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IS YOUR PRODUCT DEFECTIVE?

At the end of a trial, the jury is given a list of questions and definitions that are applicable to the trial. In civil litigation, this is how the jury decides liability to each party and what damages, if any, will be awarded. This list of questions and damages is called a Jury Charge and the majority on the questions and definitions come from the Texas Pattern Jury Charges.

In a recent Texas Supreme Court case, [*Ford Motor Co. v. Ledesma*, 242 S.W.3d 32 \(Tex. 2007\)](#), the Court looked at a products liability case and announced new rules for how a manufacturing defect will be defined for a jury. This definition will require Plaintiffs to show that the product deviated from the original plan or specifications of the manufacturer. This deviation from how a manufacturing defect question was typically presented to jurors may be more beneficial to Defendants because of this additional burden to Plaintiffs.

BACKGROUND FACTS

In March 1999, Tiburicio Ledesma, Jr., purchased a new Ford F-350 Super Duty pickup truck for his construction business. The truck had four rear tires, two on each side, surrounded by fiberglass fenders extending beyond the sides of the truck.

On June 5, 1999, Ledesma turned onto a two-lane street and began to accelerate. He testified that after shifting gears, the truck suddenly began to lurch, and he lost control, striking two parked cars that were on the side of the street. Ledesma's truck then hit the street curb and came to rest. At the time of the accident, Ledesma had approximately 4,100 miles on the truck.

There was testimony at the trial court level that power from the truck engine is conveyed to the rear axle by the drive shaft, which connects the transmission in the front of the truck with the differential/rear axle assembly in the rear. In turn, the rear-axle housing is attached to two sets of rear leaf springs by u-bolts, which wrap around the axle housing and are bolted to a rear spring plate that sits on top of the leaf-spring assembly.

At trial, both parties agreed that the truck's rear leaf spring and axle assembly came apart and that this separation caused the drive shaft to dislodge from the transmission. However, the main dispute turned on when and why this malfunction occurred and whether it caused the collision or resulted from it.

In other words, did a manufacturing defect trigger the right rear-axle displacement and cause Ledesma to lose control of the truck and strike the parked cars *or* did the right rear axle detach when Ledesma struck the parked cars and curb?

PROCEDURAL BACKGROUND

At trial, Ledesma's story was that he lost control of the truck when the truck's drive shaft separated from the transmission and "pronged" on the pavement, causing him to hit the parked cars. Ledesma also presented two expert witnesses to support this claim.

Ford presented an expert to support its theory that the axle-to-spring attachment failed, not because of a manufacturing defect, but because of the forces exerted on it when Ledesma struck the parked cars and curb.

The jury sided with Ledesma and found that a manufacturing defect caused the accident and that Ledesma was not contributorily negligent.

Ford Motor Company appealed the jury's verdict; however, the Court of Appeals affirmed.

JURY CHARGE

At trial, the jury affirmatively answered the following jury question taken out of the Texas Pattern Jury Charge:

Was there a manufacturing defect in the 1999 Ford F-350 pickup truck at the time it left Ford's possession that was a producing cause of the June 5, 1999 incident in question?

A "defect" means a condition of the product that renders it unreasonably dangerous. An "unreasonably dangerous" product is one that is dangerous to an extent beyond that which would be contemplated by the ordinary user of the product, with the ordinary knowledge common to the community as to the product's characteristics.

"Producing cause" means an efficient, exciting, or contributing cause that, in a natural sequence, produces the incident in question. There may be more than one producing cause.

Ford objected to this jury question because the above question did not ask the jury whether the product deviated, in its construction or quality, from its specifications or planned output in a manner that rendered it unreasonably dangerous? In other words, did the truck in this case do something that Ford never intended it to do when it was put together and it caused a dangerous condition?

In this case, Ledesma was arguing that his truck had a manufacturing defect. That means that Ledesma had to prove that there was not just a defect with his truck, but rather that the Ford truck did something that Ford never intended it to do and that made it dangerous. This differs from a design defect where the Plaintiff must prove that there is a safer way to manufacture a product. That was not the situation with this case.

If a Plaintiff is taking the position that a product has a manufacturing defect, then he/she now must prove to the jury that the product deviated from the manufacturer's intentions in a way that made the product dangerous. In order to do this, the Court added that expert testimony is essential because something along these lines may be too complicated for a jury to decipher.

POINTS TO TAKE AWAY

If you find yourself in this type of litigation, here are some take away tips:

You will need an expert, and more importantly, the Plaintiff will need an expert to prove that your product has a manufacturing defect. According to the Texas Supreme Court, juries should not be generally free to infer a product defect and injury causation from an accident or product failure alone, without any proof of the specific deviation from design that caused the accident.

Prior to the time of trial, you should confirm that the Plaintiff has retained an expert who will testify as to how the product deviated from the manufacturer's plans or specifications. If not, then you and your attorney should consider a Motion for Summary Judgment arguing that the Plaintiff has not produced sufficient evidence as to how the product deviated from the manufacturer's plans or specifications.

At the jury charge conference, this happens typically at the trial and before the jury charge is given to the jury, if the trial court judge does not submit a proper jury charge question to the jury, your attorney should tell the judge (1) why he or she does not agree with the charge and (2) ask the judge to rule on the objections to the charge. In other words, give the trial judge the chance to fix the charge. If he does not, then you have made your objections on the record and protected the record so that you can appeal the jury verdict if you so desire.

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