United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
April 7, 2022
Lyle W. Cayce
Clerk

No. 17-30499

PRECIOUS SEGUIN,

Plaintiff—Appellee,

versus

REMINGTON ARMS COMPANY, L.L.C.,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:14-CV-2442

Before OWEN, *Chief Judge*, and DENNIS and SOUTHWICK, *Circuit Judges*.

LESLIE H. SOUTHWICK, *Circuit Judge*:

The plaintiff seeks to impose liability on a firearm manufacturer for injuries said to result from a design defect. Our interpretive task is to decide whether a Louisiana statute permits that category of claim. We conclude that it does not. We REVERSE and RENDER for the defendant.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2013, Precious Seguin was injured while she, her father, a brother, and a friend were tracking a wounded deer at night in the woods near

Loranger, Louisiana. Her father's Remington Model 710 bolt-action rifle accidentally discharged and injured her. A year later, Precious Seguin and other family members filed suit in the United States District Court for the Eastern District of Louisiana. Those plaintiffs claimed the court had diversity jurisdiction over the defendant manufacturer, Remington Arms Co., L.L.C. In our earlier opinion in this appeal, we concluded that the initial assertions regarding Remington's citizenship were insufficient to sustain diversity jurisdiction. *See Seguin v. Remington Arms Co., L.L.C.*, 22 F.4th 492, 494–96 (5th Cir. 2022). The parties, though, cured this defect on appeal through the submission of a joint letter and Seguin's filing of an amended complaint. *Id.* at 496.

Early in the litigation, the district court dismissed all parties and claims other than Precious Seguin and her claims under the Louisiana Products Liability Act ("LPLA"). LA. STAT. ANN. §§ 9:2800.51–60. Before trial, the remaining parties stipulated to uncontested facts and filed cross-motions for summary judgment. In the statement of facts, the parties stipulated that the LPLA exclusively governs Seguin's claims; Remington is a "Firearm Manufacturer" under Section 60; Seguin is a "Claimant" under Section 53(4); and Seguin's only products liability claim was for a design defect under Section 56. The district court relied on these stipulations to conclude that the only question was whether Section 60(B) permitted Seguin to recover for a Section 56 design-defect claim against Remington. The district court held that Section 60(B) did permit the claim.

The court's reasoning started with a determination that Section 60(B) was ambiguous in one respect, though not in a manner directly relevant to whether a design-defect claim was permissible. The court also determined that whatever choice was made in resolving the ambiguity would lead to an absurd result. Ambiguity in the statutory text allowed the district court to consider the legislative intent and history of Section 60(B). The court

concluded that there was no statutory purpose to preclude design-defect claims. That analysis inexorably led to a summary judgment for Seguin on that claim. The court dismissed the remaining claims with prejudice and entered final judgment for Seguin in the amount of $500,000.

Remington timely appealed. Since the appeal was filed, there have been two notifications of Remington's bankruptcy. Each of those subjected the appeal to an automatic stay. *See* 11 U.S.C. § 362. The first notice was filed in March 2018, informing this court that Remington had filed a voluntary petition in Delaware bankruptcy court. After those proceedings were completed and the stay was lifted, notice was given to the court in July 2020 that Remington had filed a voluntary petition in bankruptcy court for the Northern District of Alabama. In March 2021, the Alabama court entered an order that certain tort claimants would have the right to pursue their litigation against Remington. Seguin, through counsel, filed a notice with the bankruptcy court that she elected to exercise her right to resume her litigation. As a result, the stay of the case before us was lifted on May 7, 2021. By a joint letter, counsel for each party agreed that no further briefing was needed, and the case was ripe for resolution.

DISCUSSION

We review summary judgment determinations *de novo*. *See Martin v. Alamo Cmty. Coll. Dist.*, 353 F.3d 409, 412 (5th Cir. 2003). A movant is entitled to summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). This case presents no factual disputes. It turns purely on a question of Louisiana statutory interpretation that neither the Louisiana Supreme Court nor any lower Louisiana court has answered. When faced with uncertainty about state law, one option is for the

court to certify the relevant questions to that state's highest court.[1] We earlier chose that option and certified to the Louisiana Supreme Court a question about the meaning of the statute that controls the outcome of this case. *See Seguin*, 22 F.4th at 497–98. The Louisiana Supreme Court declined our invitation by a 4-3 vote of the justices. *Seguin v. Remington Arms Co., L.L.C.*, 2022-CQ-00037 (La. 3/22/22), --- So. 3d ---.

