Sedgwick

Texas Appellate Court Stabilizes "Presumption of No Liability" Jury Instruction in Products Cases

Product Liability Advisory

February 2012 by Ryan Brown

In *Hamid v. Lexus*, et al., the Texas Court of Appeals upheld a take-nothing judgment against a plaintiff on the grounds that a product's risk—not the alleged defect—governs the applicability of a rebuttable presumption jury instruction of no liability if a defendant manufacturer establishes that the product's design complied with federal safety standards and regulations. 2011 WL 7074213 (Tex.App.—Houston [1 Dist.]). The decision provides manufacturers with a clearer picture of the availability of a rebuttable presumption instruction in Texas.

Megan Hamid died when she lost control of a 2002 Lexus ES300 at 9 p.m. on an unlit section of Interstate 45. In attempt to avoid another vehicle parked partially in her lane of traffic, she steered abruptly and failed to apply her brakes, and lost control. Her parents sued Lexus and Toyota alleging the ES300 was defectively designed because it was manufactured and sold without a vehicle stability control device (VSC).

The plaintiffs alleged that the lack of a VSC device in Megan's vehicle was the producing cause of her death. While admitting that a VSC is a safety feature that helps prevent the type of sliding involved in the accident, the defendants based their defense on the fact that the ES300 complied with the various mandatory government safety standards applicable to the vehicle at the time it was manufactured—and therefore entitled to a "presumption of safety" instruction to the jury pursuant to the legislative code.

The court's decision in *Hamid* focused on the interpretation of the statute and examined the legislators' comments cited by the plaintiffs. Specifically, the plaintiffs referenced a statement that the presumption does not apply when a manufacturer complies with all federal standards that exist

Sedgwick

for a product but no standard exists that related specifically to the defect alleged by the plaintiff (i.e., a standard specifically addressing VSC devices).

In its explanation, the court borrowed an illustration from a recent case against Ford based on a lack of a backup sensor where a 3-year-old boy was killed when a Ford Expedition backed over him. See *Wright v. Ford Motor Co.*, 508 F.3d 263 (5th Cir. 2007). There, the plaintiffs alleged the applicable Federal Motor Vehicle Safety Standard, which addressed rearview mirror performance placement, did not govern the rear sensing system and therefore did not pertain to the "defect" in their petition. However, the Fifth Circuit Court of Appeals held that the statute unambiguously addressed **risk** and not the specific device.

The *Hamid* court further pointed out that Texas courts have historically refused to give overriding weight to such statements. Instead, the court cited authority that such statements are not evidence of the collective intent of the majority of both legislative chambers. Ultimately, the *Hamid* decision strengthens a manufacturer's ability to submit a jury instruction that if the manufacturer complied with applicable federal safety standards and regulations, then its product is "safe"—notwithstanding a standard's failure to specifically mention a plaintiff's alternative design.

Related Practices:

Complex Litigation Product Liability