Products Liability?

In answering the first question, the Utah Supreme Court held that the jury should have been instructed as to the presumption established by the Utah statute. The Court noted that the presumption was rebuttable and that a preponderance of the evidence was sufficient to rebut it. The manufacturer argued that because the presumption already existed at common law, the Legislature must have intended to "ratchet up" the proof needed to overcome the presumption. Otherwise, no benefit would have fallen to the manufacturers. Though the court agreed with the manufacturer that the Legislature must have intended to benefit the manufacturer by creating a statutory presumption of non-defectiveness, it disagreed that the intended benefit was that the plaintiff be required to meet a higher standard of proof for rebuttal. Rather, the Court held, the statutory presumption benefits the manufacturer by more clearly highlighting for the jury the significance of the plaintiff's burden of establishing defectiveness by a preponderance of the evidence.

In answering the second question, the Court held that Utah does recognize the "enhanced injury" theory of liability. The Plaintiffs and the Defendant both agreed that Utah should recognize the theory, but disagreed on which party should bear the burden of proof with respect to the allocation of injuries resulting from the automobile accident and those resulting from the product defect. Both parties briefed the issue extensively; however, because the question of who bears the burden of proof was not certified by the federal district court to the Utah Supreme Court, the Utah Supreme Court declined to address it.

WEST VIRGINIA

COURT REJECTS LEARNED INTERMEDIARY DOCTRINE

State ex rel. Johnson & Johnson Corp. v. Karl,
647 S.E.2d 899 (W. Va. 2007)

A drug manufacturer invoked the Court's original jurisdiction in prohibition asking the Court to adopt the learned intermediary doctrine. The learned intermediary doctrine is an exception to the general duty of manufacturers to warn consumers of dangers associated with their products. "Under the learned intermediary doctrine, a drug manufacturer is excused from warning each patient who receives the product when the manufacturer properly warns the prescribing physician of the product's dangers."

A doctor prescribed Propulsid to his patient and provided her with samples. The patient died suddenly after three days of taking the drug. The patient's estate brought a products liability action against Propulsid's manufacturer, Janssen Pharmaceutica, Inc., a wholly owned subsidiary of Johnson & Johnson Corporation ("Janssen"). The trial court denied Janssen's motion for summary judgment based on the learned intermediary doctrine citing material issues of fact. Later, Janssen filed a motion *in limine*, again

relying on the learned intermediary doctrine seeking to exclude evidence or argument by the patient's estate suggesting Janssen had a duty to provide warnings to the patient personally. The trial court denied the motion *in limine*. Janssen then filed a writ of prohibition against the trial court and West Virginia's Supreme Court reviewed the writ.

The Court first noted that, despite the suggestion by courts and commentators that an overwhelming majority of states have adopted the learned intermediary doctrine, in reality only twenty-two states had adopted the doctrine, either by decision of the highest court or by statute, and the highest courts of six other states have either referred to the doctrine favorably in dicta or have adopted it in a context other than prescription drugs.

The Court then listed the primary reasons cited for courts adopting the doctrine:

- (1) the difficulty manufacturers would encounter in attempting to provide warnings to the ultimate users of prescription drugs;
- (2) patients' reliance on their treating physicians' judgment in selecting appropriate prescription drugs;
- (3) the fact that it is physicians who exercise their professional judgment in selecting appropriate drugs;
- (4) the belief that physicians are in the best position to provide

appropriate warnings to their patients; and (5) the concern that direct warnings to ultimate users would interfere with doctor/patient relationships.

The Court noted, however, that these reasons are outdated and can be traced back as far as 1925. The Court then referred to a 1948 case, the first case where the learned intermediary doctrine was applied. In that case, the court found it significant that the drug manufacturer made no representations to the patient. The Court stated that in the modern era, there is direct-to-consumer advertising and the Internet and regular mail are common methods for dispensing and obtaining prescription drug information. The Court further noted that physicians are increasingly asked and pressured by their patients to prescribe drugs the patient has seen advertised. Patients are self-diagnosing based on the symptoms in the advertisements. Further, if the doctor tells the patient the drug is not right for the patient, doctors find their credibility in question. All of these reasons militate against adopting the learned intermediary doctrine.

The Court next cited a New Jersey Supreme Court opinion that rejected the doctrine. The New Jersey Court stated the decision to take a drug was no longer exclusively a medical judgment. Very few patients were learning about the dangerous side effects from their doctors. The New Jersey Court further stated with advertising

spending in the billions of dollars, it is disingenuous for the drug manufacturers to argue they lack effective means to communicate directly with patients.

