Products Liability Law Daily Wrap Up, TOP STORY—MOTOR VEHICLE EQUIPMENT—S.D.N.Y.: General Motors' experts overcome injured driver's circumstantial evidence of defect in airbag and seat belt, (Nov. 16, 2018)

Products Liability Law Daily Wrap Up

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By Pamela C. Maloney, J.D.

The driver of a 2005 Chevrolet Avalanche failed to submit sufficient circumstantial evidence to raise a question of fact under either the malfunction theory or the doctrine of res ipsa loquitur to overcome testimony by the manufacturer's experts that neither the airbag nor the seat belt had been defectively designed or manufactured, a federal district court in New York ruled, granting the manufacturer's motion for summary judgment (*Michael v. General Motors Co.*, November 13, 2018, McMahon, C.).

The driver sustained debilitating injuries, including traumatic brain injury, memory issues, partial hearing loss and pain, when his vehicle, which had been manufactured by General Motors Company, was struck by another vehicle. As a result of the collision, the driver's vehicle crossed several lanes of traffic and collided with a concrete barrier. Although the driver allegedly was wearing his lap belt and harness, he was propelled through the driver's side window and struck the barrier. The driver filed a lawsuit against General Motors, alleging that the airbag had failed to deploy and that the seat belts had failed to restrain him. He further alleged that his injuries would have been far less severe if the airbag and seat belt had not been defective. General Motors moved for summary judgment arguing that the driver had failed to prove his claim with competent and admissible evidence.

Manufacturing defect claims. Although the complaint did not expressly state the driver's theory of product liability, allegations that the airbag had failed to deploy, that the seat belt did not perform as intended, and that his injuries would have been less severe had the airbag worked as intended stated a claim for a manufacturing defect. Although the driver failed to produce direct evidence of a manufacturing defect in the vehicle, the airbag, or the seat belt, the court advised that he could proceed under the malfunction theory using circumstantial evidence in order to prove that the vehicle did not perform as intended and to exclude all other causes of the accident that were not attributable to the manufacturer's conduct.

However, the driver failed to submit any evidence to raise a triable issue of fact on the issue of whether the vehicle failed to perform as intended. In support of his claim that the airbags contained a manufacturing defect, the driver had relied on the manufacturer's experts who testified that frontal airbags were intended to deploy in the event of a frontal—or near frontal—impact. Photographs of the vehicle further corroborated that the accident affected the front of the vehicle. If uncontroverted, this evidence would have been enough to raise a question of fact. Unfortunately, the manufacturer's experts were able to overcome the driver's theory, concluding that based on the photographs and the police report, the frontal impact in this case did not meet the criteria for deployment of the frontal airbags.

Similarly, the manufacturer's experts introduced evidence that the driver's injuries were consistent with the proper functioning of a seat belt. Even assuming that he had been wearing his seat belt as alleged, the crash forces would have moved him in the direction of impact and, given the close proximity of his head to the driver's side window, his head could have reached and impacted the window even though the seat belt was locked. Thus, summary judgment was proper with respect to the driver's strict liability claim that the airbag and the seat belt contained manufacturing defects.

Res ipsa loquitur. The driver's argument that under the doctrine of res ipsa loquitur, the airbag's non-deployment was an event that would not have occurred absent the manufacturer's negligence in design or construction also failed to create a triable issue of fact. The manufacturer's experts had testified that an airbag's

non-deployment in certain collisions was consistent with the intended design and construction, explaining that deployment was not always beneficial because it generated forces which could injure the vehicle's occupants. Applying a risk-benefit analysis, the manufacturer's engineers had determined the appropriate thresholds for deployment. Finding that this was not part of a limited subset of cases, i.e., a head-on collision, in which an airbag malfunction would be self-evident, and noting that the vehicle had been in use for approximately seven years at the time of the accident, had been involved in another accident, and had been serviced several times by parties other than the manufacturer, the court concluded that the evidence did not support an inference that the airbag's failure to deploy was a result of negligence during the manufacturing process.

The fact that the vehicle had been outside the exclusive control of the manufacturer for several years also made it impossible for the jury to infer that the driver's partial ejection from the vehicle, despite wearing his seat belt, was an event that ordinarily did not occur in the absence of the manufacturer's negligence in designing the seat belt. Thus, the court also granted summary judgment on the driver's negligence claims.

Design defect claim. With regard to the driver's allegation that the seat belt was defectively designed, the court advised that he was required to prove that the seat belt was not reasonably safe because there was a substantial likelihood of harm and that it was feasible to design the product in a safer manner. Although there was a genuine issue of fact as to whether the seat belt should have been designed in such a way that would have prevented the driver's head from hitting the car window, especially in situations in which the airbag was designed not to deploy, there was no evidence that there was a technically feasible way to design a seat belt that would have prevented that from happening. Thus, the court granted the manufacturer's motion for summary judgment on the issue of whether the seat belt had been defectively designed.

The case is No. 15 Civ. 3659 (CM).

Attorneys: Marcos Michael, pro se. Steven Robert Kramer (Eckert, Seamans, Cherin & Mellott LLC) for General Motors Co.

Companies: General Motors Co.

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