STATE OF MICHIGAN

COURT OF APPEALS

LAURA LEE SMREKAR, Plaintiff-Appellee,	UNPUBLISHED January 5, 2001
v JEEP CORPORATION, AMERICAN MOTORS CORPORATION and CHRYSLER CORPORATION, Defendants-Appellants.	No. 201521 Wayne Circuit Court LC No. 94-424069-NP ON REMAND

Before: Kelly, P.J., and Jansen and White, JJ.

PER CURIAM.

This products liability case is before us for the second time. The Supreme Court has remanded the case for further consideration and the issuance of a supplemental opinion. On remand, according to the order of the Supreme Court, dated May 17, 2000, we are to address the following two specific arguments concerning plaintiff's prima facie case of design defect:

> First, Owens[1] states that a plaintiff who produces no evidence of how likely it is that a particular type of accident will occur must bear a particularly "heavy burden" in proving that the defendant's chosen design was unreasonably dangerous. 414 Mich at 430. On remand, the Court of Appeals must consider whether the plaintiff's evidence was sufficient to carry that increased burden.
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> Second, Owens requires proof that the proposed alternative design would actually have been used by the plaintiff. 414 Mich at 430-431. The defendant's design choice was not proven to be a proximate cause of the plaintiff's injuries unless plaintiff presented sufficient proof that she actually would have utilized the alternative design proposed by her expert witness. On remand, the Court of Appeals must address defendant's argument that the plaintiff failed to present evidence that was sufficient to prove that element of her claim.

[1] *Owens v Allis-Chalmers Corp,* 414 Mich 413; 326 NW2d 372 (1982).

Because we again conclude that plaintiff presented a prima facie case of design defect, we affirm.

The facts involved in this case are straightforward and essentially not in dispute. On August 11, 1991, plaintiff, who was then approximately twenty-one-years-old, and her three friends, Amy Clark Newby (nineteen), Diane Vonovich (twenty-one) and Scott Peterson went to Cedar Pointe in Sandusky, Ohio, in Newby's boyfriend's 1991 black, two-door, soft-top Jeep Wrangler. The four spent the night in a hotel in Ohio. The next morning, they packed the car with their suitcases and pillows, leaving little room in the rear storage portion of the vehicle.

Because it was such a nice day, Newby, helped by her companions, took the top off the Jeep and removed the upper portion of both side doors. The upper half of the Jeep doors contained a vinyl window in a metal frame which was connected to the lower metal portion of the door by "three prongs, big [metal] posts [or pins] that slide into holes that are in the" lower portion of the door. The upper doors, with the metal prongs facing upward, were then placed in the small storage area of the Jeep located between the back seat and the back gate door. Originally, the upper doors were placed in the back with the pins facing down but that caused the doors to sit up too high and Newby feared the doors would "blow out the back" of the Jeep.

As they left the hotel, Newby was driving, Peterson was in the front passenger seat, Vonovich was in the back seat behind Peterson, and plaintiff was in the back seat behind Newby. The metal prongs were directly behind plaintiff's head. Shortly after leaving their hotel, Newby and the others decided to exit the interstate highway and take a two-lane highway home. As they were driving along the two-lane highway, they decided to go "off-roading." While driving over a bump, plaintiff's "head went back" and one of the metal prongs pierced her skull just above the left ear. Apparently, the prong went about six inches into plaintiff's brain, causing serious "brain damage."

Subsequently, plaintiff filed a complaint against defendants alleging that the Jeep was defectively designed in that there was no storage system incorporated within the Jeep to house the removable upper doors.

At trial, plaintiff presented the expert testimony of Carl Thelin, an automotive engineer and automobile accident investigator. Thelin testified that the metal prongs constituted a hazard when the upper doors were removed and stored within the interior of the car. Thelin described the metal prongs as "dangerous." He testified that common sense dictated that the upper doors containing the metal prongs would need to be stored somewhere. Thelin indicated that the risk in this case was obvious. He testified that "if the vehicle is involved in a front crash and those things are stored the way they were, [sic] the vehicle that [plaintiff] was in, they would come flying forward during the crash and cause injuries to whoever is sitting in any of the seats. If there is a rear impact, those spikes would make the worst kind of head restraints you can think of." According to Thelin, even if defendants had no knowledge of any other incidents like the one that occurred in this case, it would not reduce the size, magnitude, or likelihood of the risk because the risk was so "obvious." Thelin testified that it was foreseeable that somebody could be injured if the upper doors were stored behind the rear seats. Moreover, according to Thelin, there were reasonable alternative designs. For instance, Thelin testified that defendants could have manufactured a zippered pouch or bag to store the upper doors when they were removed

from the lower portion of the doors. According to Thelin, the bag would have gotten "those spikes away from people's heads." Thelin testified that the design of a carrying case for the upper doors would not have required retooling the design of the vehicle and would not have been very expensive.[2]

Following Thelin's testimony, plaintiff rested her case. Thereafter, defendants made a motion for a directed verdict, arguing that plaintiff failed to present a prima facie case of defective design. The trial court denied defendants' motion.

