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Case Study: Goodner V. Hyundai

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Law360, New York (September 8, 2011) -- As a well-plowed area of law, products liability jurisprudence tends to be a fairly placid sea. Notable cases are those that fill the interstices to the established legal principles that have evolved from recurring fact patterns. Manufacturers, and the lawyers advising them, pay attention to these cases, especially on the appellate levels, to discern evolutionary trends that might affect the designs and warnings for their products. As a trial lawyer handling complex cases, including products litigation matters, and as the recently appointed co-chairman of the American Bar Association Litigation Section's Products Liability Committee, I try to monitor the deluge of new decisions, and sift out interesting ones.

The Aug. 19, 2011, decision of the United States Court of Appeals for the Fifth Circuit, Goodner v. Hyundai, caught my attention, for several reasons. The Fifth Circuit has a well-earned reputation for cogent jurisprudence in the products and tort areas. The opinion is authored by Judge Pat Higginbotham, widely regarded as one of the leading jurists in the federal appellate bench's firmament of bright stars. For years he has been on the shortlist of possible nominees to the United States Supreme Court. He enjoys a reputation as an evenhanded, intelligent and thoughtful jurist.

So, as playwright Arthur Miller might have said, "Attention must be paid." I read the opinion with interest to discern any nuggets of wisdom in what might otherwise have been viewed as a run-of-the-mill products case. The fact that the case turned in part on the continuing conundrum of product liability law known as the "risk utility analysis" made the opinion additionally interesting.

The facts involve a sad event: Nineteen-year-old Sarah Goodner died after the SUV being driven by her 16-year-old sister went off the road, rolled over three times, in the process ejecting Sarah. She had been wearing her seatbelt, but had reclined her front passenger seat in the range of 65 degrees. Her sister driving the SUV was wearing a seatbelt and only experienced minor injuries.

The two girls were returning home, on a five-hour drive, following limited rest, after watching another of their sisters play in a softball tournament. Their mother had told Sarah not to let her sister drive because she was both tired and a young driver. But with plans to switch later, Sarah let her sister drive, and had reclined her own passenger seat to nap while her sister drove. Sarah's sister was falling asleep while driving, and drifting off the road. When Sarah woke her sister, she overcorrected several times, causing the SUV to crash at speeds estimated between 76 and 83 miles per hour into a fence off the road, and then roll over three times.

The jury agreed with the plaintiff's argument that Hyundai's seat design, allowing the passenger seat to recline more than 45 degrees, was a defect that had caused Sarah's injuries. Under applicable Texas law the jury assigned 45 percent of the responsibility to the younger sister who was driving, 10 percent to Sarah and 45 percent to Hyundai, producing a net $405,000 for each parent.

On appeal, Judge Higginbotham, applying the deferential standard on review, addresses the plaintiff's slight burden of showing whether there was any evidence the product was unreasonably dangerous, whether a safer alternative design existed, and whether the defect caused Sarah's injuries. His analysis on the "unreasonable dangerousness" issue is the most instructive for our consideration, but perhaps the least satisfying part of the court's opinion.

On this issue, Judge Higginbotham begins the risk utility analysis by identifying the five relevant factors to be considered. He starts with an opaque bit of prose: "For courts considering judgment as a matter of law, the five factors are evaluated holistically; no single factor needs to be proven on its own, so long as all factors working together point to a finding of unreasonable dangerousness."

Aside from the squishy meaning of the word "holistically", the sentence itself seems to be internally inconsistent. If no single factor itself needs to be proven, does the next phrase suggest just the opposite: "All factors working together" must establish unreasonable dangerousness? But this is a minor nit, because in fact the opinion goes on to analyze the evidentiary basis for each of the five factors. So, let's consider whether that analysis enlightens.

The opinion's discussion of the first factor — the cost-benefit analysis of the utility of the design — is truncated and unhelpful. The court acknowledges some of the benefits to a fully reclining seat (carrying cargo, or napping at a rest stop), but concludes, without explaining why, that a jury should be entitled to make the judgment call that the risk of that design outweighs those benefits. The court gives lip service to the concept that consumer preference plays a role here, but doesn't explain what role, or why that factor should be disregarded.

The second and third factors, available alternatives and the manufacturer's ability to eliminate the defect without impairing usefulness or increasing costs, seemed to be nonissues in the case. The SUV's rear seat here had a 45-degree limited recline, as did other competitors' SUVs. Hence, the issue here really wasn't whether alternatives were feasible, but whether they were legally required.