The Court then noted that several courts have recognized exceptions to the learned intermediary doctrine to address the shortcomings of the doctrine including an exception for drugs advertised directly to consumers and for over promoted drugs, among others. Similarly, the Restatement (Third) of Torts adopted the learned intermediary doctrine but incorporated a general exception to cover those circumstances where the manufacturer knows or should know that a physician will not be in a position to provide an adequate warning.

The Court found no good reason to adopt a doctrine along with multiple exceptions. The Court further added that its comparative contribution among joint tortfeasors law would adequately address any issues between the doctor and the drug manufacturer. Finally, the Court held that because the drug manufacturers benefit from the sales of the drugs and possess the knowledge concerning the potential harms, it is not unreasonable to require drug manufacturers to warn the ultimate users who bear the significant health risks of the potential harms of their products.

Thus, the West Virginia Supreme Court denied the Writ and declined to adopt the learned intermediary doctrine.

WEST VIRGINIA

MALPRACTICE LAW GOVERNS PRODUCT LIABILITY CLAIMS AGAINST HEALTHCARE PROVIDERS

Blankenship v. Ethicon, Inc., 2007 W.Va. LEXIS 66 (Oct. 12, 2007)

Plaintiffs filed a class action lawsuit alleging they sustained infections, injuries, and damages after improperly sterilized Vicryl sutures had been placed in their bodies. The plaintiffs asserted claims of product liability (including negligence, strict liability, and breach of express and implied warranties); fraud; and intentional infliction of emotional distress.

The defendant hospitals filed a motion to dismiss asserting that the Medical Professional Liability Act (hereinafter "MPLA") constituted the sole remedy for actions against health care providers; the plaintiffs failed to comply with the notice requirements of the MPLA; West Virginia's common law did not permit product liability claims against health care providers; and the plaintiffs claims were time barred.

The lower court ruled the MPLA governed and granted the defendants' motion to dismiss because the plaintiffs failed to comply with the MPLA's notice requirements. On appeal, the plaintiffs argued that they did not assert medical malpractice claims nor were any of their claims asserted under the MPLA. The Court held that where the allegations of a complaint fall within the provisions of the MPLA, the MPLA governs. The Court explained that the determination of whether a cause of action falls within the MPLA is based upon the factual circumstances giving rise to the cause of action, not the type of claim asserted. The plaintiffs were patients, both defendant hospitals were health care providers, and the plaintiffs received health care services. The Court reasoned that the core allegations of the complaint centered upon the performance of surgical procedures and because surgeries and sutures used during surgery fit within the definition of healthcare under the MPLA, the MPLA governed.

While the Court found the MPLA applied and that the plaintiffs failed to comply with MPLA notice requirements, the lower court erred in granting the defendants' motion for summary judgment. The court held that the dismissal was unduly harsh and remanded the case to afford the plaintiffs the opportunity to amend their complaint and otherwise comply with the MPLA.

WYOMING

COURT AFFIRMS SUMMARY JUDGMENT AFTER PLAINTIFF FAILS TO PRODUCE EVIDENCE TO RULE OUT SECONDARY CAUSES FOR MEDICAL DEVICE FAILURE

Rohde v. Smiths Medical, 165 P.3d 433 (Wyo. 2007)

Although Plaintiff's learned intermediary surgeon-provider received written warnings of failure risks for a chemotherapeutic venous access device, Plaintiff sued when the device broke in two. His own expert agreed the device probably broke due to plaintiff's weight gain after implantation. The manufacturer's proof showed

such failures (termed "compressions") to be among the foreseeable, secondary causes of failure. Plaintiff sought to be relieved of his burden to establish a specific defect or an inference of defect in accordance with applicable law and argued to expand the inference of defect rule to allow a plaintiff to proceed to trial simply because the product failed. The Court rejected this proposal, noting that such a rule would unduly expand product liability jurisprudence without justification. Thus, absent any evidence to establish a material issue of fact on the reasonable secondary cause advanced by the manufacturer, summary judgment on plaintiff's defect claims was proper. Additionally, because plaintiff presented no evidence that the warnings provided by the manufacturer regarding the device were inadequate, summary judgment on plaintiff's failure to warn claim also was proper.

“In the Trenches” Notable Accomplishments of ALFA Attorneys

CALIFORNIA/INDIANA

MARTIN, MARTIN & KIRSCHNER OBTAIN FAVORABLE VERDICT FOR ALFA CLIENT

When it came time for ALFA International client, Bombardier Recreational Products Inc., to try its first ATV case, they asked Skip and Bryan Martin of Haight Brown & Bonesteel LLP (Los Angeles, California ALFA Firm) and Eric Kirschner of Beckman, Kelly & Smith (Hammond, Indiana ALFA Firm) to defend it in a lawsuit filed in Federal Court in Indianapolis, Indiana.