Thus, we perforce follow the other option of interpreting the statute ourselves, applying the state's statutory interpretation methods to conclude as we believe the Louisiana Supreme Court would if it were deciding this case. *See In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 206 (5th Cir. 2007). The remainder of this opinion explains our interpretation.

I. The Louisiana Products Liability Act

Our only issue is whether the district court erred when it held that Section 60 of the LPLA, which specifically applies to injuries resulting from discharge of a firearm, did not bar Seguin from bringing a claim under Section 56 of the LPLA, which is a general section applicable to design-defect claims. The LPLA "establishes the exclusive theories of liability for manufacturers for damage caused by their products." LA. STAT. ANN. § 9:2800.52.

Generally, a claimant may recover from a manufacturer if:

> (1) The product is unreasonably dangerous in construction or composition as provided in R.S. 9:2800.55;

---

[1] Louisiana Supreme Court Rule XII, § 1 permits a federal circuit court of appeals to certify a state law question that is determinative of an issue, when "no clear controlling precedents" from that court exist. The potential that the state court will not answer is recognized in the Rule: the Court "may, in its discretion, decline to answer the questions certified to it." *Id.* Other courts have occasionally declined to answer our questions. *See, e.g., Sears, Roebuck & Co. v. Learmonth*, 95 So. 3d 633, 639 (Miss. 2012).

> (2) The product is unreasonably dangerous in design as provided in R.S. 9:2800.56;
>
> (3) The product is unreasonably dangerous because an adequate warning about the product has not been provided as provided in R.S. 9:2800.57; or
>
> (4) The product is unreasonably dangerous because it does not conform to an express warranty of the manufacturer about the product as provided in R.S. 9:2800.58.

Id. § 9:2800.54.

In 1999, the Louisiana Legislature amended the LPLA to limit products liability actions against firearms manufacturers, codifying that amendment as Section 60 of the LPLA. 1999 La. Sess. Law Serv. 1299 (codified at § 9:2800.60). The appeal here focuses on Section 60(B):

> No firearm manufacturer or seller shall be liable for any injury, damage, or death resulting from any shooting injury by any other person unless the claimant proves and shows that such injury, damage, or death was proximately caused by the unreasonably dangerous construction or composition of the product as provided in R.S. 9:2800.55.

Id. § 9:2800.60(B).

When interpreting statutes, Louisiana courts start with the text. They apply "the well-established rules of statutory construction . . . to ascertain and enforce the intent of the statute." *See Boudreaux v. La. Dep't of Pub. Safety & Corr.*, 2012-0239, p.4 (La. 10/16/12); 101 So. 3d 22, 26. If the text "is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." LA. CIV. CODE art. 9. Conversely, if "the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law." LA. CIV. CODE art. 10.

We add to this analysis the need to look at the entire statute; at times the Louisiana Supreme Court has emphasized a need to interpret one provision in a manner that reconciles it to the rest of an enactment:

> A statute's meaning and intent is determined after consideration of the entire statute and all other statutes on the same subject matter, and a construction should be placed on the provision in question which is consistent with the express terms of the statute and with the obvious intent of the Legislature in its enactment of the statute. Where it is possible, the courts have a duty in the interpretation of a statute to adopt a construction which harmonizes and reconciles it with other provisions.

ABL Mgmt. v. Bd. of Supervisors of S. Univ., 2000-0798, p.6 (La. 11/28/00); 773 So. 2d 131, 135.

With this guidance, we start down the interpretive path.

II. Section 60(B)'s plain meaning

In an unambiguous manner, the text of Section 60(B) provides that a manufacturer of a firearm like Remington has liability for harm only when "the claimant proves and shows that such injury, damage, or death was proximately caused by the unreasonably dangerous construction or composition of the product." LA. STAT. ANN. § 9:2800.60(B). The parties agree to label that liability as being for a manufacturing defect. We left out some arguably ambiguous words that were of concern to the district court and which we discuss next, but what we have quoted makes clear that this subsection of the LPLA is limited to dangerous construction or composition of the firearm.

The district court identified ambiguity in Section 60(B) based on the language that liability may exist "for any injury, damage, or death resulting from any shooting injury by any other person." *Id.* In the context of Section

60(B), the phrase "any other person" could mean any person other than (1) the firearm manufacturer or seller; (2) the claimant; or (3) both of the preceding categories. Here, the person who caused the shooting injury — Seguin's father — did not manufacture or sell the firearm and he is not the claimant, so he fits all the offered interpretations of "any other person."

No one argues that the alleged ambiguity makes application of the statute difficult in this case. With respect for the district court, under our understanding of Louisiana interpretive principles, we do not search for meaning outside of the statutory text if the only ambiguity in the statute is irrelevant to the litigation. Remington is a firearm manufacturer, the harm to Seguin resulted from a shooting injury "by any other person," and Seguin brings only a Section 56 design-defect claim.

