Products Liability Law Daily Wrap Up, TOP STORY—MOTOR VEHICLES—Pa. Super.: Evidence of government standards still inadmissible in Pennsylvania strict liability cases, (Sept. 12, 2016)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

A trial court should have instructed the jury to disregard evidence of federal motor vehicle safety standards when considering strict liability claims against a car manufacturer and the maker of a child car seat because they were inadmissible, a Pennsylvania state court ruled in vacating the decision in favor of the manufacturers and ordering a new trial. The prohibition on evidence of federal and industry standards in strict liability cases was not overruled by the state high court's decision in *Tincher v Omega Flex, Inc.* (*Webb v. Volvo Cars of North America, LLC*, September 9, 2016, Stabile, V.).

While making an "unsafe" left turn, a 1997 Volvo 850 sedan was hit on the rear passenger side door by a Chrysler PT Cruiser. A two-month old child who was strapped into a SnugRide car seat manufactured by Graco Children's Products, Inc., died as a result of the accident. The father of the child brought negligence and strict products liability claims against Volvo, Graco, the driver of the PT Cruiser, and the driver of the Volvo (who was the mother of the child and who was not married to the father at the time). After the defense presented all of its evidence at trial, the court directed a verdict in favor of the Chrysler driver. The jury then found in favor of Volvo and Graco and against the mother. The father raised seven issues on appeal, including that a new trial was required due to faulty jury instructions related to Federal Motor Vehicle Safety Standards (FMVSS) and the father's strict liability claims. According to the father, the trial court should have instructed the jury to disregard evidence of FMVSS after his negligence claims were nonsuited because they were no longer relevant.

Compliance with government standards. Evidence of compliance with government standards was still inadmissible in a strict liability products liability action under Restatement (Second) of Torts Sec. 402A, the court ruled in ordering a new trial. The FMVSS evidence was inadmissible under *Gaudio v. Ford Motor Co.* and *Lewis v. Coffing Hoist Div., Duff Norton Co., Inc.* These cases were not overruled by the Pennsylvania Supreme Court's ruling in *Tincher v. Omega Flex, Inc.* [see *Products Liability Law Daily*'s November 21, 2014 analysis], and, thus, remained good law, even though *Gaudio* relied on *Lewis* and *Lewis* had relied upon *Azzarello v. Black Bros. Co.*, which was overruled by *Tincher*. The *Azzarello* court had stated that "negligence concepts have no place in a case based on strict liability," but this is no longer the law in Pennsylvania due to *Tincher*. As a result, Volvo, Graco, and the two drivers argued *Tincher* had overruled by implication the prohibition of industry or government standards evidence in a strict liability design defect case because this prohibition had its roots in *Azzarello*. However, the *Tincher* decision did not undermine *Lewis*'s rationale for this prohibition, and the court reasoned that the continued existence of this ban should be addressed in another post-*Tincher* case. In the present case, the FMVSS evidence was admitted because it was relevant to the negligence claims, and after the negligence claims were nonsuited by the court, the trial court should have issued a jury instruction to disregard it because it was no longer relevant. Due to the prominence of this evidence in the trial and the complexity of the case, this error was not harmless.

Other issues. The father's argument that the trial court's exclusion of rebuttal testimony from his expert on his testing of the Volvo regarding FMVSS 214 was now moot. The trial court did not err in excluding as cumulative Volvo advertisements praising the safety of other Volvo models. If the appellate court were to consider the merits of the trial quashing of a subpoena of Volvo witnesses as moot, it would have found the evidence cumulative of evidence the father gathered from Volvo witnesses at trial. The admission of testimony from two experts for Volvo and Graco that the child would not have survived even with rear door bars in the car and additional head

restraint padding in the car seat because their opinions on the forces that caused the child's injuries were well within their expertise. Finally, the issue of whether the trial court erred in submitting a verdict slip to the jury asking whether the mother's conduct contributed to the child's injuries was not preserved on appeal.

The case is No. 1367 EDA 2014.

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Companies: Volvo Cars of North America, LLC; Graco Children's Products, Inc.

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