The accident happened in Haspin Acres just outside Laurel, Indiana. Haspin Acres has been described as a 750-acre "amusement park" for all-terrain vehicles and advertises over 200 miles of trails.

Plaintiff had limited experience riding an ATV, having previously ridden on two or three occasions on flat farmland. On the day in question, he was riding his father's ATV and was accompanied by his brother and his brother's friend, both of whom owned their own ATVs.

Plaintiff, in his early 30s, was rendered a paraplegic when his ATV flipped over as he was trying to tow his brother's ATV up a hill on rugged terrain after it became stuck at the bottom of a ravine. Instead of attaching the tow strap to the tow hitch on his ATV, plaintiff attached the tow strap to the luggage rack. His first attempt to

tow his brother's ATV up the hill failed. On the second attempt, his ATV flipped over on top of him.

One of Bombardier's competitors had a label attached to the rear of its ATV in the proximity of the luggage rack, warning people not to tow a vehicle by attaching a tow strap to the luggage rack. Plaintiff's theory was that a similar warning should have been present on the Bombardier ATV, and over objection, plaintiff was allowed to testify that had such a warning been present he would have seen the warning and would have followed it; therefore, the accident would not have happened had he attached the tow strap to the tow hitch.

Bombardier contended there were adequate warnings at other locations on its ATV that, if followed, would have precluded plaintiff from even attempting this maneuver. The plaintiff never read the Operator's Manual and only "glanced" at other warnings on the ATV.

A key factor in the case was the court's granting of Bombardier's motion for a jury view. This included an hour-and-a-half bus ride from the courthouse to the office at Haspin Acres. Bombardier then had five amphibious vehicles transported from St. Louis to Haspin Acres which were needed to take the jury from the office to the accident site. The hill in question may have proved to be the most significant "witness" in the case.

Under Indiana law, the jury is instructed that a plaintiff cannot recover if his or her fault is 51% or greater. The jury found the plaintiff to be 68% at fault, thus precluding any recovery on his behalf.

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The Ritz-Carlton Key Biscayne
Key Biscayne, Florida

Contact Info

ALFA Contact: Katie Garcia

April 3-4, 2008

Worker's Compensation Practice Group Seminar
Intercontinental Harbor Court
Baltimore, Maryland

Contact Info

Chair: Stephen Hessert
Norman, Hanson & Detroy, LLC, Portland, Maine
(207) 774-7000, shessert@nhdlaw.com
ALFA Contact: Joely Nicholson

April 30-May 2, 2008

Transportation Practice Group Seminar
The Breakers Palm Beach
Palm Beach, Florida

Contact Info

Chair: Gregory D. Conforti
Johnson & Bell, Ltd., Chicago, Illinois
(312) 372-0770, confortig@jbltd.com
Vice Chair: Paul T. Yarbrough
Butt Thornton & Baehr PC, Albuquerque, New Mexico
(505) 884-0777, ptyarbrough@btblaw.com
ALFA Contact: Katie Garcia

June 11-13, 2008

Retail Practice Group Seminar
The Ritz-Carlton Palm Beach
Palm Beach, Florida

Contact Info

Chair: Jeffrey H. Newman
Sills Cummis & Gross P.C., Newark, New Jersey
(973) 643-7000, jnewman@sillscummis.com
ALFA Contact: Katie Garcia

June 25-27, 2008

Employment Practices Liability Insurance Seminar
Marriott Financial Center
New York, New York

Contact Info

ALFA Contact: Joely Nicholson

July 16-18, 2008

Construction Practice Group Seminar
The Peninsula
Chicago, Illinois

Contact Info

Chair: Thomas C. Federico
Morrison Mahoney LLP, Boston, Massachusetts
(617) 439-7500, tfederico@morrisonmahoney.com
ALFA Contact: Joely Nicholson

October 23-25, 2008

Annual Business Meeting
The Capital Hilton
Washington, District of Columbia

Contact Info

ALFA Contact: Amy Sammon

November 12-14, 2008

Product Liability Practice Group Seminar
The Ritz-Carlton Laguna Niguel
Dana Point, California

Contact Info

Chair: Charles A. (Chuck) Stewart III
Bradley Arant Rose & White LLP, Montgomery, Alabama
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