Our conclusion is that Section 60(B) unambiguously bars design-defect claims. Two more considerations remain. First, does the rest of that enactment create ambiguity in how to read the relevant section? Second, is there anything absurd about the interpretation in the preceding paragraph?

III. Consideration of the entire statute

Seguin argues that other subsections of the 1999 firearm amendment to the LPLA will become superfluous if we limit Section 60(B) to manufacturing claims. Louisiana courts presume that words, sentences, and provisions in a law are not superfluous. *See Guillory v. Pelican Real Est., Inc.*, 2014-1539, p.3 (La. 3/17/15); 165 So. 3d 875, 877. We "are bound, if possible, to give effect to all parts of a statute and to construe no sentence, clause or word as meaningless and surplusage if a construction giving force to, and preserving, all words can legitimately be found." *Id.* We discuss the subsections said to surplusage under our reading of Section 60(B).

A. Section 60(C)

Seguin argues that because Section 60(C) precludes claims against manufacturers for improper *use* of firearms, that part of the statute is superfluous if Section 60(B) had already precluded all non-Section 55 manufacturing-defect claims against manufacturers.

As we must, we start with the text:

> Notwithstanding any other provision of law to the contrary, no manufacturer or seller of a firearm who has transferred that firearm in compliance with federal and state law shall incur any liability for any action of any person who uses a firearm in a manner which is unlawful, negligent, or otherwise inconsistent with the purposes for which it was intended.

LA. STAT. ANN. § 9:2800.60(C).

Seguin's solution — reading Section 60(B) to allow a Section 56 design-defect claim — does not solve Seguin's superfluity problem. Were we to interpret Section 60(B) to allow Section 56 design-defect claims and Section 55 manufacturing-defect claims, Section 60(C)'s preclusion of claims against manufacturers for others' improper use of firearms would be superfluous to both kinds of claims, and unnecessary for both.

It is evident that Section 60(B) is narrower than Section 60(C). Section 60(B) has an actor limitation: "No firearm manufacturer or seller shall be liable for any injury, damage, or death *resulting from any shooting injury by any other person*" except for a Section 55 manufacturing-defect claim. *Id.* § 9:2800.60(B) (emphasis added). Section 60(C)'s comparable actor limitation is broader: "no manufacturer or seller of a firearm . . . shall

incur any liability for *any action of any person* who uses a firearm" improperly. *Id.* § 9:2800.60(C) (emphasis added).

Thus, Section 60(C) precludes claims based on conduct by a broader category of actors than Section 60(B). Whatever the meaning, we cannot see that any need to read Sections 60(B) and 60(C) together aids Seguin.

B. Section 60(D)

Seguin argues that Remington's interpretation would render Section 60(D), which prevents a manufacturer from being liable if its firearms do not include some sort of safety device that is not actually required by statute, superfluous because it essentially is a preclusion of a specific kind of Section 56 design-defect claim. This is the language:

> The failure of a manufacturer or seller to insure that a firearm has a device which would: make the firearm useable only by the lawful owner or authorized user of the firearm; indicate to users that a cartridge is in the chamber of the firearm; or prevent the firearm from firing if the ammunition magazine is removed, shall not make the firearm unreasonably dangerous, unless such device is required by federal or state statute or regulation.

Id. § 9:2800.60(D).

We see no unavoidable surplusage. A way to interpret this subsection in a manner to avoid that problem is that it constitutes a prohibition of a category of manufacturing-defect claims. For example, a plaintiff might argue that because of some manufacturing defect of a firearm, the manufacturer has failed to "insure that a firearm has" the specific safety devices. Though Section 60(B) would not prohibit such a claim, Section 60(D) would, meaning Section 60(D) is not superfluous.

Finally, Section 60(D) does not have an actor limitation. Thus, because Section 60(D) precludes claims arising from harm other than that

resulting from a shooting injury caused by the subset of actors referenced in Section 60(B), Section 60(D) is not superfluous.

C. Section 60(E)

Seguin argues that Remington's interpretation would render Section 60(E) superfluous because it precludes a specific kind of design-defect claim already precluded by Section 60(B). This is what the section provides:

> (1) For the purposes of this Chapter, the potential of a firearm to cause serious injury, damage, or death as a result of normal function does not constitute a firearm malfunction due to defect in design or manufacture.
>
> (2) A firearm may not be deemed defective in design or manufacture on the basis of its potential to cause serious bodily injury, property damage, or death when discharged legally or illegally.

