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"Intended Use" And The Unsafe Automobile: Manufacturers' Liability For Negligent Design - Larsen v. General Motors Corp.

"Intended Use" And The Unsafe Automobile: Manufacturers' Liability For Negligent Design

Larsen v. General Motors Corp.[1]

A singular phenomenon of the contemporary law of torts is the peculiar reluctance of American courts to impose on automobile manufacturers a duty to design automobiles to provide reasonable safety for passengers in the event of an accident. Under the prevailing rule, the manufacturer's duty is limited to designing an automobile which would be reasonably safe for its "intended use." The concept of "intended use" in products liability cases has been used to limit a manufacturer's liability, under a negligence theory, to injuries caused by foreseeable contingencies.[2] The courts have consistently held that the "intended use" of an automobile does not include its participation in accidents.[3] Accordingly, recovery has been awarded for injuries sus-

1. 391 F.2d 495 (8th Cir. 1968).

2. "Intended use," "intended purpose" and "normal use" are all synonyms for "foreseeability," and what is foreseeable enough to impose a duty is, in the last analysis, determined by a variety of policy considerations. *See* W. PROSSER, TORTS § 96, at 665–69 (3d ed. 1964).

3. *E.g.*, Gossett v. Chrysler Corp., 359 F.2d 84 (6th Cir. 1966); Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966), *cert. denied*, 385 U.S. 836 (1967); Shumard v. General Motors Corp., 270 F. Supp. 311 (S.D. Ohio 1967). *Cf.* Schemel v. General Motors Corp., 384 F.2d 802 (7th Cir. 1967), *cert. denied*, 390 U.S. 945 (1968); Willis v. Chrysler Corp., 264 F. Supp. 1010 (S.D. Tex. 1967).

tained in accidents *caused* by negligent design,[4] but not where faulty design resulted only in the *enhancement* of injuries sustained in collisions attributable to other causes.[5] In contrast, in other areas of products liability courts have imposed on manufacturers a duty to design their products to provide maximum safety in the event of accidents arising from normal use.[6] The reasons for the refusal of the courts to similarly expand the duty of the automobile manufacturer are not altogether clear. The primary factors are apparently a conviction that automobile passengers should assume the risks attending that mode of transportation and an accompanying fear of placing too great a burden on the automobile industry.

Imposition of a duty on automobile manufacturers to design cars which provide reasonable safety for their passengers in accident situations has far-reaching economic ramifications. Because the duty is imposed at the point of initial planning, the burden of foreseeing the consequences of such planning is particularly heavy. Further, the technological effect of a breach of the design duty is more sweeping than a breach of the manufacturer's duty to carefully construct automobiles, since in the former case all production procedures may have to be modified. Because of these factors, courts have felt that if a duty with such a far-reaching impact is to be placed on the manufacturer, it should be done not by the courts, but rather by the legislature, acting prospectively.[7] In addition, some courts evidently feel that juries are not competent to deal with the complex technical considerations involved in automobile design cases.[8] As a result, prior to *Larsen v. General Motors Corp.*,[9] no plaintiff had ever succeeded at the appellate level by alleging that negligent design had added to, or increased the severity of, injuries received in an automobile accident.[10]

In *Larsen,* the Court of Appeals for the Eighth Circuit found the factual situation sufficiently compelling to warrant departure from the previous automobile design cases. The plaintiff was the driver of an automobile involved in a head-on collision. The impact of the crash drove the steering mechanism of the car backward and upward so that

4. *E.g.,* Carpini v. Pittsburgh & Weirton Bus Co., 216 F.2d 404 (3d Cir. 1954) (negligent design of brakes of bus caused accident producing plaintiff's injury); Rosin v. International Harvester Co., 262 Minn. 445, 115 N.W.2d 50 (1962) (negligent design of differential seal of pickup truck permitted lubricant to leak onto brakes causing accident producing plaintiff's injury). *Cf.* Blitzstein v. Ford Motor Co., 288 F.2d 738 (5th Cir. 1961) (negligent design of automobile gas tank and trunk caused explosion which injured plaintiff — defendant was supplier of the foreign made car); Elliot v. General Motors Corp., 296 F.2d 125 (7th Cir. 1961) (mechanic's arm severed by sharp edge of automobile splash pan).

