

2014 Products Liability Update

Product Liability Update

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- Presumption of No Liability
- Other Similar Incident Evidence
- Discovery of Expert Witness Bias
- Preemption of Generic Pharmaceuticals by 5th Cir.
- Personal Jurisdiction Over Foreign Defendants
- Spoliation
- Seat Belt Evidence

Kia Motors v. Ruiz (Tex. 2014)

Kia Motors v. Ruiz

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- Head-On Collision
- Passenger Airbag Deploys = No Injury
Driver Airbag **Does Not Deploy** = Death
- Plaintiff: Negligent Design of Wire Connectors
- Defendant: Husband Put in Radio
- Jury finds Plaintiff: 45% on Kia; 55% Bullet

Kia Motors v. Ruiz: Presumption of No Liability

Kia Motors v. Ruiz: Presumption

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- Kia: We complied with FMVSS 208 re: Airbags so we are presumed not liable per 82.008
- Plaintiff:
 - FMVSS 208 is a “performance,” not “design” standard so compliance is immaterial
 - FMVSS 208 did not govern the product risk that caused the harm

Kia Motors v. Ruiz: Presumption

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- Texas Supreme Court
 - Rejects “Design” v. “Performance” argument—it is a safety standard
 - Agreed FMVSS 208 assumed deployment. Here, the risk was non-deployment
 - There was no presumption of non-liability

Kia Motors v. Ruiz: Defect Evidence Was Sufficient

Kia Motors v. Ruiz: Defect Evidence Sufficient

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- PAGE 3-4 of Paper
- Expert did identify specific defect in connector
- SAD: can be proven by showing alternative designs in production
- Plaintiff Does Not Have to Eliminate Manufacturing Defect as Cause
- Plaintiff only has to rule out other “**Plausible Causes**”

Kia Motors v. Ruiz: Other Similar Incident Evidence

Kia Motors v. Ruiz: Other Similar Incident Evidence

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- 432 Warranty Claims: 67 which involved same issue as in Ruiz Case
- Kia Objected: Hearsay & Relevance
- Ct Appeals:
 - Admission Party Opponent
 - Waiver of relevance because no request for limiting instruction
 - Harmless

Kia Motors v. Ruiz: Other Similar Incident Evidence

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- Failure to Ask Limiting Instruction Is Not Waiver
- Still have to show relevance under *Nissan v. Armstrong*
- 85% of OSI were irrelevant
- 15% still have to show issue was with the connector alleged to be defective

Kia Motors v. Ruiz: Other Similar Incident Evidence

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- OSI Was Harmful:
 - Emphasis During Trial
 - Spreadsheet was an oversized exhibit
 - The sheer volume of OSIs
 - Jury Asked to See the Spreadsheet During Deliberations
- Reversed & Remands on OSI evidence

Discovery of Expert Bias

In Re Ford Motor Co: Discovery of Expert Bias

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- Ford Park to Reverse Case
- Ford Hires: Exponent & Carr Engineering
- Plaintiff: Corp. Rep. Depos: Frequency & Money
- Texas Supreme Court
 - Only can depose the expert
 - 12 years financials is “overbroad” “fishing expedition”

Pharmaceutical Preemption

Pharmaceutical Preemption

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- **Mensing (2011)(USSC)**

- Failure-to-Warn claims against Generics are Preempted
- Fed. Regs. Require Generics to use same warnings as Brand names

- **Bartlett (2013)(USSC)**

- Extending *Mensing* to Design Defect claims against Generics

Pharmaceutical Preemption

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- **Lashley & Eckhart (2014)(5th Cir.)**

- Sued Generics (every COA)
- Sued Brand Name (fraud & misrepresentation)
- 5th Circuit
 - Dismissed Generics per *Mensing* and *Bartlett*
 - Dismissed Brand Name because Plaintiff did not ingest

Personal Jurisdiction Over Foreign Defendants

Personal Jurisdiction

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- **In re: Chinese Drywall (2014)(5th Cir)**
 - In MDL, apply the jurisdictional test from the location of original filing
 - Focus on contacts with that jurisdiction
 - Subsidiaries' contacts maybe imputed to the parent

Evidence of Seatbelt Non-Use

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• ***Nabors Well Service (El Paso—pet granted)***

- MVA—TC excluded non-use of seatbelts
- 30 years of precedent
 - Non-use is not admissible to show contributory negligence
 - Non-use is not admissible to show failure to mitigate
- 2003 Amendment repealed Statutory Bar of Non-Use Evidence, but did not overrule prior precedent or require admissibility of non-use
- TX SC granted petition

Spoliation

Spoliation: Brookshire v. Aldridge

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- Slip & Fall
- Only 8 Minutes of Video Kept
- Judge Instruction on Spoliation
- Jury renders a 1.0 million verdict

Spoliation: Brookshire v. Aldridge

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- Spoliation is Now a Question-of-Law
 - 1) Whether the party spoliated evidence
 - A) duty to preserve (Anticipation + Material & Relevant)
 - B) party negligent or intentionally breach duty
 - 2) Court assesses appropriate remedy

Spoliation: Brookshire v. Aldridge

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- Spoliation Hearing is to be conducted outside the presence of the jury
- Evidence bearing on whether party spoliated is not admissible
- Sanction must be “proportionate” and “not excessive”

Spoliation: Brookshire v. Aldridge

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- Remedies:
 - A) Degree of Culpability
 - B) Degree of Prejudice
- Must Have Finding that Less Severe Sanction Would Be Insufficient
- Harsh Remedy of Jury Instruction Almost Always Requires Specific Intent to Conceal Evidence
- Exception: Eliminates a Claim or Defense

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