Id. § 9:2800.60(E).

Like Section 60(D), Section 60(E) does not have an actor limitation, thereby precluding claims where the actor limitation of Section 60(B) does not apply, such as when the harm resulted from a shooting injury caused by someone outside the Section 60(B) actor subset.

D. Section 60(F)

Section 60(F) protects manufacturers from certain kinds of claims of a failure to warn:

> Notwithstanding any provision of law to the contrary, no manufacturer or seller of a firearm shall incur any liability for failing to warn users of the risk that:
>
> (1) A firearm has the potential to cause serious bodily injury, property damage, or death when discharged legally or illegally.
>
> (2) An unauthorized person could gain access to the firearm.

> (3) A cartridge may be in the chamber of the firearm.
>
> (4) The firearm is capable of being fired even with the ammunition magazine removed.

Id. § 9:2800.60(F).

Yet again, we rely on the fact that this section includes no actor limitation. Thus, Section 60(B) does not block all failure-to-warn claims but only those based on harm resulting from a shooting injury by a specific actor subset.

We conclude that none of the other subsections of Section 9:2800.60 are superfluous under our reading that Section 60(B) forecloses design-defect claims. Even though the meaning of some of the other sections required analytical effort, we at least conclude that any duplication of meaning is not reduced by adding design-defect claims to the coverage of Section 60(B). In other words, Seguin's reading of Section 60(B) would not resolve the superfluity that her argument would have us identify.

We conclude with considering whether this limited meaning is absurd.

IV. Possible absurdity

In Louisiana, "a court must give effect to the literal application of the language of a statute . . . except in the rare case where such application will produce absurd or unreasonable results." *Pumphrey*, 2005-0979, p.14; 925 So. 2d at 1211. We see no evidence from that state's caselaw that a search is to be made for an actual explanation from the legislature. Instead, we are "to interpret the laws so as to give them the meaning which the lawmakers obviously intended them to have and not to construe them so as to give them absurd or ridiculous meanings." *Savoie v. Rubin*, 2001-3275, p.4 (La. 6/21/02); 820 So. 2d 486, 488.

Remington suggests that the legislature might have been fearful of "regulation through litigation." That is, allowing design-defect claims to proceed under the circumstances set forth in Section 60(B) poses a risk that judges and juries could deem certain designs defective, resulting in a virtual prohibition of those designs in all cases and for all manufacturers. By contrast, manufacturing-defect claims do not present the same risk of regulation through litigation because they do not affect entire product lines or industry-wide designs.

It is evident that the legislature sought to restrain liability. The first section of the 1999 amendment addressing firearms stated "that the Louisiana Products Liability Act was not designed to impose liability on a manufacturer or seller for the improper use of a properly designed and manufactured product," and further, "that the manufacture and sale of firearms" by those who are properly licensed "is lawful activity and is not unreasonably dangerous." 1999 La. Sess. Law Serv. 1299 (codified at § 9:2800.60). We consider this legislative statement of purpose in our analysis of the possibility of absurdity in the manner in which we have interpreted Section 60(B). Of course, this introductory section as well as Section 60(E) both refer to design defects. We conclude that such references neither suggest absurdity nor create ambiguity. A somewhat broader hortatory statement of purpose than is realized in actual statutory language is not absurd, and, possibly, not even unusual.

The plain text leads to preventing a meaningful category of potential claims against the manufacturers of firearms. In light of the overall focus of this legislation on providing a variety of protections to firearm manufacturers, we see no absurdity in giving these words the meaning they obviously have.

We REVERSE and RENDER judgment for Remington.

JAMES L. DENNIS, *Circuit Judge*, dissenting:

I respectfully dissent from the majority's certification of its question to the Louisiana Supreme Court. That question—"Does § 9:2800.60(B) of the Louisiana Products Liability Act bar an individual, who is shot and injured by a third-party, from bringing a design defect claim under § 9:2800.56 against a firearm manufacturer or seller?"—is not appropriate for certification because: (1) it is not determinative of this cause independently of any other question involved in this case; and (2) there are clear controlling precedents in the Louisiana Supreme Court decisions that require this court to affirm the district court's judgment without seeking an answer to a novel question that favors a party's litigation position. *See* La. Supreme Court Rule XII, section 1.

