

Proof of Feasible Alternative Design Does Not Prove Defect

September 2, 2011 by Sean Wajert

Readers know that most jurisdictions require that a plaintiff alleging a design defect in a product must produce sufficient evidence of a feasible alternative design that would have avoided the plaintiff's injury had it been adopted. But a Texas appeals court reminded us recently that evidence of a safer alternative design, while necessary, is not sufficient to show a design defect. [Zavala v. Burlington Northern Santa Fe Corp.](#), No. 08-10-00169-CV (Tex. App., 8th Dist., 8/24/11).

Plaintiff filed suit against the railroad, alleging personal injuries sustained while attempting to open an allegedly defective railcar hopper door to unload sugar. Defendant filed a motion for summary judgment, which the trial court granted, and Zavala appealed.

Plaintiff alleged a manufacturing defect, but he could not identify the exact car which injured him or pinpoint any specific defect on that car. He did not see the hopper car again, but he identified the opening mechanism on a BNSF model 450 car as the "same or substantially similar hopper loading mechanism I was injured on." The court concluded that since he could not identify the specific car which caused his injuries, he must show more than a scintilla of evidence that all BNSF model 450 cars possess a manufacturing defect. That he could not do.

The court then turned to the alleged design defect. The defect was the alleged unreasonably dangerous condition of the hopper car opening mechanism. Texas courts apply a risk-utility analysis to design defects that requires consideration of the following factors: (1) the utility of the product to the user and to the public as a whole weighed against the gravity and likelihood of injury from its use; (2) the availability of a substitute product design which would meet the same need and not be unsafe or unreasonably expensive; (3) the manufacturer's ability to eliminate the unsafe character of the product without seriously impairing its usefulness or significantly increasing its costs; (4) the user's anticipated awareness of the dangers inherent in the product and their avoidability because of general public knowledge of the obvious condition of the product, or of the existence of suitable warnings or instructions; and (5) the expectations of the ordinary consumer. The risk-utility analysis operates in the context of the product's intended use and its intended users.

The court of appeals reasoned that global assertions that all model 450 doors were defective because they were all hard to open does not create more than a mere suspicion of a defect. It refused to hold that a hard-to-open door is necessarily a malfunction, or that circumstantial proof of a hard-to-open door suffices to demonstrate a design defect.

Plaintiff pointed to his expert evidence of an alleged feasible alternative design for the hopper door. Although evidence of an alternative safer design may assist in proving a design defect, proof of an alleged safer alternative design is not enough to sustain a defective design claim, concluded the court of appeals. See also *Hernandez v. Tokai Corp.*, 2 S.W.3d 251, 256 (Tex. 1999)(proof of an alternative safer design does not negate the common law requirement that

the alleged defect renders the product unreasonably dangerous). A design defect claim arises if a safer alternative design existed *and* there is a defect that was a producing cause of the personal injury, property damage, or death for which the claimant seeks recovery.

Here, plaintiff failed to produce sufficient evidence to create an issue of fact on defect, even if he did have evidence of a feasible alternative design. In essence, the court recognized that there can be more than one non-defective way to design a product. There may be different pluses and minuses in each design, and the existence of an alternative does not render all other alternatives necessarily defective.