

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 22, 2026

CV-25-0985

RICHARD JANOF,

Respondent-
Appellant,

v

AUTO WAREHOUSE et al.,

Defendants,

MEMORANDUM AND ORDER

and

BMW OF NORTH AMERICA, LLC,

et al.,

Appellants-
Respondents.

Calendar Date: August 19, 2026

Before: Garry, P.J., Fisher, Powers, Corcoran and Ryba, JJ.

Smith Duggan Cornell & Gollub LLP, Boston, Massachusetts (*Peter M. Durney* of counsel, admitted pro hac vice) and *Biedermann Hoenig Semprevivo*, New York City (*Joseph Kim* of counsel), for appellants-respondents.

McCartney Stucky LLC, Rye (*Austin T. Osborn* of counsel), for respondent-appellant.

Ryba, J.

Cross-appeal from a judgment of the Supreme Court (Kevin Bryant, J.), entered June 5, 2025 in Ulster County, upon a verdict rendered partially in favor of plaintiff.

Plaintiff commenced this action against defendants BMW of North America, LLC and Bayerische Motoren Werke AG (hereinafter collectively referred to as BMW), and other defendants, seeking damages for personal injuries sustained when the vehicle he was driving veered off the roadway and struck a utility pole. According to plaintiff, the subject vehicle, a 2008 MINI Cooper Clubman S designed and manufactured by BMW, was defectively designed because it utilized an untethered driver-side airbag that was unreasonably dangerous and enhanced the injuries he sustained in the collision – ultimately resulting in the loss of his eye. The verified complaint asserted causes of action sounding in strict products liability, negligent design and breach of the implied warranty of merchantability. BMW denied liability and asserted various affirmative defenses.

Following discovery and extensive pretrial motion practice, the matter proceeded to a jury trial with BMW as the sole defendant, which resulted in a jury verdict in favor of plaintiff on his claims for strict products liability and breach of implied warranty, and in favor of BMW on plaintiff's claim for negligent design. BMW moved to set aside the verdict under CPLR 4404 (a), or alternatively for a new trial on the grounds that the verdict was inconsistent. Supreme Court denied each motion and entered judgment. BMW appeals and plaintiff cross-appeals.

Initially, BMW contends that the jury's verdict on plaintiff's claims for strict products liability and breach of implied warranty is not supported by legally sufficient evidence and is against the weight of the evidence. We disagree. A jury verdict may be set aside for legal insufficiency only where "there is simply no valid line of reasoning and permissible inferences which could possibly lead rational [people] to the conclusion reached by the jury on the basis of the evidence presented at trial" (*Cohen v Hallmark Cards*, 45 NY2d 493, 499 [1978]; see *Lu v Gamba*, 244 AD3d 1488, 1490 [3d Dept 2025], *lv dismissed* 46 NY3d 942 [2026]), whereas a weight of the evidence inquiry requires us to determine whether the evidence so preponderated in favor of the unsuccessful party that the verdict could not have been reached on any fair interpretation of the evidence (see *Alaimo v General Motors Corp.*, 32 AD3d 627, 627-628 [3d Dept 2006]; *Warnke v Warner-Lambert Co.*, 21 AD3d 654, 657 [3d Dept 2005]).

Here, the subject vehicle used a deflector, rather than a tether, to direct the flow of gas and control the airbag's shape as it inflated on impact. Plaintiff presented expert proof that the use of a tether would have made the airbag safer by reducing inflation distance and ensuring that a driver made contact with a stable surface, therefore reducing the likelihood of an eye injury such as the one caused to plaintiff. In addition, plaintiff's

expert opined that a deflector design is uncommon in the industry and was not reasonably safe for its ordinary use in the subject vehicle based upon the maximum inflation distance, which is approximately six inches longer than the alternative tethered design. Based on the foregoing and the record as a whole, we cannot conclude that the jury verdict is "utterly irrational" (*Killon v Parrotta*, 28 NY3d 101, 108 [2016]; *see Streit v Katrine Apts. Assoc., Inc.*, 212 AD3d 957, 958 [3d Dept 2023]; *Veeder v Community Health Plan*, 281 AD2d 756, 757 [3d Dept 2001]). Although BMW presented evidence and competing expert proof concerning the development, testing and performance of the subject restraint system which included the use of a deflector airbag, we are mindful that the resolution of conflicting expert opinions presents a question for the jury (*see Abar v Freightliner Corp.*, 208 AD2d 999, 1001 [3d Dept 1994]), and we therefore cannot conclude that the verdict could not have been reached by any fair interpretation of the evidence (*see Fritz v White Consol. Indus.*, 306 AD2d 896, 897 [4th Dept 2003]).

Next, BMW contends that the verdict sheet is internally inconsistent and fatally flawed because it failed to combine plaintiff's three causes of action into a single set of interrogatories, despite each cause of action being legally synonymous with the others.¹ We find this contention to have merit. Under CPLR 4111 (c), "when the answers on a verdict sheet 'are inconsistent with each other and one or more is inconsistent with the general verdict, the court shall require the jury to further consider its answers and verdict or it shall order a new trial' " (*Motta v Eldred Cent. Sch. Dist.*, 172 AD3d 1575, 1578 [3d Dept 2019], quoting CPLR 4111 [c]). An inconsistency occurs "only when a verdict on one claim necessarily negates an element of another cause of action" (*Barry v Manglass*, 55 NY2d 803, 805 [1981]). Where, like here, a plaintiff "has pleaded both strict liability and negligent design causes of action, the standards set forth" for resolving a strict products liability claim "apply to both" (*Adams v Genie Indus., Inc.*, 14 NY3d 535, 543 [2010]) – and a verdict sheet which purports to inquire separately into whether a design was "negligent" or "not reasonably safe" is essentially "redundant" (*Reis v Volvo Cars of N. Am.*, 24 NY3d 35, 40 [2014] [internal quotation marks omitted]). Similarly, while breach of implied warranty and strict products liability share "a high degree of overlap,"