The parties in this case, both desiring to avoid the costs of a trial, entered a stipulation that they would file cross-motions for summary judgment, with Seguin relying on her theory of a design defect in the rifle based on her expert's report, and Remington relying on Louisiana Revised Statute § 9:2800.60(B)[1] ("§60(B)"), which effectively requires that a claim against a firearm manufacturer or seller may be pursued or proven only as a construction or composition claim. Per the stipulation, if the district court granted Remington's motion, judgment would be entered denying all of Seguin's claims; but, if the court granted Seguin's motion instead, judgment would be rendered in her favor in the amount of $500,000, regardless of her

[1] §60(B) provides: "No firearm manufacturer or seller shall be liable for any injury, damage, or death resulting from any shooting injury by any other person unless the claimant proves and shows that such injury, damage, or death was proximately caused by the unreasonably dangerous construction or composition of the product as provided in R.S. 9:2800.55."

actual damages. After considering briefs and oral arguments, the district court concluded that applying §60(B) literally would lead to absurd consequences; therefore, the court concluded that Seguin had presented a litigable design defect claim under the Louisiana Products Liability Act ("LPLA"), *see* La. R.S. 9:2800.56, and, in accordance with the parties' stipulation, awarded Seguin $500,000 in damages.

I agree that applying §60(B) literally to the present case would lead to absurd consequences, viz., treating all firearm injury or death claims as if they were construction or composition claims, contrary to the intent of design or warning defect claimants; incentivizing the corrupt efforts of special interest lobbyists; and misshaping the development of Louisiana products liability law in ways that are incongruous and inappropriate to a shocking degree.

The LPLA, enacted in 1988, was the careful result of a compromise between the Louisiana Trial Lawyers Association ("LTLA") and the Louisiana Association of Business and Industry ("LABI"), *see* Thomas Galligan, *The Louisiana Products Liability Act: Making Sense of It All*, 49 LA. L. REV. 629, 637-38 (1989); on the other hand, §60(B) was added eleven years later in 1999. As the district court correctly realized, applying §60(B) literally would lead to absurd consequences. Not only would it totally isolate and protect gun manufacturers from claims for design defects and inadequate warnings, but it would also incentivize the marketing of unsafe firearm products for use in Louisiana, and would deviate sharply from cases in Louisiana and all other states and jurisdictions, as well as from the original LPLA (1988), and from the American Law Institute's ("ALI") Restatements Second and Third of the Law of Torts-Products Liability. To my knowledge, no other state, jurisdiction, or institute has completely insulated firearms manufacturers from design defect and inadequate instruction or warning claims.

By its literal terms, §60(B) provides that no gun manufacturer or seller shall be liable to anyone shot by any other person unless the claimant proves that such injury or death was proximately caused by the construction or composition of the product under La. R.S. 9:2800.55. Thus, applied literally, §60(B) is a double-barreled blunderbuss that denies any claim against a gun maker unless it is proven as a construction or composition claim, a requirement that is no concession or sop: To prove a gun defective in construction or composition requires a claimant to prove that "the product deviated in a material way from the manufacturer's specifications or performance standards" at the time it left the manufacturer's control. *See* La. R.S. 9:2800.55.

Thus, if a person is harmed by a rifle that discharged without a trigger pull, as Seguin claims, she would not be able to hold the manufacturer liable so long as the rifle met the manufacturer's own specifications when it left the maker or seller's control—even if those specifications included a defectively designed trigger mechanism that can cause the gun to discharge without a trigger pull, and even if, as Seguin's expert Charles Powell wrote in his report, the gun manufacturer's entire product line has such a defectively designed trigger mechanism, and even if the manufacturer has known about the dangerous defect for years. This is an absurd result, which would aggravate victims' actual losses by grotesquely converting all of their claims into losing manufacturing defect claims. The manufacturing defect claim under § 9:2800.55 cannot serve to prove a design defect or inadequate instruction or warning claim; the upshot of a literal application of §60(B) to this or similar cases would be defeat of all design and inadequate warning claims against gun manufacturers.

In this respect, a literal application of §60(B) would break sharply with American and Louisiana products liability law, most of which was made initially by courts in common law fashion until the ALI began the

Restatements. Louisiana joined this process and adopted its principles starting with *Weber v. Fidelity & Casualty Insurance Company of New York*, 250 So. 2d 754 (La. 1971). It is solidly established in American and Louisiana products liability law that product defects are divided into manufacturing defects, design defects, and defects based on inadequate instructions or warnings. *See* Restatement (Third) of Torts: Products Liability § 1, cmt. a, note 1.[3] The identical division is present in the LPLA, as originally enacted, *see* La. R.S. 9:2800.55–57 (1988), and was established by the Louisiana Supreme Court in pre-LPLA Louisiana products liability jurisprudence. *See Halphen v. Johns-Manville*, 484 So. 2d 110 (La. 1986). This system of three

