

## [Products Liability Law Daily Wrap Up, TOP STORY—MOTOR VEHICLE EQUIPMENT—D. S.C.: Ford's request for new trial in airbag defect case rejected, \(Aug. 31, 2017\)](#)

Products Liability Law Daily Wrap Up

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By Susan Engstrom

Sufficient evidence supported a jury verdict against Ford Motor Company in a crashworthiness case brought by the wife of an SUV driver who was injured in a one-car accident during which the vehicle's airbag failed, the federal court in South Carolina held. The wife presented proof that there was a design defect in the SUV's restraint system and that a reasonable juror could find Ford liable for the wrongful death of her husband, who committed suicide several months after the accident. Ford's objections to the court's evidentiary rulings and jury instructions failed, as did its assertion that comparative fault was a defense to strict liability and breach of warranty claims. Thus, the manufacturer's motions for judgment as a matter of law, for a new trial, and to alter the judgment were denied (*Wickersham v. Ford Motor Co.*, August 30, 2017, Norton, D.).

The SUV driver, who had a history of mental illness, was injured in a single-car accident when his 2010 Ford Escape hit a tree after he made a left turn. He sustained significant injuries, including the eventual loss of one eye, and he suffered severe pain as a result of the accident. Seventeen months later, he committed suicide. His wife alleged that her husband's injuries and suicide were caused by the Escape's defective airbag restraint system, which deployed the airbag too late. She filed suit against Ford in South Carolina federal district court, asserting claims both individually and as her husband's representative for negligence, strict liability, and breach of warranty.

**Jury verdict.** The matter was tried before a jury, which returned a verdict in the wife's favor after finding that the airbag system in her husband's 2010 Ford Escape was defectively designed and that this defect was the cause of his injuries and eventual suicide [see *Products Liability Law Daily's* August 30, 2016 [analysis](#)]. The total award was \$4.65 million. However, the jury also found that the driver was at fault in his use of the Escape's restraint system and that this fault was a proximate cause of his injuries. The jury attributed 30 percent of the fault to the driver, and 70 percent to Ford. The automaker subsequently moved for judgment as a matter of law, for a new trial, and to alter or amend the judgment.

**Motion for judgment as a matter of law.** In its motion for judgment as a matter of law, Ford argued that the wife failed to identify an actual defect in the Escape's restraint system. The wife's expert, who had worked on the development of airbag systems at Delco (a division of General Motors), opined that the vehicle's airbag should not have deployed at all or, at the very least, should not have deployed so late into the crash, and that this malfunction was caused by either a defect in the calibration of the algorithm or the design of the algorithm itself. Contrary to Ford's assertion, the expert's testimony did not infringe on the rule that "one cannot draw an inference of a defect from the mere fact [that] a product failed." The expert highlighted various pieces of evidence supporting his defect opinion—namely, Ford's testing data. Moreover, his opinions derived from his understanding of how a restraint control module (RCM) system can be designed and his assessment of how the RCM system actually performed in this case. Using that knowledge, he was able to draw inferences about the algorithm's design.

The court also rejected Ford's argument that the wife failed to present sufficient evidence of a feasible alternative design. The wife's expert testified that he had used both of his alternative designs—a raised-threshold approach and increased variability-based calibration—in his work at Delco. In light of this evidence that other manufacturers utilized the expert's alternative designs, there was evidence that the designs were feasible in light of costs, safety, and functionality. Thus, the wife presented sufficient evidence of a design defect.

Ford also argued that it could not be held liable for the driver's suicide, objecting to the court's legal determination that a defendant may be held liable for a decedent's wrongful death by suicide when the decedent suffered an uncontrollable impulse that was proximately caused by the defendant's wrongful conduct. Ford pointed to an admission by the wife's psychiatry expert that the decedent knew what he was doing when he committed suicide. Under the uncontrollable impulse test, however, it does not matter that the decedent intended the consequences of his actions because intent does not necessarily constitute "control" within the meaning of the rule. Thus, the fact that the decedent in this case knew what he was doing did not preclude a finding that he was under an uncontrollable impulse. Rather, the court concluded that a reasonable juror could have found that the decedent's capacity to resist his suicidal impulse was so severely impaired that he lacked the ability to control that impulse. Accordingly, the wife presented sufficient evidence for a reasonable juror to find Ford liable for her husband's wrongful death.

**Motion for new trial.** Contrary to Ford's assertion, the court did not err by admitting evidence of the amounts paid to Ford's experts and their companies in other cases because the experts were owners of their respective firms. An owner's interest in his or her firm would be stronger than an ordinary employee's and, thus, the owner's bias would be affected more by the overall relationship between his or her firm and the client—not just what the client was paying in the specific case at issue. The court also did not err by allowing testimony referencing other airbag cases, as it was clear that the focus of this testimony was on the experts' biases, and not on the Escape at issue in this case. Also rejected were Ford's assertions that the court erred by: allowing the wife to engage in unfairly prejudicial closing arguments; allowing the driver's treating physician to offer injury causation opinions; allowing the wife to offer rebuttal testimony; admitting evidence of the driver's suicide; instructing the jury that Ford could be held liable for the driver's suicide; and instructing the jury on the aggravation of a pre-existing condition. Thus, Ford's motion for a new trial was denied.

**Motion to alter or amend the judgment.** Ford asserted that the jury's total award of \$4.65 million should be reduced by 30 percent to reflect the jury's finding with respect to the driver's comparative fault. According to Ford, because the elements required to prove strict liability are included in the elements of a negligence claim, failing to apply comparative fault to a strict liability claim would effectively remove the comparative fault defense from products liability actions. However, the court determined that the South Carolina Supreme Court would decide that comparative fault is not a defense to strict liability and breach of warranty claims in a crashworthiness action such as this one, even when the user was negligent in his use of the defective component. Strict liability and breach of warranty claims are "statutory constructs," and the state legislature has not added comparative fault as a defense under either statutory scheme. Similarly, it would be just as inconsistent in this case to look to the driver's fault while ignoring the manufacturer's fault. Thus, Ford's motion to alter or amend the judgment was denied.

The case is Nos. [9:13-cv-1192-DCN](#) and [9:14-cv-0459-DCN](#).

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Companies: Ford Motor Co.

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