

AVIATION AND
PRODUCT LIABILITY

ALERT

APRIL
2017

PRODUCTS LIABILITY IN A POST-*TINCHER* WORLD:
APPELLATE COURT UPHOLDS \$55 MILLION VERDICT
AGAINST AMERICAN HONDA MOTOR CO., INC.

By Poonam Sethi

In *American Honda Motor Co., Inc., v. Martinez, et al.*, the Superior Court of Pennsylvania upheld the jury's verdict and award of more than \$55 million to Plaintiff Carlos Martinez, who was rendered a quadriplegic after he lost control of his vehicle, causing it to leave the roadway and roll over twice. The jury found American Honda negligent based on theories that the design of the seatbelt in Martinez's car was defective and failure to warn.

After the jury rendered its verdict, but before the court issued its decision on American Honda's post-trial motion, the Pennsylvania Supreme Court decided *Tincher v. Omega Flex, Inc.*, a seminal products liability case holding that a jury, not the trial court, should determine the threshold question of whether a product is "unreasonably dangerous." Under *Tincher*, a plaintiff can prove a product is in a defective condition by showing that the danger is unknowable and unacceptable to the average consumer, or that a reasonable person would conclude that the probability and seriousness of harm caused by the product outweigh the burden or costs of taking precautions.

The trial court denied American Honda's post-trial motion and American Honda appealed on several bases arguing that, because *Tincher* applied retroactively, it was entitled to a new trial. On

appeal, American Honda argued that a new trial was required because the court, not a jury as *Tincher* requires, made the threshold determination of whether the seat belt was "unreasonably dangerous." The appellate court rejected American Honda's argument on the basis that the jury indirectly conducted a risk utility analysis when it determined whether the seriousness of harm caused by the product outweighed the burden or costs of taking precautions when it determined whether there was an alternative, safer and practicable design for the seat belt restraint system. The court thus reasoned that the jury had determined implicitly that the seatbelt in plaintiff's vehicle was unreasonably dangerous.

American Honda also argued it was entitled to a new trial because it was prevented from introducing evidence of its compliance with federal regulatory and industry standards. The appellate court affirmed the lower court's ruling, finding that *Tincher* did not affect the applicability of prior rulings holding that such evidence is inadmissible because it misleads a jury from the quality of the design of the product in question.

The court also rejected American Honda's argument that it is entitled to Judgment N.O.V. on Plaintiffs' design-defect claim because the

alternative design they proposed was infeasible since it was unlawful under federal regulations. The court once again rejected American Honda's claim, finding that there was conflicting evidence of the legality and practicality of the alternative design, and that the jury was free to believe all or none of the evidence presented by the parties.

Finally, the court rejected American Honda's claims that the damages awarded by the jury were excessive and illegal, finding that the trial court did not abuse its discretion in holding that the jury's verdict did not shock its sense of justice. Mr. Martinez was paralyzed; there was evidence that his future care would cost \$14,605,393 and wage loss totaled \$720,321; and Mr. Martinez went from "a family wage earner and head of the household [to] a helpless person dependent upon others for every aspect of his daily survival."

The court rejected several other arguments that do not warrant discussion in this Alert. This decision in *American Honda Motor Co., Inc., v. Martinez, et. al.* is important in a post-*Tincher* world where the jury determines if a product is in a defective condition. Perhaps most frustrating about this decision, specifically, and Pennsylvania law, in general, is the inability to offer evidence of a design's compliance with the applicable regulations, even if only as evidence (as opposed to being conclusive) that a design is not defective. Also of concern is that the verdict was permitted to stand despite the fact that the alternative proposed design apparently did not meet regulatory requirements. ♦

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

For more information about Schnader's Aviation or Product Liability Practice Groups or to speak with a member of the firm, please contact:

Robert J. Williams
Chair, Aviation Group
412-577-5291
rwilliams@schnader.com

Barry S. Alexander
Vice-Chair, Aviation Group
212-973-8099
balexander@schnader.com

Alice Sacks Johnston
Chair, Product Liability Practice Group
412-577-5121
ajohnston@schnader.com

Poonam Sethi
212-973-8038
psethi@schnader.com

www.schnader.com
© 2017 Schnader Harrison Segal & Lewis LLP
* See: www.schnader.com/jakarta