---

[2]*See, e.g.*, *Caterpillar Tractor Co. v. Beck*, 593 P.2d 871, 881-82 (Alaska 1979); *Dart v. Wiebe Mfg., Inc.*, 709 P.2d 876, 878-79 (Ariz. 1985); *Barker v. Lull Eng'g Co.*, 573 P.2d 443, 454 (Cal. 1978); *Cassisi v. Maytag Co.*, 396 So.2d 1140, 1145 (Fla. Ct. App. 1981); *Hunt v. Harley-Davidson Motor Co.*, 248 S.E.2d 15, 15-17 (Ga. Ct. App. 1978); *Toner v. Lederle Labs.*, 732 P.2d 297, 316 (Idaho 1987) (Bakes, J., concurring); *Hoffman v. E.W. Bliss Co.*, 448 N.E.2d 277, 281 (Ind. 1983); *Ulrich v. Kasco Abrasives Co.*, 532 S.W.2d 197, 200 (Ky. 1976); *Phipps v. General Motors Corp.*, 363 A.2d 955, 959 (Md. 1976); *Back v. Wickes Corp.*, 378 N.E.2d 964, 970 (Mass. 1978); *Prentis v. Yale Mfg. Co.*, 365 N.W.2d 176, 182 (Mich. 1984); *Bilotta v. Kelley Co.*, 346 N.W.2d 616, 621-22 (Minn. 1984); Miss. Code Ann. § 11-1-63 (1993) (establishing different liability tests for manufacturing, design, and failure to warn defects); *Nesselrode v. Executive Beechcraft, Inc.*, 707 S.W.2d 371, 375-77 (Mo. 1986); *Rix v. General Motors Corp.*, 723 P.2d 195, 200 (Mont. 1986); *Thibault v. Sears, Roebuck & Co.*, 395 A.2d 843, 846-47 (N.H. 1978); *O'Brien v. Muskin Corp.*, 463 A.2d 298, 304 (N.J. 1983); *see also* N.J. Stat. Ann. §§ 2A:58C-2, 3 (West 1987) (establishing different defenses based on whether product was defective in manufacture, design, or warning); *Denny v. Ford Motor Co.*, 662 N.E.2d 730, 735 n. 3 (N.Y. 1995); *State Farm Fire & Casualty Co. v. Chrysler Corp.*, 523 N.E.2d 489, 494 (Ohio 1988) (*see also* Ohio Rev. Code Ann. §§ 2307.74-76 (Anderson 1991) (establishing different liability tests for manufacturing defects, design defects, and failure to warn)); *Phillips v. Kimwood Mach. Co.*, 525 P.2d 1033, 1035-38 (Or. 1974) (*see also* Or. Rev. Stat. § 30.900 (1991)); *Turner v. General Motors Corp.*, 584 S.W.2d 844, 847-48 (Tex. 1979) (*see also* Tex. Civ. Prac. & Rem. Code Ann. § 82.005 (West 1993) (sets standards for proving a design defect which do not govern a manufacturing defect)); *Peterson v. Safway Steel Scaffolds Co.*, 400 N.W.2d 909, 912 (S.D. 1987); *Baughn v. Honda Motor Co., Ltd.*, 727 P.2d 655, 661 (Wash. 1986) (*see also* Wash. Rev. Code Ann. § 7.72.030 (West 1992) (establishing different standards for manufacturing, design, and failure to warn defects)); *Morningstar v. Black & Decker Mfg. Co.*, 253 S.E.2d 666, 682 (W. Va. 1979).

main categories of product defects is also well recognized by eminent law professors and treatise writers; indeed, it is so fundamental that most casebook authors and treatise writers organize their discussions concerning product defects around these categories. *See* Restatement (Third) of Torts: Products Liability § 1, cmt. a, note 1.[4] Legal scholarship and commentary also recognize this division as fundamental to the law of products liability. *Id.*[5]

---

[3] *See, e.g.*, FISCHER AND POWERS, PRODUCTS LIABILITY: CASES AND MATERIALS Ch. 2C (1988); FRANKLIN AND RABIN, TORT LAW AND ALTERNATIVES 492-541 (6th ed. 1996); HENDERSON AND TWERSKI, PRODUCTS LIABILITY: PROBLEMS AND PROCESS PARTS I AND II (3d ed. 1997); MADDEN, PRODUCTS LIABILITY: Chs. 8, 9, 10 (2d ed. 1988); NOEL AND PHILLIPS, PRODUCTS LIABILITY: CASES AND MATERIALS Chs. 5-7 (1976); OWEN, MONTGOMERY AND KEETON, CASES AND MATERIALS ON PRODUCTS LIABILITY AND SAFETY Ch. 7 (3d ed. 1996); PHILLIPS, TERRY, MARAIST, MCCLELLAN, TORT LAW: CASES, MATERIALS, PROBLEMS 717-30 (1991); KEETON, DOBBS, KEETON AND OWEN, PROSSER AND KEETON, ON THE LAW OF TORTS § 99 (5th ed. 1984 & Supp. 1988); SHAPO, THE LAW OF PRODUCTS LIABILITY Chs. 9, 19 (2d ed. 1990).