5. *See* Nader & Page, *Automobile Design and the Judicial Process,* 55 CALIF. L. REV. 645 (1967).

6. Notes 31–33, 45 *infra* and accompanying text.

7. *See* Schemel v. General Motors Corp., 384 F.2d 802 (7th Cir. 1967), *cert. denied,* 390 U.S. 945 (1968); Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966), *cert. denied,* 385 U.S. 836 (1967). *Cf.* Campo v. Scofield, 301 N.Y. 468, 95 N.E.2d 802 (1950).

8. *See, e.g.,* Hatch v. Ford Motor Co., 163 Cal. App. 2d 466, 329 P.2d 605 (1955).

9. 391 F.2d 495 (8th Cir. 1968).

10. *See* Nader & Page, *Automobile Design and the Judicial Process,* 55 CALIF. L. REV. 645 (1967); Noel, *Manufacturer's Negligence of Design or Directions for the Use of a Product,* 71 YALE L.J. 816 (1962); Annot., 76 A.L.R.2d 91 (1961).

it injured the plaintiff's head. The alleged defective design did not cause the collision, but the plaintiff contended that because of the defective design, he received injuries he would not otherwise have received. He claimed that the rearward displacement of the steering shaft was much greater in his 1963 Corvair than it would have been in other cars. The plaintiff based his claim on the theory that an automobile manufacturer is under a duty of reasonable care in the design of an automobile to make it safe for its intended use and that the intended use of an automobile includes the possibility of collision with other automobiles or with stationary objects. The district court, consistent with existing authority, rejected the plaintiff's contentions and granted a summary judgment for the defendant.[11] The court of appeals reversed, charging the manufacturer with a duty to foresee the possibility of accident and to design the automobile to provide a reasonable amount of safety for its passengers in case of an accident. The court also imposed a correlative duty to warn of a dangerous condition in vehicle design.[12]

THE CONCEPT OF "INTENDED USE"

Today, the generally accepted duty of an automobile manufacturer is to design an automobile that will be reasonably safe for its intended purpose, without concealing defects which would make it dangerous to persons using it for that purpose.[13] Although courts may vary in their language, the requirements are relatively uniform: (1) the duty in design extends only to the "intended use" of the product;[14] (2) the manufacturer is not an insurer and has no duty to make the product "accident-proof" or "fool-proof";[15] and (3) the manufacturer is not under a duty to make the product "more safe" where the danger is obvious to all.[16]

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11. Larsen v. General Motors Corp., 274 F. Supp. 461 (D. Minn. 1967).

12. Although the plaintiff based his claim on three distinct theories, negligence, breach of implied warranty of merchantability and strict liability, the court decided the case on the negligence theory alone. The court expressly refused to consider the issue of implied warranty or that of strict liability, arguing that these were policy questions to be decided by the legislature. The court was apparently uncertain as to whether the Michigan courts would consider an automobile to be a dangerous instrumentality within the doctrine of strict liability. Accordingly, the court concluded: "The common law standard of a duty to use reasonable care in light of all the circumstances can at least serve the needs of our society until the legislature imposes higher standards or the courts expand the doctrine of strict liability for tort." 391 F.2d at 506.

13. *See, e.g.*, Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966), *cert. denied*, 385 U.S. 836 (1967). *See also* RESTATEMENT (SECOND) OF TORTS § 398 (1965). Maryland has very little relevant case law on this topic. However, Maryland appears to follow the *Restatement* rule for negligent design of a product. *See* Woolley v. Uebelhor, 239 Md. 318, 211 A.2d 302 (1965); Babylon v. Scruton, 215 Md. 299, 138 A.2d 375 (1958). *See also* Banko v. Continental Motors Corp., 373 F.2d 314 (4th Cir. 1966).

14. *E.g.*, Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966), *cert. denied*, 385 U.S. 836 (1967).

15. *E.g.*, Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966), *cert. denied*, 385 U.S. 836 (1967). *Cf.* Campo v. Scofield, 301 N.Y. 468, 95 N.E.2d 802, 804 (1950).

16. *E.g.*, Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966), *cert. denied*, 385 U.S. 836 (1967). *Cf.* Campo v. Scofield, 301 N.Y. 468, 95 N.E.2d 802, 804 (1950).