Turning to the last two factors — consumer expectations and the appropriateness of warnings — one is left unclear for the basis of the Court's reasoning. The abbreviated discussion of suitable warnings is elliptical and puzzling. There were fairly extensive warnings against the risks of traveling in a reclined seat in the SUV's owner's manual. The warnings specified that a risk of traveling in a reclined seat was that the seat belt wouldn't do its job properly. Did the court deem these warnings deficient because the specific factual risk at issue here — ejection in a rollover — was not addressed expressly?

The manufacturer's expert testified as to the adequacy of the warnings, and apparently Sarah's sister acknowledged (albeit after the accident) that it was common sense not to ride in a vehicle with a reclined seat. But all we learn is that for Judge Higginbotham "the jury is free to disregard [defendant's expert] testimony and rely on their own impressions of the warnings admitted into evidence."

If the jury is to be empowered to second-guess the role of warnings in products cases like this, it would be helpful if the court explained what more is needed to constitute a reasonable warning, so that future litigation could be avoided if possible. But we need not quibble long here, for this turned out not to be a warnings case, but rather a defective design case. This distinction means, at

least to Judge Higginbotham, that even if the warnings had been adequate, that was only one of five factors that go to the "holistic" cost-benefit analysis, and hence not dispositive on its own.

When Judge Higginbotham then addresses the related "common risk knowledge" element of the fourth factor, the analysis also appears a bit muddled. He first cites a Texas Supreme Court case for the proposition that whether the "risk of injury is common knowledge is a question of law, not fact." This is followed with a cite to another Texas Supreme Court decision opining "… in some situations there could be a fact question about whether consumers have common knowledge of risk associated with a product."

In this case, the opinion deduces, it was not a matter of law whether the risk of injury from a reclining seat was common knowledge, because that required factual analysis, hence a jury question. Judge Higginbotham seems to have harmonized this apparent ambiguity in Texas law by concluding that while it is a matter of law whether the issue of the risk of injury is common knowledge, a court can find in "some situations" the question becomes one of fact. But one wonders, what are the criteria courts apply to decide about those situations? Is the issue of common knowledge a question of law except when a court says it's not? Some guidance through this fog would be useful.

One need not pause long on the court's discussion of available safer alternative designs. The fact that both Hyundai as well as other SUV manufacturers utilized designs restricting seat recline to 45 degrees or less made this fairly much a nonissue. There was some question if the issue had been properly preserved for appeal, but this topic was not central to the case.

The last appellate issue the court addresses was causation — whether there was sufficient evidence that the seat recline caused Sarah's death. The plaintiff's expert testified that the seat recline had caused her ejection, and increased her risk of injury or death, but he was not allowed to opine that the recline had actually caused her injuries. The opinion does not reveal the existence of any trial evidence on whether Sarah's ejection would not have happened if the seat had been upright.

The court concludes that the jury was entitled to look at the circumstantial evidence — that Sarah's sister, seated upright in the driver's position and belted, did not suffer any significant injuries, as a basis for reaching an appropriate causation conclusion. Readers are left unclear what, if any, evidence existed as to accident reconstruction or the biomechanics and physical forces in this event, things that could have distinguished what happened to Sarah from what happened to her sister. The complexities of causation seemed glossed over by the conclusion that juries can infer causation as a question of fact, and rely on circumstantial evidence to do so.

What, then, can be distilled from analysis of this case? First, appellate deference to jury verdicts remains a steep hurdle for product liability defendants. Relatedly, courts seem content to allow juries to play the role of post-hoc advisory committees of engineers and product designers, who can apply a retrospective risk utility analysis to decide whether a product was unreasonably dangerous. Jurors also appear empowered to reject evidence as to the adequacy of warnings, and decide the issue on an ad hoc basis. Third, manufacturers attempting to divine the dividing line between designing unsafe products, versus products that must protect against a panoply of more remote risks, will have to await further case law guidance.

I have one personal takeaway from this case. We all want manufacturers to be responsible for not marketing dangerous products, and the law should not shield from liability cars with exploding

gas tanks or that are unsafe at any speed. But if you are a consumer for whom a deeply reclining passenger seat would be an attractive feature, you'd better hurry up to buy one before we all have to sit rigidly semi-upright, the way most of us now do in packed airplanes flying all around the country.

As someone who grew up with and survived some of today's forbidden pleasures (and risks) e.g., diving boards, commercial horseback rides that go faster than a slow saunter, and the like, it looks like another personal risk choice is going to be taken away, for our own good, of course.

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