

Kim v. Toyota Motor Corporation (1/19/2016) C.A. 2nd/7, No. B247672

In a strict products liability action, evidence of industry custom and practice may be admissible, depending on the nature of evidence and purpose for introducing such evidence.

FACTS/PROCEDURE:

Plaintiff William Jae Kim (Kim) and Hee Joon Kim sued defendant Toyota Motor Corporation in connection with a motor vehicle accident that was allegedly due to a defect in his 2005 Toyota Tundra pickup truck. Kim sued under the theory of strict products liability and claimed that the absence of an electronic stability control (ESC) in the pickup truck was a design defect that proximately caused the accident.

Kim filed several motions in limine, including the motion involved in this appeal which asked the court to exclude evidence that the custom of the automotive industry was not to include ESC as standard equipment in pickup trucks. Kim argued that such evidence is irrelevant, unduly prejudicial, and inadmissible as a matter of law in a strict liability action. The Kims also moved in limine to preclude “any argument, evidence or testimony” that the 2005 Tundra was not defective because it complied with Federal Motor Vehicle Safety Standards (“FMVSS”). The trial court denied both motions.

There are two alternative tests for identifying a design defect in a strict products liability action: the consumer expectations test and the risk benefit test. Under the consumer expectations test, if a product is used in an intended or reasonably foreseeable manner, yet fails to perform as safely as an ordinary consumer would expect, it has a design defect. To prove a design defect under the risk benefit test, a plaintiff must show a product’s “design embodies ‘excessive preventable danger.’” The trial court instructed the jury on the risk benefit test and refused to instruct on the consumer expectations test. After the jury rendered a defense verdict, the Kims moved for a new trial arguing the trial court erred on their evidentiary ruling, jury instructions, and cutting off their rebuttal argument without giving their attorneys adequate warning. The trial court denied this motion as well, and the Kims appealed. The issue in this appeal is whether the trier of fact may consider evidence of industry and custom practice in the risk benefit analysis.

DISCUSSION/HOLDING:

Affirmed. The court parted from two divergent views on the admissibility of industry custom and practice in a strict liability design defect case. One view, which Kim relied on, stated such evidence was always inadmissible. A second view from a recent case stated that such evidence was always admissible. Neither view persuaded the court, and it instead settled on a middle ground. The court held that evidence of custom and practice may be admissible in a strict liability action, depending on the nature of the evidence and the purpose for which the proponent seeks to introduce the evidence. The trial court has discretion to exclude this evidence if it is not relevant to the issues in the case or if under Evidence Code section 352 its probative value is substantially outweighed by the risk of undue prejudice or confusion. Industry custom may reflect legitimate, independent research and practical experience regarding the appropriate balance of product safety, cost, and functionality. Such evidence may be relevant in a strict products liability action in determining whether a product embodies excessive preventable danger, which is the ultimate question under the risk-benefit test.

Here, the Kims moved to exclude all evidence of custom and practice. Since the per se rule of inadmissibility was erroneous, the court found no abuse in discretion in the trial court’s order denying Kim’s motion. The court also concluded that the trial court’s evidentiary rulings and imposition of a time limit on the duration of rebuttal argument were not an abuse of discretion, and

that it properly refused the Kims' proposed jury instructions on federal safety standards and industry customs.