

Product Liability Case Law Update

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Ford Motor Co. v. Reese **300 Ga. App. 82** **Sept. 16, 2009**

Reese involved a wrongful death claim arising from a read-end collision in which a dump truck struck a 1994 Ford Tempo. The plaintiffs contended that the decedent's seatback collapsed due to a defective design, thereby increasing the severity of the decedent's injuries, and that Ford negligently failed to recall the vehicle. The trial court charged the jury that Georgia law required auto manufacturers to recall products when the manufacturer knows, or reasonably should know, of a danger arising from the product, even if the product is not defective.

The court of appeals reversed, holding that, absent special circumstances, a manufacturer does not have a common law duty to recall a product after the product has left the manufacturer's control. The court reasoned that "a manufacturer's duty to implement alternative safer designs is limited to the time the product is manufactured,

not months or years later when technology or knowledge may have changed," and found that "[a]ny other rule would render a manufacturer a perpetual insurer of the safety of its products, contrary to established Georgia law." The court also reasoned that, because the General Assembly had imposed on manufacturers a continuing duty to warn under O.C.G.A. § 51-1-11(c), the General Assembly knew how to impose such a duty, and the General Assembly's declination to impose a continuing duty to recall was evidence that the General Assembly did not intend to the duty to exist.

Bagnell v. Ford Motor Company **297 Ga. App. 835** **April 16, 2009**

Bagnell arose out of a one-vehicle incident that occurred in July 2001 Texas. The driver was a Georgia resident who was driving several persons from Houston, Texas to Atlanta. The subject vehicle was a 1991 Ford Aerostar van. The trial court applied Georgia's ten-year products liability statute

of repose to some of the plaintiffs' claims.

After a defense verdict, the plaintiffs appealed, contending that the trial court erred by failing to apply Texas' fifteen-year statute of repose. The court of appeals found Georgia's products liability statute of repose to be procedural and applied Georgia's choice of law rules to uphold the trial court on this issue (the court of appeals then reversed on an evidentiary issue involving Texas law).

In deciding whether Georgia's products liability statute of repose is substantive or procedural, the court of appeals relied on cases involving the retrospective application of statutes of repose. The court reasoned that because the courts deciding those cases had found that "statutes of repose look only to remedy and not to substantive rights," the same reasoning should apply to choice of law cases. Applying the *lex loci delicti* principle (under which the law of the forum controls procedure), the court of appeals held that Georgia's statute of repose should apply. ❖