In the final analysis, however, the scope of the manufacturer's design duty depends on the courts' interpretation of "intended use." This concept has been used in the automobile cases to narrow the duty of the manufacturer. Many courts have feared that a liberal extension of intended use would make the manufacturer an insurer of his product's safety.[17] One of the most influential expressions of this trend of thought was the New York Court of Appeals' opinion in *Campo v. Scofield*,[18] a case which did not involve automobiles. Campo, a farm hand, had to place his hands near a set of revolving steel rollers in order to feed onions into an onion-topping machine. Campo's hands were caught in the steel rollers and badly injured. He claimed the manufacturer was negligent in not designing a safety guard or stopping device. The court held that these allegations failed to constitute a cause of action because there was nothing to indicate that the manufacturer could reasonably have foreseen such a danger: "If a manufacturer does everything necessary to make the machine function properly for the purpose for which it [was] designed, if the machine is without any latent defect, and if its functioning creates no greater danger or peril that is not known to the user, then the manufacturer has satisfied the law's demands."[19] The emphasis under the *Campo* approach is on the exclusion of obvious dangers from the scope of intended use. The natural effect of such a limitation is that the manufacturer must only design a product that functions *properly*; he is not obliged to design a product that functions *safely*.

The courts were quick to apply the rule of *Campo v. Scofield* to automobile design cases,[20] holding that automobile accidents are an obvious danger, and, therefore, are not part of a car's intended use.[21] The influence of *Campo* has produced an anachronism in legal reasoning by eliminating the duty to design an automobile so that it will safely meet a reasonably expected emergency.[22] In *Kahn v. Chrysler Corp.*[23] a boy on a bicycle collided with a parked car, and his injuries were aggravated by a protruding tail fin; in *Hatch v. Ford Motor Co.*,[24] a child's injuries were enhanced by a sharp hood ornament when he ran into the front of a parked car. The court in each case held that such a risk was not to be anticipated in the normal use of the car. Since the person injured was not a passenger in the car and since the car was parked, the manufacturer owed no duty to the

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17. *See, e.g.*, Gossett v. Chrysler Corp., 359 F.2d 84 (6th Cir. 1966).

18. 301 N.Y. 468, 95 N.E.2d 802 (1950).

19. 95 N.E.2d at 804.

20. The *Campo* decision has been extensively cited in automobile design cases to support limitations the courts have placed on the manufacturer's duty. *See, e.g.*, Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966), *cert. denied*, 385 U.S. 836 (1967); Shumard v. General Motors Corp., 270 F. Supp. 311 (S.D. Ohio 1967).

21. *E.g.*, Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966), *cert. denied*, 385 U.S. 836 (1967).

22. *See, e.g.*, Gossett v. Chrysler Corp., 359 F.2d 84 (6th Cir. 1966).

23. 221 F. Supp. 677 (S.D. Tex. 1963).

24. 163 Cal. App. 2d 393, 329 P.2d 605 (1958).

injured party.[25] In *Muncy v. General Motors Corp.*,[26] the Supreme Court of Texas held that General Motors was not under a duty to anticipate that the design of their ignition switch, which permitted a driver to remove the key without turning off the engine, would permit a driverless car to run down a pedestrian on the sidewalk.[27] Nor, in *Gossett v. Chrysler Corp.*,[28] was there a foreseeable emergency within the concept of intended use when an allegedly defective hood latch slipped, allowing the hood of a moving vehicle to fly up and obstruct the driver's vision.[29] In *Schemel v. General Motors Corp.*,[30] where a plaintiff was struck by a car traveling 115 miles per hour, it was held that the manufacturer was not obligated to foresee the possible misuse of the automobile and, therefore, was under no duty to provide a "governor."

