Summary of Georgia Product Liability Cases

(July – September 2006)

Caldwell v. Howard Indus., Inc., 2006 U.S. Dist. LEXIS 45711 (M.D. Ga. July 6, 2006):

The defendant Howard Industries moved to exclude the testimony of plaintiff's expert witness M.T. Harrelson in this product liability matter arising from an allegedly defective bolt in a transformer lifter. In addition, Howard Industries moved for summary judgment.

In his Daubert analysis, Judge Clay Land found that Harrelson, a Georgia Tech graduate who had worked for Georgia Power for 28 years, was qualified to offer his opinions. In addition, Harrelson used a proper methodology by interviewing witnesses and examining the bolt at issue. Accordingly, Howard Industries' motion to strike was denied, and with these opinions from Mr. Harrelson, plaintiff had sufficient evidence to prevail on the motion judgment motion.

Johnson v. Ford Motor Co., 2006 U.S. Dist. LEXIS 843 (Ga. Ct. App. July 7, 2006):

This automotive product liability case before the Georgia Court of Appeals involved two issues: (1) when does the statute of repose begin to run – on the date of manufacture, the date of sale, or at some other time; and (2) does a negligent failure to warn claim require bodily harm. The lawsuit arose from a car fire that plaintiff contended was caused by a defective switch in the car. There was no claim for personal injury, only property damage.

Statute of Repose: The analysis of the statute of repose issue involved an examination of the phrase "first sale for use or consumption" in O.C.G.A. § 51-1-11(b)(2). The defendants argued that the statute of repose began to run when the car was usable, i.e., drivable off the assembly line. Plaintiff contended that the statute should not begin to run until the sale to the consumer. The court of appeals held that the statute of repose began to run from the time manufacture, when the car became "usable" – not from the date of sale to the consumer.

Negligent Failure to Warn: The trial court, relying on Fluidmaster, Inc. v. Severinsen, 238 Ga. App. 755, 520 S.E.2d 253 (1999) (physical precedent), had granted summary judgment to Texas Instruments because the plaintiff failed to show any physical harm arising from the alleged failure to warn. But the Court of Appeals found Fluidmaster to be unpersuasive. Instead, the court looked to section 7 of the Restatement (Second) of Torts and concluded that physical harm can include damage to property. Thus, "bodily harm" is not required to maintain a claim for negligent failure to warn.

Davenport v. Ford Motor Co., 2006 U.S. Dist. LEXIS 49481 (N.D. Ga. July 19, 2006):

Plaintiffs in this automotive product liability matter filed a motion to remand the matter back to state court. In their original complaint, plaintiffs had asserted a breach of warranty claim against Hutson Ford, a Georgia corporation and the dealership that sold the car to plaintiffs. Ford removed the case to federal court contending that the plaintiffs had fraudulently joined this dealership to defeat diversity jurisdiction.

Judge William Duffey denied the motion to remand holding that there was no reasonable basis for the breach of warranty claim against the dealership. The court found that the disclaimer language contained in the dealership's sales documents sufficiently disclaimed the warranties, pursuant to O.C.G.A. § 11-2-316. Thus, there was no possibility that plaintiffs could have prevailed on their claim against the dealership.

Mize v. HJC Corp., 2006 U.S. Dist. LEXIS 65180 (N.D. Ga. Sept. 13, 2006):

In this matter involving allegations of a defective motorcycle helmet, plaintiff contended he crashed his motorcycle because his helmet fogged up when he yelled "Hey" to some friends. HJC, the designer and manufacturer, renewed its motion for summary judgment on a design defect claim. (The court had previously granted a partial summary judgment motion and excluded the testimony of plaintiff's expert witness under Daubert.) For purposes of the motion, the parties agreed that the helmet fogged.

Defendants contended that after the exclusion of plaintiff's expert witness, plaintiff had no evidence that the helmet was defectively designed. Plaintiff countered that expert testimony was not required to prove a defect under Georgia law. The court agreed that expert testimony was not mandatory but held that expert testimony generally was required to assess many of the Banks factors. Plaintiff also argued that expert testimony was not necessary because the jury could reasonably conclude the fogging of the helmet was the cause of the accident. But the court cautioned that this link was insufficient to show that the helmet actually was defectively designed. In addition, the court rejected the plaintiff's own alternative helmet designs that he himself proposed. The court granted summary judgment to HJC.

McCurdy v. Ford Motor Co., 2006 U.S. Dist. LEXIS 69201 (M.D. Ga. Sept. 26, 2006):

Judge Louis Sands denied defendant Ford Motor Co.'s motion to exclude (under Daubert) and motion for summary judgment in this automotive product liability case arising from an allegedly defective "sway bar link system." Ford had moved to exclude the testimony of plaintiff's expert witness, Dr. George Flowers, who had opined that the design of the linkages for the stabilizer bar was defective.

Ford challenged Dr. Flowers' qualifications because he had never designed an automobile suspension. But Judge Sands found that this factor was not relevant in the Daubert analysis because Flowers was not offering an opinion regarding how the suspension should have been designed. In addition, Ford complained that Dr. Flowers had not actually performed the tests he relied upon in developing his opinions. But the court explained that there is no requirement under Daubert that the expert actually perform the studies/testing relied upon in the formulation of the expert's opinions. With this opinion from Dr. Flowers, plaintiff was able to survive summary judgment.