[4] *See, e.g.*, Sheila L. Birnbaum, *Unmasking the Test for Design Defect: from Negligence [to Warranty] to Strict Liability to Negligence*, 33 VAND. L. REV. 593, 599-600 (1980); David K. DeWolf & Keller W. Allen, *Liability for Manufacturers in Washington: When Is Strict Liability Appropriate?*, 27 GONZ. L. REV. 217, 235-39 (1991/1992); Dennis J. Dobbels, *Missouri Products Liability Law Revisited: A Look at Missouri Strict Products Liability Law Before and After the Tort Reform Act*, 53 MO. L. REV. 227 (1988); Raymond J. Kenney, *Products Liability in Massachusetts Enters the 1990's*, 75 MASS. L. REV. 70 (1990); Keith Miller, *Design Defect Litigation in Iowa: The Myths of Strict Liability*, 40 DRAKE L. REV. 465, 471 (1991); William Mowery, Comment, *Torts—A Survey of the Law of Strict Products Liability in New Mexico*, 11 N.M. L. REV. 359, 383-87 (1981); Note, *Minnesota Replaces the Restatement Standard with a Negligence Standard*, 11 WM. MITCHELL L. REV. 891, 892-96 (1985); David G. Owen, *The Moral Foundations of Product Liability Law: Toward First Principles*, 68 NOTRE DAME L. REV. 427, 463-77 (1993); William Powers, *A Modest Proposal to Abandon Strict Products Liability*, 1991 U. ILL. L. REV. 639 (1991); Sales, *Product Liability Law in Texas*, 23 HOUS. L. REV. 1, 15-97 (1986); Gary T. Schwartz, *Foreword: Understanding Products Liability*, 67 CAL. L. REV. 435, 460-

Yet, contrary to this overwhelming weight of consistent authority, the unquestioning literal acceptance of §60(B) urged by Remington totally goes against the grain of Louisiana's well-balanced, comprehensive products liability system insofar as firearms are concerned, and, if given credence, would undermine the most basic principle of products liability: to hold manufacturers equally and fairly liable for damage caused by the marketing of unreasonably dangerous products. A literal application of §60(B) would render a gun manufacturer immune from liability when it sells a firearm that can, because of a defective trigger-firing-pin design, discharge autonomously (without a trigger pull), putting all in range at risk of severe injury or death. A literal application would insulate a gun manufacturer from liability even when the manufacturer has knowledge of the unreasonably dangerous design defect, yet does nothing to rectify it and chooses instead to continue to knowingly sell the unreasonably dangerous and defective firearm. This is an absurd result that conflicts with the basic principles of Louisiana and American products liability law, and it cannot be seen as anything other than a colossal and unwelcome aberration in the law otherwise designed to protect consumers and ordinary citizens.

As the district court correctly explained, pursuant to Louisiana Civil Code article 9, "[w]hen a law is clear and unambiguous *and its application does not lead to absurd consequences*, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." LA. CIV. CODE art. 9 (emphasis added). However, "where a literal interpretation would produce absurd consequences, the letter must give way to the spirit of the law and the statute construed so as to produce a reasonable result." *Sultana Corp. v. Jewelers Mut. Ins. Co.*, 860 So. 2d 1112, 1116 (La.

---

81 (1979); John W. Wade, *On the Nature of Strict Tort Liability for Products*, 44 MISS. L.J. 825, 830-38 (1973).

2003) (citations removed); *see also* P. Raymond Lamonica & Jerry G. Jones, 20 Louisiana Civil Law Treatise: Legislative Law and Procedure § 7.4 (2011 ed.) ("In situations where the *application* of statutory or constitutional text is judicially determined to create an 'absurd consequence,' the literal language of the law need not be followed."). In order for a court to find that a literal application results in absurd consequences, "there must be a determination by the court that the specific application at issue arising from the literal wording would, if judicially enforced, produce a factual result so inappropriate as to be deemed outside the 'purpose' of the law." *See, e.g.*, *McLane S., Inc. v. Bridges*, 84 So. 3d 479, 485 (La. 2012) (quoting Lamonica & Jones, § 7.4).

