

**Products Liability Law Daily Wrap Up, TOP STORY—CAUSATION—
S.C. Sup. Ct.: Traditional causation rules apply to wrongful death,
crashworthiness claims following injured motorist's suicide, (Jul. 25, 2019)**

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By Pamela C. Maloney, J.D.

Injured motorist suicide must be considered under proximate cause rules, not intervening cause exception.

Whether the widow of a driver who committed suicide several months after being injured in an automobile accident had a valid claim for wrongful death must be determined by using traditional proximate cause principles, the South Carolina Supreme Court held in response to a question certified by the U.S. Court of Appeals for the Fourth Circuit. The state high court also determined that in a crashworthiness case, the driver's own actions contributing to the enhancement of his injuries, as opposed to those that caused the accident itself, must be compared to the tortious conduct of the automaker in determining liability (*Wickersham v. Ford Motor Co.*, July 24, 2019, Few, J.).

The 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 drove through a T-intersection. 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 a South Carolina state court, asserting claims both individually and as her husband's representative for negligence, strict liability, and breach of warranty. The case was removed to federal court where a jury returned a verdict in the wife's favor after finding that the airbag system in her husband's vehicle 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. The federal district court denied the motions, concluding that there was sufficient evidence to support the jury's verdict [see *Products Liability Law Daily's* August 31, 2017 [analysis](#)].

Ford appealed and the U.S. Court of Appeals certified the following questions to the state supreme court [see *Products Liability Law Daily's* June 15, 2018 [analysis](#)]:

1. Does South Carolina recognize an "uncontrollable impulse" exception to the general rule that suicide breaks the causal chain for wrongful death claims? If so, what is the plaintiff required to prove is foreseeable to satisfy causation under this exception—any injury, the uncontrollable impulse, or the suicide?
2. Does comparative negligence in causing enhanced injuries apply in a crashworthiness case when the plaintiff alleged claims of strict liability and breach of warranty and was seeking damages related only to the plaintiff's enhanced injuries?

Suicide and causation. As a general rule, suicide was not recognized by the South Carolina state courts as an intervening act that broke the chain of causation. Instead, the state courts had applied traditional principles of proximate cause to individual factual situations when considering whether the personal representative of an estate had a valid claim form wrongful death from suicide. In light of this general rule, the state supreme court

restated the first question as asking the court to explain how the state's traditional proximate cause analysis applied to an alleged wrongful death from suicide.

Under traditional proximate cause principles, the question of whether a suicide was a foreseeable consequence of tortious conduct was initially a question of law for the court to decide. If the court determined that a particular suicide was not unforeseeable, it then became a question for the jury to determine legal cause, *i.e.*, foreseeability. The jury must also consider causation-in-fact, including whether the defendant's tortious conduct caused the decedent to suffer from an involuntary and uncontrollable impulse to commit suicide. Applying this analysis to the case at bar, the state high court explained that the wife was required to prove the following sequence of events: Ford's defective design of the airbag enhanced the driver's injuries, which in turn caused him to suffer severe pain that he would not otherwise have had, which in turn caused him to experience an uncontrollable impulse to commit suicide, which in turn caused him to take his own life involuntarily, which he would not have done but for Ford's defective design.

Enhanced injuries. Turning to the second question, which asked whether comparative negligence in causing enhanced injuries applied in a crashworthiness case, the state supreme court again restated the question, addressing it as one of proximate cause and asking whether a plaintiff's actions, which caused only the enhancement of his injuries and not the accident itself, could be proximate or were they legally remote. The state high court concluded that when there was evidence in a crashworthiness case that the plaintiff's own actions—although not a cause of the accident itself—caused his enhanced injuries, comparative principles must be employed to determine the defendant's share of liability for the plaintiff's enhanced injuries. The court added that regardless of whether the theory of recovery sounded in negligence, breach of warranty, or strict liability, the burden in this case was on the widow to prove that the automaker's tortious conduct proximately caused a specific share of the driver's enhanced injuries.

The case is [No. 2018-001124](#).

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Companies: Ford Motor Co

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