¹ We reject BMW's contention that the verdict was also fatally inconsistent because the jury apportioned 35% of the fault to plaintiff while also finding that plaintiff's negligence was not a substantial factor in causing his injuries. Supreme Court responded appropriately by clarifying the instructions on a revised verdict sheet and directing the jury to reconsider their first verdict; the jury ultimately resolved this inconsistency in their second verdict (*see CPLR 4111 [c]; Popolizio v County of Schenectady*, 62 AD3d 1181, 1184 [3d Dept 2009]).

the "core element of 'defect' is subtly different" between the claims – with defect in the former focusing on a balancing of the risk versus the utility, and defect in the latter focusing on "the expectations for the performance of the product when used in the customary, usual and reasonably foreseeable manners" (*Denny v Ford Motor Co.*, 87 NY2d 248, 256, 258-259 [1995]; accord *Wojcik v Empire Forklift, Inc.*, 14 AD3d 63, 66 [3d Dept 2004]).

Here, plaintiff's strict products liability and negligent design claims were both premised upon BMW's use of an untethered, deflector-equipped driver-side airbag rather than a tethered design, and the same evidence concerning the risks and utility of that design and the feasibility of the proposed alternative was offered to support both theories. BMW objected to separate interrogatories, warning that they could produce inconsistent findings, and proposed a single interrogatory asking whether the airbag was "defectively or negligently designed." Plaintiff opposed that request, expressly stating that he was "willing to accept the risk of an inconsistent verdict." Supreme Court submitted the claims separately, resulting in a jury verdict finding that the airbag was defectively designed because it was not reasonably safe, but that BMW was not negligent in selecting that same design.

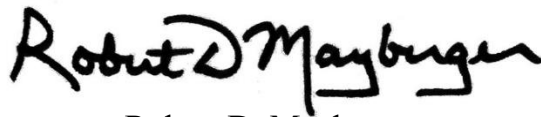
Under these circumstances, the separate interrogatories unnecessarily divided what was in essence a single design inquiry and permitted the jury to reach divergent findings without a discernible factual basis for doing so (*see Reis v Volvo Cars of N. Am.*, 24 NY3d at 40). Although strict products liability and negligent design involve distinct legal theories that may permissibly yield different results under certain circumstances, the evidence here supplied no factual basis for such a distinction. Plaintiff identified no negligent conduct by BMW apart from its selection of the very airbag design that the jury found to be defective. Such proffer not only related to whether the allegedly defective design was reasonably safe, but also whether it was reasonably fit for its ordinary purpose under the breach of implied warranty claim (*see Fritz v White Consol. Indus.*, 306 AD2d at 897). Thus, the jury simultaneously determined that the design was not reasonably safe or reasonably fit for its ordinary purpose, yet that BMW was not negligent in choosing that design, without any evidentiary basis upon which to reconcile those findings (*see generally Searle v Suburban Propane Div. of Quantum Chem. Corp.*, 263 AD2d 335, 339 [3d Dept 2000]). Upon retrial, the verdict sheet should be structured to account for the substantial factual overlap between the claims to avoid the potential for inconsistent findings.

Although our determination renders the parties' remaining contentions academic, during the retrial Supreme Court must ensure that a proper foundation exists before admitting evidence of other similar incidents identified through the National Automotive Sampling System (*see Daniels v New York City Tr. Auth.*, 35 NY3d 938, 939 [2020]). Indeed, under appropriate circumstances, evidence of prior accidents may be admitted to demonstrate, among other things, a dangerous condition, causation or notice, but only upon a foundational showing that the prior incidents occurred under circumstances substantially similar to those surrounding the accident at issue (*see Hyde v County of Rensselaer*, 51 NY2d 927, 929 [1980]; *see also Johns v Crown Equip. Corp.*, 242 AD3d 1398, 1399 [3d Dept 2025]; *O'Buckley v County of Chemung*, 149 AD3d 1232, 1234 [3d Dept 2017]; *Cramer v Kuhns*, 213 AD2d 131, 136 n, 137 [3d Dept 1995], *lv dismissed* 87 NY2d 860 [1995]; *Facci v General Elec. Co.*, 192 AD2d 991, 993 [3d Dept 1993]). Inasmuch as substantial similarity is defined by the product or defect at issue, an appropriate foundation for the admission of other similar incidents must include proof that such incidents involved substantially similar airbag systems and that the injuries sustained were caused by the same alleged defect. Moreover, to utilize "the professional reliability exception to the hearsay rule[, which] allows an expert witness to provide opinion evidence based on otherwise inadmissible hearsay, it must be shown to be the type of material commonly relied on in the profession" (*Delosh v Amyot*, 186 AD3d 1793, 1796 [3d Dept 2020] [internal quotation marks and citations omitted]).

Garry, P.J., Fisher, Powers and Corcoran, JJ., concur.

ORDERED that the judgment is reversed, on the law, without costs, and matter remitted to the Supreme Court for a new trial.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large, stylized "R" and "M".

Robert D. Mayberger
Clerk of the Court