

Products Liability Law Daily Wrap Up, DAMAGES—MOTOR VEHICLES—D.P.R.: Comparative fault applies to allocation of liability in enhanced injury cases, (Feb. 4, 2015)

By Pamela C. Maloney, J.D.

Section 16 of the Restatement (Third) of Torts: Products Liability, commonly known as the *Fox-Mitchell* rule, applied to a strict products liability action in which it was alleged that a design defect caused enhanced injuries to a driver who was killed in an under-ride accident, the U.S. District Court for the District of Puerto Rico held. In accordance with this rule, the jury would be instructed to apportion liability among the defendants, the decedent and other culpable parties (*Quilez-Velar v. Ox Bodies, Inc.*, February 2, 2015, Carreño-Coll, S.).

Background. Maribel Quilez-Bonelli (Quilez) was killed when the hood of her 2004 Jeep Liberty under-ride a dump truck that was stopped in the left lane of an expressway while municipal employees did maintenance work in the area. Quilez apparently realized at the last minute that the truck ahead of her was not moving and she swerved to avoid a collision. However, the driver's side of her Jeep impacted the truck and the truck's bumper penetrated the driver's side roof and windshield of the Jeep, striking Quilez in the face and head. Relatives of Quilez filed a product liability action against Ox Bodies, Inc. and Truck Bodies & Equipment Int'l. Inc., the companies that designed and manufactured the dump body of the truck, claiming that the company failed to properly design or manufacture the dump truck's rear guard. In an earlier decision in this matter, the [federal district court](#) found that Puerto Rico Supreme Court would apply the crashworthiness doctrine and refused to summarily relieve the designers-manufacturers of the dump body of a truck from liability for Quilez's death. The court also refused to summarily dismiss the motorist's negligent design claim.

Following this decision, the defendants then asked the court to clarify whether section 16 of the Restatement (Third) of Torts: Products Liability, commonly known as the *Fox-Mitchell* rule, applied to the case at hand. The defendants claimed that the estate's position that comparative fault was irrelevant to its strict liability claims and that the jury only needed to find that a design defect existed demonstrated its misunderstanding of this rule.

Section 16 rule. Section 16 of the Restatement (Third) provides that when "a design defect enhances a plaintiff's injury beyond that which would have been resulted from other causes, and where that injury is a non-divisible one, like death, the manufacturer 'is liable for *all* of the plaintiff's harm attributable to the defect *and other causes.*'" Therefore, the manufacturer is "jointly and severally liable . . . with other parties who bear legal responsibility for causing the harm," as that liability would be "determined by applicable rules of joint and several liability" in the forum.

The court explained that if section 16 applied, the estate would only need to prove that, regardless of other causes, the vehicle's defective design was a "substantial factor" in increasing her harm. Once that was proven, the defendants would be jointly and severally liable with any other tortfeasors for all of Quilez's injuries.

Adoption of section 16 by Puerto Rico. Noting that the Puerto Rico Supreme Court had not explicitly followed either section 16 or the *Fox-Mitchell* rule, the federal court chose to follow it in this case because Puerto Rico had consistently relied on California Supreme Court precedent in developing its products liability law and California is among the jurisdictions that follow the rule. In addition, both the First Circuit and the Restatement (Third) recognize this rule as the majority rule.

Puerto Rico apportionment rules. Having determined that section 16 would apply, the court turned to the question of what joint and several liability rules applied to the case. According to the federal court, Puerto Rico law explicitly permits comparative negligence in strict products liability cases. Because Puerto Rico follows a regime in which liability is apportioned among the joint tortfeasors, the jury would be instructed to apportion liability between the defendants, Quilez, and the Municipality of San Juan. The court further instructed that the parties were prohibited from making any statements to the jury inconsistent with the court's guidance on this issue.

The case is Civil No. 12-1780(SCC).

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Companies: Ox Bodies, Inc.; Truck Bodies & Equipment International, Inc.

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