After defendants presented the testimony of their witnesses, plaintiff presented the rebuttal testimony of Ricky LeBlanc. LeBlanc testified that he owned a 1987 soft-top Jeep Wrangler and that he stored the upper doors behind the back seat with the prongs pointing upward because "[t]he pins, when they are facing down, the wind blows on the doors and makes the doors move back and forth and tears holes in the carpet" and the upper doors "ride lower" when they are stored with the prongs facing upward, thereby improving visibility. According to LeBlanc, he had observed his friends and acquaintances who own Jeeps removing the upper doors and storing them behind the back seat with the "[p]ins always [facing] up, especially, in off-roading situations . . . . It is vibrations and going off the bumps and climbing hills, those pins will do a lot of damage to the inside of your Jeep."

After hearing all of the evidence, the jury awarded plaintiff damages in the amount of $444,204.91. Defendants then moved for judgment notwithstanding the verdict. Specifically, defendants claimed that plaintiff failed to present evidence of the magnitude of the risk, the availability of an alternative design, and proximate cause. The trial court denied defendants' motion for judgment notwithstanding the verdict. Defendants then filed an appeal as of right. In our original opinion, we determined that plaintiff presented a prima facie case of defective design. Upon further consideration, we again conclude that plaintiff made a prima facie showing of defective design.

A manufacturer has a duty to design its product so as to eliminate any unreasonable risk of foreseeable injury. *Prentis v Yale Manufacturing Co,* 421 Mich 670, 693; 365 NW2d 176 (1984); *Owens v Allis-Chalmers Corp,* 414 Mich 413, 425; 326 NW2d 372 (1982); *Reeves v Cincinnati,* 176 Mich App 181, 185; 439 NW2d 326 (1989). In *Owens,* our Supreme Court set forth the requirements of a prima facie case of defective design in a case such as this. To show a defective design, a plaintiff must produce sufficient evidence of (1) the magnitude of the risks of injury involved, including the likelihood of the occurrence of the type of accident precipitating the need for the safety device and the severity of injuries sustainable from such an accident and (2) the reasonableness of the proposed alternative design and whether that device would have been effective as a reasonable means of minimizing the foreseeable risk of danger. *Owens, supra,* 414 Mich at 429-431; *Reeves, supra,* 176 Mich App at 187-188. Under *Owens*, "where the magnitude of the risks is quite uncertain because it is dependent upon an unknown incidence of [the specific injury in question], an examination of the effects of any proposed alternative

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[2] Defendants' expert, former Chrysler/Jeep employee James Thornton, admitted that it would have been feasible to design a carrying case for the upper doors.

design must bear a heavy burden in determining whether the chosen design was unreasonably dangerous." *Owens, supra,* 414 Mich 430.

We believe that plaintiff met her burden of proving that defendant's chosen design was unreasonably dangerous. As we indicated in our original opinion in this matter, the evidence presented at trial indicated that there was a substantial risk of injury associated with the protruding prongs on the removable upper doors in light of the fact that there was nowhere to store the doors on or within the vehicle, and although the doors could be placed prongs down, there was evidence that there were features of the vehicle and upper doors that made it foreseeable that vehicle users would find it preferable to place the doors prongs up. Plaintiff's expert, Carl Thelin, testified that defendants' design was dangerous, that the risk of injury was obvious, and the injury in this case was foreseeable. From the evidence presented by plaintiff's expert, the jury could properly infer that the metal prongs represented an obvious danger and that it was extremely likely that the exposed metal prongs would cause injury to occupants during off-roading situations or during an accident. Basically, these prongs were dangerous pointed projections attached to an unstable mass poised to inflict injury under a myriad of circumstances. The consequences associated with the vehicle occupants coming into contact with these metal prongs, as this case illustrates, could be extremely serious. Moreover, evidence was presented to indicate that the alternative design, the safety bag, was an acceptable, feasible, safe, inexpensive alternative. Even defendants' expert testified that the safety bag had been used in other situations and was a feasible alternative design.

In our opinion, the evidence, viewed most favorably to plaintiff, *Zander v Ogihara Corp,* 213 Mich App 438, 441; 540 NW2d 702 (1995), supported a finding that the risk of injury from the exposed metal prongs would have been apparent to the ordinary juror. Therefore, we conclude that plaintiff met her burden of producing sufficient evidence for the jury to conclude that defendants' chosen design was unreasonably dangerous.

With regard to the requirement that plaintiff produce evidence to show that she or her companions would likely have used the alternative design, *Owens, supra,* 414 Mich at 430-431, given that plaintiff and her companions initially placed the doors with metal prongs down, we believe that the jury could infer from the evidence that if a safety bag had been provided by defendants, plaintiff and/or her companions could have utilized the alternative design.

For the reasons set forth above, we find that plaintiff presented a prima facie case of defective design; therefore, the trial court properly denied defendants' motion for directed verdict as well as defendants' motion for judgment notwithstanding the verdict. *Goldman v Phantom Freight, Inc,* 162 Mich App 472, 477; 413 NW2d 433 (1987).

Affirmed.

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ Helene N. White