

[Products Liability Law Daily Wrap Up, TOP STORY—DESIGN AND MANUFACTURING DEFECTS—III. App.: Trial court erred in granting summary judgment in dump trailer steps accident, \(Jan. 16, 2020\)](#)

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By Joshua Frumkin, J.D.

Genuine issues of material fact existed as to whether a dump trailer's cast iron steps were defective and unreasonably dangerous under both the risk-utility and consumer expectation tests.

The Illinois Appellate Court has reversed and remanded a trial court's grant of summary judgment in favor of a dump trailer manufacturer in a lawsuit alleging defective design and failure to warn claims brought by a truck driver who was injured when he slipped off of allegedly defectively designed trailer steps. The appeals court ruled that the trial court erred when it failed to take into consideration the risk-utility test and the consumer-expectation test, both of which raised genuine issues of material fact ([*Gillespie v. Edmier*](#), January 13, 2020, Cobbs, C.).

Configuration and use of the dump trailer. The dump trailer manufacturer produced a "frameless model" (Genesis II) equipped with cast iron steps leading to the top of the trailer. A truck driver who was hauling a load of mulch, climbed up the steps and into the trailer to level the material, and upon his exit from the top of the trailer, he slipped and fell to the ground. The trailer had been ordered with a top tarp which covered an end cap that otherwise would have been exposed as a part to grab onto. The unit was not equipped with a grab handle nor side rails, along the sides of the steps, and there was testimony that the steps were not the proper width and the spacing between the steps was not proper either. The truck driver filed suit alleging design defect and failure to warn claims against the dump trailer manufacturer and other parties involved in the ordering and use of the dump trailer. The trial court entered summary judgment in favor of the manufacturer, and the truck driver appealed.

Deposition testimony for the manufacturer. Witnesses on behalf of the manufacturer testified as to the design, safety standards, and foreseeability of use of the trailer. The principal engineer testified that the purpose of the steps was for drivers to climb up and down the trailer for inspecting the load, and that it was foreseeable that a driver might use the steps to climb into the dump trailer. He was aware that the dump trailers were built to Federal Motor Vehicle Safety Standards (FMVSS) relating to brakes and lights. However, the engineer was not aware of any safety standards for ladders or steps. Nor was he aware of any ANSI or OSHA standards applicable to the steps or ladders of dump trailers.

Elements of design defect claim. To establish a design defect claim for a strict products liability cause of action, the truck driver had to prove that: (1) the product had an unreasonably dangerous condition, (2) the dangerous condition existed when the product left the manufacturer's control, and (3) the condition injured him. The manufacturer did not contest the fact that the truck driver was injured, leaving the other two factors to be addressed by the appellate court.

Unreasonably dangerous condition. The truck driver contended that the cast iron steps installed on the dump trailer were defective and unreasonably dangerous under both the risk-utility and consumer-expectation tests under Illinois law. The court noted that the determination of whether a product is defective and unreasonably dangerous is ordinarily a question of fact for the jury to consider, and that when a claim is based on an alleged design defect, the "unreasonably dangerous" element can be proven under the risk-utility test or the consumer-expectation test.

Risk-utility test. Under the risk-utility test, the court needed to determine whether, on balance, the benefits of the challenged design outweighed the risk of danger inherent in that design. In making such a determination, courts may consider (1) the product's utility to the public, (2) the likelihood and the probability of foreseeable injury to the consumer, (3) the manufacturer's ability to eliminate unsafe characteristics without impairing a product's usefulness or making that product too expensive to maintain its utility, (4) the availability and feasibility of alternate designs, and (5) conformity with any applicable industry standards and governmental regulations.

Expert raised genuine issues of material fact. The truck driver argued that the trial court erred in granting summary judgment because his expert witness had testified that the dump trailer steps failed to comply with ANSI, OSHA, and other recommended practices as to the steps' spacing, width, distance, and lack of side rails. The court found that the expert testimony provided sufficient evidence for a fact finder to consider when determining whether the steps were unreasonably dangerous. Having determined that OSHA is a relevant standard for the jury to consider, the appellate court further found that the standards were relevant for the jury's consideration. The court concluded that the risk-utility test weighed in favor of the truck driver; and that when the possibility of an alternative design was taken together with the manufacturer's testimony, there was sufficient evidence to create a genuine issue of material fact as to whether the trailer was unreasonably dangerous.

Consumer-expectation test. Next, the court examined the expectations of the consumer (truck driver) with respect to steps being constructed with proper spacing and with side rails. The manufacturer argued that the trailer was built to the safety specifications of the industry. However, the court ruled that under the consumer-expectation test, a plaintiff may prevail if he or she shows that the product failed to perform as an ordinary consumer would expect when the product was used in an intended or reasonably foreseeable manner.

The manufacturer's witness testified that he never tested the design of the steps to make sure the steps were safe. He maintained no formal accident review procedure or an investigation procedure for incidents. The court found that the mere fact that the manufacturer's trailer complied with industry standards—where there are no regulations or guidelines that specifically govern the dump trailer industry—was not persuasive enough to overcome the consumer's expectations. A reasonable truck driver would expect that the steps would be properly spaced.

Accordingly, the court ruled that as with the risk-utility test analysis, the OSHA and ANSI standards were relevant for the purposes of determining whether the cast iron steps were defective and unreasonably dangerous. Thus, the court found that genuine issues of material fact remained as to whether the cast iron steps were defective and unreasonably dangerous under the consumer-expectation test. Furthermore, in construing all reasonable inferences from the expert and witness deposition testimony in the light most favorable to the truck driver, the appeals court determined that a genuine issue of material fact remained as to whether it was foreseeable that purchasers would install tarp covers and caps and whether the presence of a grab handle would be necessary to maintain three points of contact. Consequentially, summary judgment should not have been granted on the truck driver's strict liability design defect claim.

Strict liability—failure to warn. The appellate court rejected the manufacturer's argument that misuse was a basis for affirming summary judgment on the truck driver's failure to warn claim. The truck driver argued that the manufacturer failed to warn that a grab handle was necessary if a consumer installed a tarp cover. He asserted that the lack of a grab handle rendered the trailer unreasonably dangerous and, therefore, the dump trailer maker was strictly liable for its failure to warn of that danger. The court found that summary judgment was granted improperly on this claim because the manufacturer was aware of the practice of maintaining three-point contact in the truck driving industry when working on a trailer and the maker had acknowledged that by placing a tarp over the front top of the dump trailer, the consumer would not be able to maintain the three-point contact necessary for the consumer's safety. Although the manufacturer was aware of this issue, it failed to warn of the potential danger to consumers. Finally, the court rejected the manufacturer's contention that the truck driver's crawling across the tarp cap to climb down the front sidesteps of the dump trailer instead of using the back steps constituted misuse. According to the appellate court, misuse of a product occurs when it is used for a purpose neither intended nor reasonably foreseeable by the defendant based on an objective standard. In the case at

bar, the manufacturer's principal engineer testified that the purpose of the steps on the dump trailer was for drivers in climbing up and down the trailer "to inspect the load." His testimony indicated that the truck driver used the stairs for its intended purpose and that it was reasonably foreseeable for him to climb down the front stairs. Therefore, the misuse was not a basis for affirming summary judgment.

Based on the foregoing, the appellate court reversed and remanded the case to the trial court.

The case is No. [1-17-2549](#).

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