

## WINTER 2012 NEWSLETTER

### PRODUCTS LIABILITY UPDATE

By Rocky Little

1. ***Hamid v. Lexus, No. 01-10-00163-CV (Tex. App. – Houston, December 22, 2011).***

Megan Hamid died in a one-car accident when she lost control of the Lexus ES300 she was driving. While traveling on Interstate Highway 45, Megan steered violently to avoid an abandoned vehicle that was extending partially into her lane of travel. As a result of taking evasive action, she lost control of the Lexus ES300, which hit the concrete barrier dividing the interstate and then rolled numerous times. Megan's parents sued Lexus alleging that the ES300 was defectively designed because it did not have a Vehicle Stability Control device (VSC). The VSC is a safety technology that helps drivers maintain control of their vehicle during emergency steering maneuvers. At the time the ES300 was manufactured, it complied with all applicable government safety standards. However, there was no Federal Motor Vehicle Safety standard that applied to a VSC. During trial, there was expert witness testimony that the failure to include a VSC as standard equipment on the ES300 was a design defect that rendered the vehicle unreasonably dangerous and that, had the ES300 been equipped with the VSC, Megan would have survived the accident. Plaintiffs contended that the trial court committed reversible error because it included a rebuttable presumption instruction as part of the following jury question:

QUESTION NO. 1: Was there a design defect in the 2002 Lexus ES300 at the time it left the possession of Toyota or Lexus?

- A. "Design defect" is a condition of the 2002 Lexus ES300 that renders it unreasonably dangerous as designed, taking into consideration the utility of the 2002 Lexus ES300 and the risk involved in its use. For a design defect to exist, there must have been a safer alternative design. "Safer alternative design" means a product design other than the one actually used that in reasonable probability—
- (1) would have prevented or significantly reduced the risk of the occurrence in question without substantially impairing the product's utility; and
  - (2) was economically and technologically feasible at the time the 2002 ES300 left the control of Toyota by the application of existing or reasonably achievable scientific knowledge.

You are entitled to presume that Toyota is not liable for any injury to the plaintiffs if the evidence establishes that the 2002 Lexus ES300 complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or any agency of the federal government, that were applicable to the

2002 Lexus ES300 at the time of its manufacture and that govern the product risk that allegedly caused harm.

Plaintiffs may rebut the presumption by establishing that the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risk of injury or damage.

ANSWER: “Yes” or “no.”

Plaintiffs contended that the rebuttable presumption instruction should not have been given because there was no safety standard applicable to the Vehicle Stability Control device. The Court of Appeals held that, pursuant to §82.008(a) of the Texas Civil Practice & Remedies Code, the trial court was not in error to instruct the jury as to the rebuttable presumption.

**2. *Sharyland Water Supply Corp. v. City of Alton*, 55 Tex. Sup. J. 46, December 16, 2011.**

In *Sharyland*, the Texas Supreme Court reaffirmed the longstanding, but limited application of the Economic Loss Rule in products liability cases that applies when the only loss is damage to the product itself. When the product failure causes damage only to the product itself, recovery is generally limited to remedies for breach of contract, breach of implied warranty, or statutory remedies provided by the Uniform Commercial Code. In this case, the court declined to expand the applicability of the Economic Loss Rule, noting that the rule did not preclude Sharyland’s negligence claim. In essence, because this cause of action was for general negligence, rather than strict products liability, the Economic Loss Rule did not limit the recoverable damages.

**3. *Jenkins v. Occidental Chem. Corp.*, No. 01-09-01140-CV (Tex. App. – Houston, November 17, 2011).**

Jenkins was partially blinded while working at a chemical plant when acetic acid was sprayed on him by an acid addition system. The acid addition system was designed by Occidental, and Jenkins sued Occidental for negligent design of the system. One of the issues addressed by the Houston Court of Appeals was whether or not Texas recognizes a negligent design claim outside the bounds of a strict products liability cause of action against a manufacturer, and if so whether a party bringing such a claim must prove the three elements of a products liability claim; i.e.,

1. whether the acid addition system was a “product,”
2. whether the system was placed in the “stream of commerce,” and
3. whether Occidental was a “manufacturer.”

The court held that Jenkins’ claim was not a strict products liability claim against a product manufacturer, and reaffirmed that Texas law recognizes a claim for negligent design or negligent manufacturing distinct from a strict products liability claim.