The continuing dominance of *Campo v. Scofield* over automobile design cases has produced another irony. The specific holding of *Campo* concerned the duty to design safety features on farm machinery. The most recent farm machinery cases are typified by the Iowa case of *Calkins v. Sandvin*,[31] in which the plaintiff was allowed to recover against the manufacturer when his arm was caught in the moving part of a "grain-o-vator." Similarly, in *Wright v. Massey-Harris, Inc.*,[32] the manufacturer was held to have a duty to provide a safety shield for the same kind of "obvious danger" found in *Campo*. If negligent design of the product involved is likely to endanger life and limb, the courts in these cases look beyond the exact purpose for which it was designed to the foreseeable risk it creates, often requiring safety guards even for obvious dangers.[33] Thus, while the courts continue to rely on the *Campo* decision in limiting the automobile manufacturer's duty to design a safe car, the influence of that decision in the area for which it was originally developed has become minimal.[34]

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25. In *Hatch* there was an additional problem of statutory interpretation. The court felt that a statute prohibiting the sale or operation of a motor vehicle equipped with a protruding hood ornament was not designed to protect those who by their own acts collided with a lawfully parked car.

26. 357 S.W.2d 430 (Tex. 1962).

27. The *Muncy* opinion speaks of the *automobile's* intended use. This raises an interesting point as to which product is considered in determining intended use, as the product alleged to have been negligently designed in *Muncy* was not the automobile as a whole, but rather the ignition mechanism. While the circumstances that followed were not reasonably foreseeable under the automobile's intended purpose, they certainly were foreseeable within the intended purpose of the ignition switch.

28. 359 F.2d 84 (6th Cir. 1966).

29. There was, however, in *Gossett* a strong possibility of intervening negligence on the part of a third party or of misuse by the plaintiff.

30. 384 F.2d 802 (7th Cir. 1967), *cert. denied*, 390 U.S. 945 (1968).

31. 256 Iowa 682, 129 N.W.2d 1 (1964).

32. 68 Ill. App. 2d 70, 215 N.E.2d 465 (1966).

33. *See* Calkins v. Sandvin, 256 Iowa 682, 129 N.W.2d 1 (1964); Moberly v. Sears, Roebuck & Co., 4 Ohio App. 2d 126, 211 N.E.2d 839 (1965); Wright v. Massey-Harris, Inc., 68 Ill. App. 2d 70, 215 N.E.2d 465 (1966).

34. Many of these cases bear a strong factual similarity to the situation in *Campo*. *Compare* Campo v. Scofield, 301 N.Y. 468, 95 N.E.2d 802 (1950) *with* Wright v. Massey-Harris, Inc., 68 Ill. App. 2d 70, 215 N.E.2d 465 (1966).

THE "SECOND COLLISION" AS AN ARTIFICIAL DISTINCTION

The concept of the "second collision" has played an important part in prior judicial definitions of the "intended use" of automobiles.[35] The "second collision" occurs when an occupant strikes some feature of the vehicle's interior immediately after his vehicle has collided with another object. In the past, a manufacturer could be held liable for the injuries of the "second collision" under a negligent design theory only if the negligent design was the cause of the "first collision."[36]

Although the automobile manufacturer's duty to foresee the "second collision" as part of the car's intended use has been recognized in automobile cases involving negligent construction,[37] prior to the *Larsen* decision a similar duty had not been recognized in automobile design cases.[38] In the two years prior to *Larsen,* three important cases held that automobile manufacturers had no duty to design automobiles to minimize the effects of the second collision.[39] Typical of these pre-*Larsen* cases is *Evans v. General Motors Corp.,*[40] which held that: "The intended purpose of an automobile does not include its participation in collisions with other objects, despite the manufacturer's ability to foresee the possibility that such collisions may occur."[41] In *Evans,* the decedent was involved in a broadside collision. The plaintiff contended that the decedent's death was caused by the total collapse of the car's left side due to the "X"-frame employed by the manufacturer; it was alleged that another frame design then in use would have reduced the possibility of such a collapse. The court was careful to distinguish *Evans* from cases in which the defective design *caused* the accident: "The products involved in all these cases were unfit for their intended use and in *precisely that respect* were the cause of accidental injuries."[42] The *Evans* court argued that to make the automobile manufacturer responsible for the effects of collisions would place him in the position of designing an "accident-proof" car.

Relying on the *Evans* decision, the courts have denied recovery in other recent cases. In *Shumard v. General Motors Corp.,*[43] where a fire rapidly spread throughout a car after collision, the manufacturer was placed under no duty to design a "fireproof" car. Similarly, in

35. *See* Nader & Page, *Automobile Design and the Judicial Process,* 55 CALIF. L. REV. 645, 655 (1967).

