

[Products Liability Law Daily Wrap Up, DESIGN AND MANUFACTURING DEFECTS—MOTOR VEHICLE EQUIPMENT—Ga. App.: Suzuki fails to put brakes on \\$12.5M jury award to injured motorcyclist, \(Jul. 10, 2019\)](#)

Products Liability Law Daily Wrap Up

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By Pamela C. Maloney, J.D.

The trial court did not err in failing to grant the manufacturer a directed verdict because the evidence supported the jury's findings that a defect in the brake caused the injuries and that the company failed to provide adequate warnings.

Suzuki Motor Corp. was not entitled to a directed verdict following a jury verdict awarding an injured motorcycle driver and his spouse \$12.5 million in compensatory and loss-of-consortium damages because the evidence supported the jury's finding that the motorcycle's front brake was defectively designed, and that Suzuki failed to provide adequate warnings regarding the defect, the Georgia Court of Appeals held. With regard to the driver's cross-appeal, the appellate court determined that the trial court's reduction of the \$12.5-million award to reflect the percentage of fault apportioned to the driver was proper. The appellate court also upheld the trial court's finding that, in accordance with successor liability, Suzuki's American distributor remained liable for negligent failure to warn and negligent recall, and found that the trial court had not erred in admitting evidence of a recall involving the motorcycle as well as evidence of similar incidents ([Suzuki Motor of America, Inc. v. Johns](#), June 28, 2019, Rickman, B.).

The driver was riding a 2006 Suzuki GSX-R1000 motorcycle to work one morning when a tractor-trailer in front of him slowed down. As the driver applied his front brake to do the same, he experienced total failure of that brake and the bike failed to slow down. As a result, the driver was forced to rely on his rear brake, which caused his motorcycle to skid and swerve, after which the motorcycle hit a curb and the driver was thrown from the bike. The driver sustained permanent injuries to his neck, spine, and left hand.

After his release from a rehabilitation facility following spinal fusion surgery and a separate hand surgery, the driver received a recall notice from Suzuki warning of a dangerous safety defect in the motorcycle's front brake master cylinder. Asserting that his accident had been caused by a defect in the motorcycle's front brake master cylinder, he filed a lawsuit against Suzuki Motor Corporation (Suzuki), the Japanese manufacturer of the motorcycle, and its American wholesale distributor, Suzuki Motor of America, Inc. (SMAI)—a wholly-owned subsidiary of Suzuki—setting forth claims for strict product liability based on design defect, negligent failure to warn, and negligent recall. The driver's wife also filed a claim for loss of consortium.

Jury verdict. After finding that the driver and his wife had proven their design defect, negligent recall, and continuing-duty-to-warn claims by a preponderance of evidence, the jury awarded the driver \$10.5 million in compensatory damages. The jury further determined that the driver was 49 percent at fault for his injuries, that Suzuki was 45 percent at fault, and that SMAI was six percent at fault. The jury also awarded \$2 million in compensatory damages to the wife for loss of consortium (see [Products Liability Daily's February 23, 2018 analysis](#)). The trial court reduced both awards based on the jury's allocation of fault. Suzuki and SMAI appealed, and the driver cross-appealed the trial court's reduction of damages based on fault, which the driver argued had no applicability to an award based on strict liability.

Successor liability. On appeal, Suzuki argued that SMAI should have been dismissed from the lawsuit because it had not assumed liability for the driver's claims when it acquired its predecessor corporation's assets as part of a bankruptcy proceeding. Prior to trial, the trial court had granted summary judgment to SMAI on the design defect claims, concluding that SMAI was not a manufacturer for purposes of the strict liability action. However,

the trial court had denied summary judgment on the remaining claims against SMAI based, in part, on successor liability.

The appellate court refused to consider Suzuki's argument on appeal, holding that it was not possible to unwind the jury verdict as to any single defendant. In addition, the term "manufacturer" had not been defined in the jury charge, which referred to Suzuki and SMAI collectively as "manufacturers" throughout. Finally, the verdict form, by express consent of all parties, had not distinguished between the defendants when asking the jury to determine the liability associated with any claim. Thus, to the extent liability had been assessed to SMAI improperly, it was "invited error," the court concluded.

Intervening cause. Suzuki also argued that it should have been granted a directed verdict on the design defect claim because the driver's admitted failure to have replaced the brake fluid for eight years in contravention of instructions in the owners' manual was an intervening cause that broke the causal connection between the alleged defect and the driver's injuries. According to the appellate court, it remained undisputed that the defect in the brake cylinder—namely, the direct contact of the steel spring and the zinc piston which led to corrosion—was present in the motorcycle when the driver purchased it. Although Suzuki presented evidence that changing the brake fluid regularly might have reduced the possibility of the development of corrosion, the manufacturer also admitted that the majority of its customers did not follow a regular maintenance schedule, including changing the brake fluid, and that the customers' failure to do so was a well-known and established fact.

