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## THE BASSETT BULLETIN™

### DESIGN DEFECTS OF A PRODUCT — DOES UTILITY OUTWEIGH RISK?

In *Timpte Industries, Inc., et al. vs. Robert Gish, et al.*, 2009 Tex. LEXIS 320; 52 Tex. Sup. J. 827, the Texas Supreme Court has reaffirmed prior holdings applying a risk-utility analysis to determine whether a product was defectively designed so as to render it unreasonably dangerous. The *Timpte* case illustrates application of risk-utility analysis in the context of an allegedly defectively designed truck-trailer.

### FACTS OF THE CASE

Robert Gish was seriously injured when he fell from the top of a trailer into which he was attempting to load fertilizer. He sued Timpte Industries, the manufacturer of the trailer, alleging, among other things, that several features of the trailer were defectively designed, rendering the trailer unreasonably dangerous. The trial court granted a No-Evidence Summary Judgment in Timpte's favor, but the court of appeals reversed solely on the ground that there was *some evidence* upon which reasonable fact finders could disagree as to whether the trailer's design was both unreasonably dangerous and a cause of the Plaintiff's fall.

### ALLEGED DESIGN DEFECTS

The Plaintiff alleged that the trailer contained two design defects:

- ★ The top two rungs of the trailer's ladders, attached to the front and rear of the trailer, allowed a person to climb atop the trailer; and
- ★ The top rail of the trailer was too narrow and slippery and contained too many tripping hazards for a person to walk safely along it.

## DESIGN DEFECT ELEMENTS

To recover for a products liability claim alleging a design defect, a Plaintiff must prove that (1) the product was defectively designed so as to render it unreasonably dangerous; (2) a safer alternative design existed; and (3) the defect was a producing cause of the injury for which Plaintiff seeks recovery. *Hernandez v. Tokai Corp.*, 2 S.W.3d 251, 256-57 (Tex. 1999).

## RISK-UTILITY ANALYSIS

Texas courts have long applied a risk-utility analysis that requires consideration of:

- (1) the utility of the product to the user weighed against the likelihood of injury from its use;
- (2) the availability of a substitute product which would meet the same need and not be unsafe or unreasonably dangerous;
- (3) the manufacturer's ability to eliminate the unsafe character of the product without seriously impairing usefulness or significantly increasing costs;
- (4) the user's anticipated awareness of the dangers inherent in the product and their avoidability because of general public knowledge of the obvious condition of the product, or the existence of suitable warnings, and
- (5) the expectations of the ordinary consumer.

Risk-utility analysis does not operate in a vacuum, but rather in the context of a product's intended use and its intended users. Whether the risk of injury is common knowledge is a question of law, not fact. The Texas Supreme Court has determined that the proper inquiry is whether an average user of the product would recognize the risk entailed by the use of the product. The consumer's perspective has been found to be that of an ordinary user of the product, which is not necessarily the same as that of an ordinary person unfamiliar with the product.

## THE SUPREME COURT'S RULING

The Supreme Court, after applying risk-utility factors, confirmed that the design of the Timpte trailer was not defective as a matter of law. The Court's ruling was based upon the fact that Timpte warned users to always maintain three-point contact (i.e., two feet and one hand) with the trailer ladder, which would be impossible for a user standing on the top rail, as the Plaintiff was at the time of his fall from the trailer. The Court also found that increasing the width of the top rail would increase the trailer's weight thus reducing its utility.

The Supreme Court concluded that the risk of injury from use of the ladder was slight, the trailer's warnings were adequate, and any risk from the ladder stemmed only from the risk that a user would ignore both Timpte's warnings and open and obvious dangers. Accordingly, the Court found no evidence that the design defects alleged by the Plaintiff rendered the trailer unreasonably dangerous. As a result, the Court reversed the court of appeals judgment and rendered judgment reinstating the trial court's summary judgment.

## LESSONS LEARNED

The decision in *Timpte* reflects a refreshing application of common sense in the Court's analysis of a products liability design defect claim. In addition to the Court's observation that the risk of falling from the top of a trailer while trying to balance on a five inch strip of extruded aluminum is obvious to the average user of the trailer, this case also establishes that:

1. Risk-utility analysis, in the context of a design defect products liability claim, is determined from the perspective of an ordinary user of the product;
2. Whether the risk of injury is common knowledge to the community of a product's users is a question of law, not fact (thus providing the opportunity for disposition of a design defect case through Summary Judgment); and
3. The proper inquiry to determine whether the risk of injury is common knowledge to the community of users is whether an average user of the product would recognize the risk entailed by the use of the product.

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