36. *See* cases cited note 4 *supra.*

37. *See, e.g.,* Ford Motor Co. v. Zahn, 265 F.2d 729 (8th Cir. 1959).

38. *See* notes 3 & 5 *supra.*

39. Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966), *cert. denied,* 385 U.S. 836 (1967); Shumard v. General Motors Corp., 270 F. Supp. 311 (S.D. Ohio 1967); Willis v. Chrysler Corp., 264 F. Supp. 1010 (S.D. Tex. 1967).

40. 359 F.2d 822 (7th Cir. 1966), *cert. denied,* 385 U.S. 836 (1967). Many law review articles have been critical of the *Evans* decision and the line of thought it represents. See Nader & Page, *Automobile Design and the Judicial Process,* 55 CALIF. L. REV. 645 (1967); Note, *Manufacturer's Liability for an "Uncrashworthy" Automobile,* 52 CORNELL L.Q. 444 (1967); Note, *Liability for Negligent Automobile Design,* 52 IOWA L. REV. 953 (1967); 42 NOTRE DAME LAW. 111 (1967); 1966 UTAH L. REV. 698; 80 HARV. L. REV. 688 (1967).

41. 359 F.2d at 825. In *Evans,* the Seventh Circuit affirmed the district court's decision granting a motion to dismiss.

42. *Id.* (emphasis added).

43. 270 F. Supp. 311 (S.D. Ohio 1967).

Willis v. Chrysler Corp.,[44] the manufacturer was absolved of liability for injuries sustained when plaintiff's car split in two following a collision. Thus, eighteen years after *Campo v. Scofield,* the automobile manufacturer still had no duty to foresee the obvious danger of automobile collision. While the design duty of automobile manufacturers remained narrow, the duty of other manufacturers to carefully design their products had been greatly expanded.[45]

Departing from the *Evans* rationale, the court in *Larsen v. General Motors Corp.* based its definition of "intended use" on the principles set out in the non-automobile products liability cases. The court argued that the environment in which a product is used is as relevant to a consideration of "intended use" as the actual function for which it is made, citing *Spruill v. Boyle-Midway, Inc.*,[46] and other similar cases. In *Spruill,* a fourteen month old infant accidentally swallowed some furniture polish left on a table by his mother. The defendants maintained that their furniture wax was not intended to be swallowed, and that therefore they owed no duty. In the court's opinion:

> Since their product was not intended to be consumed, [the defendants] say, there is no liability for death or injury resulting from consumption of it. We agree with the general principle but the application the defendants would have us make of it here is

44. 264 F. Supp. 1010 (S.D. Tex. 1967). The plaintiff's claim in *Willis* was based on an alleged breach of implied warranty, but the court used the "intended use" theory developed in the negligence cases to reject that claim.

45. *See* Moran v. Pittsburgh-Des Moines Steel Co., 183 F.2d 467 (3d Cir. 1950) (gas storage tank); Reed & Barton Corp. v. Maas, 73 F.2d 359 (1st Cir. 1934) (coffee urn); Hyatt v. Hyster Co., 106 F. Supp. 676 (S.D.N.Y. 1952), *rev'd by stipulation,* 205 F.2d 421 (2d Cir. 1953) (fork-lift truck); Phillips v. Ogle Aluminum Furniture, Inc., 106 Cal. App. 2d 650, 235 P.2d 857 (1951) (aluminum tubular chair); Wright v. Massey-Harris, Inc., 68 Ill. App. 2d 70, 215 N.E.2d 465 (1966) (cornpicker); Clark v. Zuzuch Truck Lines, 344 S.W.2d 304 (Mo. 1961) (tractor); Marathon Battery Co. v. Kilpatrick, 418 P.2d 900 (Okla. 1966) (battery); South Austin Drive-In Theater v. Thomison, 421 S.W.2d 933 (Tex. 1967) (power lawn mower). *Contra* Simpson Timber Co. v. Parks, 369 F.2d 324 (9th Cir. 1966), *vacated and remanded,* 388 U.S. 459 (1967) (packaging of doors); Murphy v. Cory Pump & Supply Co., 47 Ill. App. 2d 382, 197 N.E.2d 849 (1964) (power lawn mower). *See generally* Noel, *Manufacturer's Negligence of Design or Directions for Use of a Product,* 71 YALE L.J. 816 (1962); Annot., 76 A.L.R.2d 93 (1961).

