Torts

Defective Automobile – Experts – Recalls – Other Designs – Discovery

***Vanderventer v. Hyundai Motor Am.*, 2022 WI App 56 (filed Oct. 26, 2022) (ordered published Nov. 30, 2022)**

HOLDINGS: 1) The trial judge properly admitted expert opinion testimony as well as evidence of other recalls and alternative designs. 2) The court properly denied a motion to exclude evidence based on an alleged violation of discovery.

SUMMARY: The plaintiff's car, a Hyundai Elantra, was rear-ended by another vehicle while the plaintiff was driving, and his spine was severed. The plaintiff sued Hyundai, alleging various claims based on defects in the driver's seat. A jury returned a $38 million verdict, finding that the seat was defective and unreasonably dangerous and that Hyundai was negligent in its design or testing of the seat.

The court of appeals affirmed in an opinion authored by Judge Neubauer. The opinion addressed four issues, and the court of appeals held that as to each, the trial judge exercised appropriate discretion.

First, the trial court properly admitted expert opinion testimony by an engineer and a neurosurgeon regarding the seat design and the plaintiff's injuries. Applying Wis. Stat. section 907.02 and recent case law, the court of appeals held that the trial judge properly exercised discretion in finding that the engineer's testimony was based on a reliable methodology founded on the engineer's experience. The court of appeals found "no support" for Hyundai's proposition that testing was required (¶ 64). In short, "crash testing" was not mandated; it was, to be sure, "grist for the mill on cross-examination" (¶ 68).

Nor did the physician stray "beyond his area of expertise" in finding a causal link between the seat defect and the plaintiff's injury (¶ 70). Again, the expert's experience was key, especially because medical science does not permit testing on human subjects (*see* ¶ 72). The engineer also properly testified about the causal link (*see* ¶ 79).

Second, the trial court properly admitted evidence of product recalls of the Hyundai vehicle. The court rejected the contention that evidence regarding the recalls was prohibited by the presumption in Wis. Stat. section 895.047(3)(b). The recall evidence "tended to show that vehicles which comply with [federal regulations] could nonetheless have safety-related defects" (¶ 90). The trial judge carefully restricted the recall evidence to Hyundai's contention that it complied with federal safety regulations. Moreover, the judge properly took judicial notice of the recall evidence, which was discussed but never shown to the jury (*see* ¶ 92).

Third, the trial court properly admitted evidence regarding a safer seat design introduced by Hyundai after this collision. The evidence showed that information about the safer design existed before the plaintiff's injury occurred. The court rejected Hyundai's contention that there must be an extant "actual prototype of a reasonable design alternative" or proof that the manufacturer adopted or considered the alternative for commercial use (¶¶ 96, 100). Finally, case law permits the impeachment use of such evidence in appropriate cases, as occurred here (for example, Hyundai claimed its seat design was "'abundantly' safe") (¶¶ 104-105).

Finally, the court of appeals rejected Hyundai's contention that an expert witness improperly testified to "undisclosed opinions." The scheduling order required only a "summary of expected testimony," not a disclosure of all expert opinions (¶ 114). **WL**

BLINKA

HAMMER

In this column, Prof. Daniel D. Blinka and Prof. Thomas J. Hammer summarize select published opinions of the Wisconsin Court of Appeals. Full-text decisions are available online at www.wisbar.org/wislawmag.

Want faster access to Wisconsin Supreme Court and Court of Appeals decisions? Get weekly updates on the previous week's supreme court and court of appeals decisions. Subscribe to CaseLaw Express, a benefit of your membership, delivered to your inbox every Monday.

Prof. Daniel D. Blinka, U.W. 1978, is a professor of law at Marquette University Law School, Milwaukee.

daniel.blinka@marquette.edu

Prof. Thomas J. Hammer, Marquette 1975, is a law professor and director of clinical education at Marquette University Law School, Milwaukee.

thomas.hammer@marquette.edu