The Louisiana Supreme Court has interpreted multiple statutes under this doctrine, holding that application of the literal wording of the statute would produce absurd results. *See Gulley v. Hope Youth Ranch*, 221 So. 3d 21, 27 (La. 2017) (holding that Office of Workers' Compensation's application of Medical Treatment Guidelines was invalid because it led to an absurd result that was medically unsound); *McLane S.*, 84 So. 3d at 485-86 (holding that excise tax applied to smokeless tobacco, even though the legislature failed to amend one portion of the Tobacco Tax Law, because holding to the contrary would cause "a result outside the purpose of the Tobacco Tax Law as a whole" and would be absurd); *Webb v. Par. Council of Par. of E. Baton Rouge*, 47 So. 2d 718, 720 (La. 1950) (construing the word 'election' in a statute to mean 'primary election' rather than 'general election' to avoid an absurd result); *Bradford v. Louisiana Pub. Serv. Comm'n*, 179 So. 442, 446 (La. 1938) (construing an 'or' in a statute as an 'and' to avoid an absurd result) (citing *Gremillion v. Louisiana Pub. Serv. Comm'n*, 172 So. 163 (La. 1937)).

In my view, the present case is another instance in which the Louisiana Supreme Court, in a case arising in its court system, would declare that the

application of the literal wording of a law would lead to absurd consequences. Applying §60(B) literally as a stand-alone law would lead to the absurd consequence that if a manufacturer designed a gun that could discharge autonomously without a trigger pull, no person injured because of that defect would be allowed to recover damages from the manufacturer. This is a legal consequence so inappropriate as to be outside the original LPLA, its design defect definition, *see* § 9:2800.56, its jurisprudential antecedents, *see Halphen*, 484 So. 2d 110, and United States products liability law in general, *see* Restatement (Third) of Torts: Products Liability § 1.

The LPLA provides that a manufacturer "shall be liable to a claimant for damage proximately caused by a characteristic of the product that renders the product unreasonably dangerous when such damage arose from a reasonably anticipated use of the product by the claimant or another person or entity." La. R.S. 9:2800.54(A). It defines an unreasonably dangerous product, *inter alia*, as one "unreasonably dangerous in construction or composition," "unreasonably dangerous in design," or "unreasonably dangerous because of inadequate warning," as defined by §§ 9:2800.55, .56, and .57. *See* La. R.S. 9:2800.54(B). Under a literal application of §60(B), even where a firearm is "unreasonably dangerous in design" such that it discharges without a trigger pull, a manufacturer could not be held liable. This would contravene the purpose of the LPLA to provide an avenue for holding manufacturers responsible when a product leaves its control that is unreasonably dangerous because of a design or warning defect, as well as by reason of a manufacturing defect.

The absurdity of these consequences is also well-illustrated by the strength of Seguin's defective design claim that would be relegated anomalously to a frivolous manufacturing claim by §60(B). Seguin's expert, Charles W. Powell, would have testified, according to his Engineer's Report, that the model of firearm at issue, a Remington Model 710 bolt action rifle,

was defectively designed in that its construction allows foreign materials to build up unseen inside the fire control assembly (the "Walker trigger"), which can cause the weapon to fire without the user pulling the trigger. The Eighth Circuit, in a case in which Powell also gave expert testimony, found this alleged defect to be present in the fire control assembly of the Remington Model 700, which is the functional equivalent of the Model 710's fire control assembly. *See O'Neal v. Remington Arms Co.*, 817 F.3d 1055, 1057–58 (8th Cir. 2015). In *O'Neal*, the court explained that the "inherent design" of the Walker trigger assembly is such that, if its operative components are "misaligned by as little as 1/100th of an inch," the result can be "the weapon discharging without the trigger being pulled." *Id.* Because "[v]ery small pieces of dirt, manufacturing residue, corrosion deposits, lubricant deposits, firing deposits, and even condensation can get trapped between the connector and the trigger when the two parts separate" every time the rifle is fired, the risk of such misalignment is high. *Id.* at 1057. Further, the *O'Neal* court found evidence that Remington had been aware of the Walker trigger assembly's defective design for decades, yet did nothing to fix it. *Id.* at 1057–58 ("Remington knows the Walker trigger can cause Model 700 rifles to fire a round when the safety lever is released from the safe position to the fire position, without the trigger being pulled . . . Remington knew about this problem with the Walker trigger at least as early as 1979.").

For all of the foregoing reasons, I respectfully dissent from the majority's decision to certify a question to the Louisiana Supreme Court, rather than applying that court's already developed precedents dealing with statutes leading to absurd consequences and that clearly control in the present case and require that the district court's judgment be affirmed.