A good contrast between the old and new views is found in Hentschel v. Baby Bathinette Corp., 215 F.2d 102 (2d Cir. 1954). The defendant manufactured a bathinette made partly of a magnesium alloy. The material was highly inflammable and when ignited by an independently caused fire it could not be extinguished in a normal manner, since water fed the flames rather than killing them. The plaintiffs alleged that use of such inflammable material constituted negligent design, since it greatly increased the fire danger to persons nearby. The majority held that the product contained no latent defect that would endanger a bathing baby. Since it was safe for its intended use, the manufacturer had satisfied his legal duty. Judge Frank's lengthy dissent states the rule prevailing today in home product cases: it is not sufficient to look strictly at the intended purpose for which a product is made. The manufacturer has a duty to foresee the natural consequences of the product's use. *Id.* at 105. The recent cases indicate that the manufacturer must take into consideration the character of the product sold and its reasonably foreseeable dangers. *See, e.g.,* Wright v. Massey-Harris, Inc., 68 Ill. App. 2d 70, 215 N.E.2d 465 (1966); Moberly v. Sears, Roebuck & Co., 4 Ohio App. 2d 126, 211 N.E.2d 839 (1965). For critiques of *Hentschel,* see Dillard & Hart, *Product Liability: Directions for Use and the Duty to Warn,* 41 VA. L. REV. 145 (1955); Noel, *Manufacturer's Negligence of Design or Directions For Use Of A Product,* 71 YALE L.J. 816 (1962).

46. 308 F.2d 79 (4th Cir. 1962).

> much too narrow. . . . [The manufacturer] must also be expected to anticipate the environment which is normal for the use of his product. . . .[47]

The *Larsen* opinion adopted parallel reasoning: "While automobiles are not made for the purpose of colliding with each other, a frequent and inevitable contingency of normal automobile use will result in collisions and injury-producing impacts."[48] It is important to remember, however, that the *Larsen* opinion did not explicitly reformulate the traditional rule.[49] Although *Larsen* liberalized the concept of "intended use," it still insisted that the automobile manufacturer should not be required to design an "accident-proof" car or to be an insurer of the safety of his product. The *Larsen* court considered the "present state of the art" of automobile manufacturing and limited the manufacturer's duty to the use of only that amount of reasonable care in design which is necessary to avoid subjecting the passenger to an "unreasonable risk of injury."[50] The manufacturer, then, under this standard, has the duty to use current knowledge of design to minimize, not eliminate, the injurious effects of collision. Assuming that it is not presently feasible for the manufacturer to market a completely safe car, there exists what the court terms a "normal hazard" to the automobile user. The manufacturer's duty is breached only when, because of his negligence in design, the hazard becomes "unreasonable."

Since the passage of the National Traffic and Motor Vehicle Safety Act of 1966,[51] manufacturers have argued that their liability in regard to safe design is limited to the standards and sanctions set forth in that Act. Presumably, the courts of *Campo v. Scofield* and *Evans v. General Motors Corp.* would agree, since they argued that such a fundamental change in duty should be effected by the legislature and limited to the standards it imposes. The language of the statute itself, however, negates this contention; it expressly provides that compliance with its standards will not exempt any person from common law liability.[52] The statute does, however, provide relevant guidelines that may be of use to courts searching for a substantive measure of the reasonable care in design which should be required of the automobile manufacturer.[53]

THE POLICY BASES FOR THE REDEFINITION OF "INTENDED USE"

The *Larsen* opinion resolves many inconsistencies in the area of products liability. In attempting to keep automobile manufacturers free

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47. *Id.* at 83.
48. 391 F.2d at 502.
49. *See* notes 13–16 *supra* and accompanying text.
50. In the court's own words: "The sole function of an automobile is not just to provide a means of transportation, it is to provide a means of safe transportation or as safe as is reasonably possible under the present state of the art." 391 F.2d at 502.
51. 15 U.S.C.A. §§ 1381–1425 (Supp. 1967).
52. 15 U.S.C.A. § 1397(c) (Supp. 1967).
53. 15 U.S.C.A. §§ 1397, 1400–02 (Supp. 1967). *See also* Nader & Page, *Automobile Design and the Judicial Process,* 55 CALIF. L. REV. 645, 669–73 (1967).

from a duty to design "crash-proof" cars, courts have created a separate law of products liability for automobiles based on outdated principles. As late as 1936 the ancient case of *Winterbottom v. Wright*[54] was cited as controlling. At a time when most manufacturers were required to foresee that their products might be used in ways they did *not* intend, the automobile manufacturer was not obliged to foresee the fact that many cars will be involved in injury-producing accidents.

