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FEDERAL DISTRICT COURT DENIES CLASS CERTIFICATION ON RISK UTILITY CLAIMS

A United States District Court has again denied plaintiffs' efforts to certify a class related to alleged design flaws in automotive seats. *Lloyd v. General Motors Corp., et al.*, --- F. Supp.2d ---, 2011 WL 2433091 (D. Md. June 16, 2011). The *Lloyd* decision is significant because it emphasizes that there are cases where it is not practicable for juries to decide issues related to vehicle design issues, even where the risk-utility standard is used for purposes of evaluation.

The court previously declined to certify a class related to Ford Explorers, Mercury Mountaineers, or Ford Windstars for various model years. The plaintiffs had claimed that the seats in the vehicles at issue in the earlier ruling were defective because they were prone to collapse rearward in certain kinds of collisions. *See id.* at *1. The plaintiffs sought to recover money damages to strengthen the seats and not for personal injuries. *See id.*

In response to the earlier ruling denying class certification, the plaintiffs requested leave to propose a reformulated class and filed another class certification motion, with the proposed class to address only Maryland residents who owned certain Ford or Mercury vehicles. The plaintiffs also abandoned other tort and deceptive trade practices claims, leaving only claims for negligence and strict product liability. *See id.* at *2.

In connection with the renewed motion for class certification, the court found that while the proposed class met the requirements of Civil Rule 23(a), it failed to meet the requirements of Civil Rule 23(b)(3). *See id.* The court stated that a court "must envision how a class action would unfold. This requires a mental dress rehearsal of the anticipated proof, the jury instructions, the verdict sheet, and the burdens imposed on the jury. Certification should not be denied merely because the case would be complicated or protracted. When complexity would degenerate into disorder, however, class certification must be refused." *Id.*

The court addressed the proper product liability framework under Maryland law, which uses two product liability tests: the consumer expectation test and the risk-utility test. "The consumer expectation test asks whether the product was in a defective condition at the time it was sold. A defective condition is one not contemplated by the ultimate consumer, which will be unreasonably dangerous to him." *Id.* (quotation omitted). The risk-utility test "asks whether a manufacturer, knowing the risks inherent in the product, acted unreasonably in putting it on the market." *Id.* (quotation omitted).

The court rejected the plaintiffs' argument that the consumer expectation test should apply. The court explained that "[i]t would be pointless to ask whether a reasonable consumer would or would not expect a seatback to deform backwards in a moderate speed rear-impact collision. Any reasonable consumer would want to know the safety tradeoffs involved in making the seatbacks more rigid. A reasonable consumer would also want to know whether potentially safer alternative designs were technologically feasible, cost-effective, and available when the vehicles were manufactured." *Id.* at *5. The court explained that these inquiries "lie at the very heart of the risk-utility test." *Id.*

With respect to applying the risk utility test, the court held that the class still fails the tests of manageability and superiority:

> The jury, as before, would be confronted with an intimidating task. In order to apply the risk-utility test, the jury would have to shoulder two burdens. First, jurors would need to understand the safety performance of the seating system as built. This would, in turn, require them to understand fully the manner in which the seating system protects or fails to protect passengers of different ages, weights, and sizes in different types of crashes at different speeds. Second, after assessing the safety performance of the system as-built, the jury would be required to determine whether there was a feasible alternative design available to the manufacturer when the cars were built. This inquiry would require the jury to hypothesize changes to the seating system to determine whether it could have been differently designed in a way so as to make the cars safer overall. If so, the jury would next be required to determine whether the redesigned system could have been manufactured at a reasonable cost with the technology available. If the jury decided, after applying the risk-utility test, that the seating system was defectively designed, they would next be called upon to determine whether the seating system could be repaired or strengthened to make it safer.

Id. at *5.

The court also indicated that because several personal injury seatback cases have gone to trial, "[a] seatback case, therefore, is not per se an impossible task for a jury," but elsewhere stated that this case "presents a more difficult and amorphous task for a jury. Because there is no specific accident at issue, the jury must evaluate the system's performance in the abstract. It must take into consideration the multiplicity of accident types and passenger profiles and decide whether the existing NHTSA standard (3,300 in-pounds) is adequate, and, if not, how rigid the seatbacks should have been to make the overall system reasonably safe. This inquiry would present overwhelming manageability problems for a jury trial." *Id.* at *6.

The *Lloyd* decision highlights some of the arguments and defenses that manufacturers may want to emphasize in defending against product liability class actions, including the difficulties involved in analyzing design questions at an abstract level, much like a regulator would do.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or either of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Jeffrey J. Jones
Columbus
+1.614.281.3950
jjjones@jonesday.com

J. Todd Kennard
Columbus
+1.614.281.3989
jtkennard@jonesday.com