In addition, there was documentary evidence to support a finding that Suzuki was unable to determine conclusively that the corrosion would not have occurred if customer maintenance had been performed properly. Finally, there was evidence that the motorcycle's back brake—which had the same master cylinder design but included a rubber insulator—also had the same lack of maintenance history but was not corroded. In light of this evidence, the question of whether the driver's failure to replace the brake fluid was an intervening cause that broke the causal connection was squarely one for the jury, the appellate panel opined. Refusing to substitute its judgment for that of the jury, the panel upheld the trial court's refusal to grant Suzuki's motion for a directed verdict on the design defect claim.

The panel further opined that the driver's admitted failure to follow the maintenance schedule as laid out in the owner's manual did not bar his design defect claim. In light of evidence that given the cylinder's design, corrosion still could have occurred even if the driver had been diligent in changing his brake fluid according to the maintenance schedule, when combined with evidence that the driver had never changed the fluid in the rear brake (which included the same design with the exception of the rubber insulator and yet was not corroded), was sufficient to raise a question for the jury, which had found in the driver's favor.

Failure to warn. The appellate court also found no error in the trial court's refusal to grant Suzuki's motion for a directed verdict on the negligent failure-to-warn claim. The record contained evidence—including customer complaints ranging from a decrease in pressure to a total loss of pressure in the front brakes—that raised a jury question as to whether Suzuki had knowledge of a defective condition in the motorcycle's brake cylinder that gave rise to a duty to warn. Although Suzuki claimed that it was unaware of the exact nature of the defect, the evidence supported a finding that at the very least, Suzuki should have known that a defect in the master cylinder's design resulted in corrosion of the brake piston and produced corrosive byproducts that could interfere with the proper functioning of the front brake.

Expert testimony. Suzuki further argued that the driver had failed to present expert testimony to support his allegations that the warnings provided in the owner's manual were inadequate or defective. However, there was nothing in the record to suggest that a determination as to the adequacy of the warnings provided in the owner's manual was beyond the understanding of the average juror. Therefore, no expert testimony on the issue was required or would have been proper, the appellate court concluded.

Voluntary recall evidence. In addition, the trial court did not commit error in admitting evidence of Suzuki's voluntary recall. Suzuki's argument that the recall was meant to address a different issue, i.e., a buildup of hydrogen gas, which could result in spongy brakes, and not a buildup of zinc formate, which could lead to total brake failure, and that, as such, its admission was prejudicial, took a very narrow view of the recall. Both the

defect that was the subject of the recall and the defect in the driver's motorcycle involved corrosion that resulted from a defect in the design of the master cylinder which, in turn, interfered with the functioning of the front brake. As such, its admission was not error.

Evidence of other accidents. Similarly, the trial court did not err in admitting evidence of similar incidents, especially in light of Suzuki's repeated denials that the design defect at issue in the recall could result in a total loss of front brake pressure. The similarities between the other two incidents in which two owners of Suzuki GSX-R motorcycles experienced complete front brake failure were sufficient to support a finding that the motorcycles shared a common defect and that those defects shared a common causation.

Reduction of damage award. The driver's argument that the jury's damage award should not have been reduced in accordance with the allocation of fault was based on the common-law principle that a plaintiff's comparative negligence was not a defense to a strict products liability claim. According to the court, the issue was how that principle was impacted by Georgia's apportionment statute, which directs trial courts in personal injury actions to reduce the amount of damages awarded in proportion to the plaintiff's percentage of fault. The statute does not refer to a plaintiff's negligence and it was not clear from the text of the statute what impact it had on common law principles as they related to claims for strict liability, the court explained. However, in a case involving criminal assault, the Georgia Supreme Court had held that in enacting the apportionment statute, the legislature clearly intended to displace the common law of apportionment and that if the legislature had intended to exclude any acts from the statute, it would have done so. Therefore, the trial court did not err in reducing the damage award on his claim for strict products liability. In addition, because his wife's loss-of-consortium claim was derivative and arose out of the tort committed against the driver, the reduction in her award also was proper, the court held.

The case is Nos. [A19A0108](#) and [A19A0109](#).

Attorneys: Chilton Davis Varner (King & Spalding) for Suzuki Motor of America, Inc. Randy Edwards (Cochran & Edwards, LLC) for Adrian Johns.

Companies: Suzuki Motor of America, Inc.; Suzuki Motor Corp.

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