Economic and technical conditions have changed markedly since the phrase "intended use" was first used by Judge Cardozo in *MacPherson v. Buick Motor Corp.*[55] In 1916, the automobile industry had just emerged from its infancy. In an era of small, struggling manufacturers[56] with limited technical capabilities, a narrow definition of "intended use" was appropriate. However, the production of motor vehicles soon became the country's largest industry,[57] and the vigorous competition among producers characterizing the industry's earlier years gave way to oligopoly, with three manufacturers accounting for nearly all sales of domestically produced cars. A corresponding increase occurred in the technical capabilities of the manufacturers. Today, the automobile manufacturers have at their disposal the technology, facilities and trained manpower to design a reasonably "safe" automobile.

Since *MacPherson,* there have also been many changes in the environment in which the automobile is used. In 1916, the few automobiles in use traveled at low speeds on deserted country roads; high-speed collision was hardly an imminent danger. Today, when automobiles are designed expressly for continual high-speed travel on crowded superhighways, injury-producing collision at some time in the lifetime of an automobile is clearly foreseeable. Each day millions of cars pass within a few feet of each other traveling at high rates of speed. The realities of modern day driving undercut the notion that accidents are only foreseeable when there is some structural defect that causes the collision. Between one-fourth and two-thirds of all new cars will at some time be involved in an accident producing death or injury.[58]

Today, motor vehicle accidents are a major public problem. In 1966, 53,000 Americans lost their lives in traffic accidents,[59] and another 1,900,000 were injured.[60] The economic cost of this mayhem and slaughter amounted to $10,000,000,000.[61] Deaths from motor vehicle accidents increased by 34% from 1956 to 1966.[62] In the State of Maryland, 1454 people lost their lives in motor vehicle accidents in the years 1965–1966.[63] It seems clear that this grisly toll could be

54. 10 M. & W. 109, 152 Eng. Rep. 402 (1842).

55. 217 N.Y. 382, 111 N.E. 1050 (1916).

56. In 1914, for example, there were 71 firms in the industry. G. FITE & J. REESE, AN ECONOMIC HISTORY OF THE UNITED STATES 341 (2d ed. 1965).

57. *Id.* at 537–38.

58. O'Connell, *Taming of the Automobile,* 58 NW. U. L. REV. 299, 348 (1963).

59. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 40 (1967 ed.).

60. *Id.*

61. *Id.*

62. *Id.* at 58.

63. *Id.* at 64.

substantially reduced by better design practices. For example, the National Safety Council claims that if all passenger cars were outfitted with seat belts, and "car occupants used seat belts all the time, 8,000 to 10,000 lives would be saved annually."[64] Other single design improvements may not be as important; but collectively, a sharp reduction in automobile accident injuries and fatalities could be realized by safety-conscious design.

CONCLUSION

The *Larsen* decision has modernized the concept of duty in automobile products liability. *Larsen* accepted the principle that a manufacturer has a duty to design and construct a product that is reasonably fit for its "intended use," but discarded the outdated interpretation of "intended use."[65] In so doing, the court resolved the blatant discrepancies between automobile and non-automobile design cases and made allowance for changes in technology, economic balance, and environment.

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64. *Id.* at 53. Courts may soon find that car occupants injured in an accident who were not wearing seat belts were contributorily negligent. *See* 27 MD. L. REV. 437 (1967).

65. 391 F.2d at 502–03:

> The intended use and purpose of an automobile is to travel on the streets and highways, which travel more often than not is in close proximity to other vehicles and at speeds that carry the possibility, probability, and potential of injury-producing impacts. The realities of the intended and actual use are well known to the manufacturer and to the public and these realities should be squarely faced by the manufacturer and the courts.