



News & Updates

ILLINOIS SUPREME COURT REJECTS POST-SALE DUTY TO WARN, OVERTURNS \$43 MILLION JURY VERDICT AGAINST FORD

Late last month, the Illinois Supreme Court threw out a \$43 million award, affirmed by the Illinois intermediary appellate court, given to plaintiffs in a post-collision, fuel-fed fire case. The reversal highlights for manufacturers the significant but not dispositive role compliance with industry standards can play against plaintiffs' claims of negligence, and it upholds that manufacturers have no duty to warn of defects in cases where there is no actual or constructive knowledge of a defect when the product leaves the manufacturer's control.

Mr. and Mrs. Jablonski, the elderly plaintiffs, were stopped on the interstate in a construction zone when their 1993 Lincoln Town Car was hit from behind by a Chevrolet Lumina. The Lumina hit the Town Car at 55 to 65 miles per hour and there was no evidence of any pre-impact braking. During the collision, a large pipe wrench that was in the Town Car's trunk penetrated the trunk and punctured the car's fuel tank. A fire ensued. Mr. Jablonski died as a result of the fire and Mrs. Jablonski suffered severe burns and subsequent disfigurement. Mrs. Jablonski was awarded \$23.1 million in compensatory and \$15 million in punitive damages, and her husband's estate was awarded compensatory damages of about \$5 million.

Plaintiffs initially alleged that Ford was negligent and strictly liable because Ford equipped the 1993 Town Car with a vertical behind-the-axle fuel tank, that it failed to shield the vertical behind-the-axle tank and that it failed to warn consumers of the risk of trunk contents puncturing the fuel tank. However, after the close of evidence, plaintiffs abandoned their strict liability claims and alleged that Ford was liable for negligent design and willful and wanton conduct based on the following: Ford failed to locate the fuel tank over the rear axle or forward of the rear axle; Ford failed to shield the fuel tank to prevent punctures by contact from items in the trunk; and Ford failed to warn of the risk of trunk contents puncturing the fuel tank. Additionally, the trial court instructed the jury that they were to consider whether or not Ford was negligent for failing to inform the plaintiffs of certain remedial measures taken by Ford after the Town Car was manufactured but before the plaintiff's accident. Note that this theory had not been raised by the plaintiffs until the close of evidence.

Although Ford argued that its compliance with the Federal Motor Vehicle Safety Standards was enough by itself to defeat plaintiffs' negligence claims, the Supreme Court rejected this argument, holding that compliance with industry standards is important but only a factor to be considered when evaluating a product under the risk utility analysis. The court explained, "It is well settled that conformance to industry standards is relevant, but not dispositive on the issue of negligence."

The Supreme Court did rule, however, that plaintiffs did not present sufficient evidence from which a jury could conclude that Ford breached its standard of care. The court focused on several key pieces of evidence in concluding this, including the fact that Ford complied with and even exceeded the industry standards set for fuel system integrity; plaintiffs' expert's agreement with the National Highway Traffic Safety Administration's conclusion about the variability of fuel tank locations and the expert's admission that "you could probably make a good fuel tank in any location;" the fact that the puncture condition that occurred in plaintiffs' vehicle was so remote that it had never occurred in vehicles similar to plaintiffs' in the 15 years in which millions of those similar vehicles were on the road prior to 1993; plaintiffs' expert's admission that his shielding for the fuel tank was not proven out by crash testing or some other design process; and plaintiffs' expert's admission that the upgrade kit that Ford provided to later, different model police vehicles would not have prevented the condition that occurred in plaintiff's accident.

The Supreme Court refused to adopt a post-sale duty to warn in products liability cases. Prior to trial, plaintiffs had not even pled a post-sale duty to warn. Nevertheless, the trial court instructed the jury that "it could find Ford negligent for its failure to 'inform of the existence of the Trunk Pack and/or Trunk Pack recommendations'" that were developed a decade after the sale of plaintiff's 1993 Town Car. Plaintiffs urged the court to adopt the post-sale duty to warn discussed in section 10 of the Restatement 3rd of Torts: Products Liability (1998), despite the fact that Illinois had rejected this theory in the past. The Court here concluded that plaintiffs' post-sale duty to warn was not recognized in Illinois at the time of trial and therefore was legally defective and improperly submitted to the jury. The court even went so far to explain that even if it adopted the post-sale duty to warn set forth in section 10, plaintiffs failed to come forth with sufficient evidence to prove that a reasonable person would have provided a warning under section 10.

Finally, the court rejected plaintiffs' claim that Ford violated the voluntary undertaking doctrine when it provided a retrofit kit to police users who were experiencing post-crash fires in different Ford vehicles. Like the post-sale duty to warn claim, plaintiffs never raised this theory until trial. The court ruled that the jury instruction that plaintiffs submitted was a misstatement of the voluntary undertaking doctrine. Additionally, the fact that Ford provided a retrofit kit for police users of different vehicles did not create a duty toward other individual civilian customers.

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