

The Value of Well-Developed Industry Standards in Products Liability Legislation

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In 2014 the Woodworking Machinery Industry Association (WMIA) and the Wood Machinery Manufacturers Association (WMMA) formed a Technical Advisory Group (TAG) that is working on harmonizing the ANSI 01.1 Woodworking Safety Standards with global woodworking standards created by the International Safety Organization (ISO). This project will benefit the entire industry in creating more uniform global standards. One goal is there will be fewer injuries by the woodworkers using the machines. Another result of the project will be to use these well developed standards as a defense where there is an injury. The project will help the defense of future claims and suits.

ANSI 01.1 is a consensus standard that aids manufacturers, employers and employees in the safe construction, installation, operation and maintenance of woodworking machinery and accessory equipment. Since 1944, the ANSI 01.1 Standard has been updated on multiple occasions. The recent work of the 01.1 Committee has included drafting the following standards:

- ANSI 01.1:2013 Woodworking machinery – Safety requirements
- ANSI 01.1-1:2007 Safety Requirements for Fixed Angle Jump saws
- ANSI 01.1-3:2014 Safety Requirements for CNC Machining Center
- ANSI 01.1-2 Safety Requirements for Gang Rip Saws (in progress)
- ANSI 01.1-4 Safety Requirements for CNC Machining Center shapers (in progress)
- ANSI 01.1-5 Safety Requirements for Straight-Line Rip Saws (in progress)

This article will examine how well-developed standards can be successfully used in the defense of product liability cases alleging claims of strict liability, negligence and even punitive damages. Compliance with such well developed standards can help a manufacturer, distributor or dealer present a compelling defense to the product liability claims.

I. Introduction

In products liability cases, defendant manufacturers usually introduce evidence of compliance with industry standards to prove their product designs are reasonable and not defective. Courts in Georgia and elsewhere routinely hold such evidence to be admissible, but not conclusive on the issue of whether a product is defective. Georgia law is consistent with this analysis.

Plaintiff's lawyers often argue the industry standards are only "minimum standards" and the manufacturer should have done more. Well developed standards are much more than the minimum. There are several cases from other jurisdictions suggesting a defendant-manufacturer's compliance with well-drafted industry standards can in some circumstances preclude a defective design claim when plaintiff lacks sufficiently credible evidence establishing a defect. This is particularly true for negligent design claims, where the reasonableness of the manufacturer's design choice is a central issue. Where a well-developed industry standard represents the state-of-the-art and there is no safer alternative design, compliance with industry standards should be dispositive. Compliance with industry standards in strict liability cases is less likely to be dispositive because a safer alternative design choice than the industry standard might still constitute evidence of design defect.

II. Georgia Law on Industry Standards

In *Banks v. ICI Americas, Inc.*, 264 Ga. 732, 450 S.E.2d 671 (1994), the Georgia Supreme Court adopted the risk-utility balancing test to evaluate the sufficiency of a product's design. See 264 at 735. *Banks* sets forth a

non-exclusive list of considerations that form this balancing test, including the state of the art, a product's usefulness, severity of danger raised by the product and whether that danger can be avoided, the ability to eliminate the danger without impairing the usefulness of the product etc. In laying out these factors, the Georgia Supreme Court noted that "[a] manufacturer's proof of compliance with industry-wide practices, state of the art or federal regulations does not eliminate conclusively its liability for its design of allegedly defective products." *Id.* at 736. See also *Doyle v. Volkswagenwerk Aktiengesellschaft*, 267 Ga. 574, 577, 481 S.E.2d 518, 521 (1997) (compliance with Federal standard is a significant factor in *Banks* test, but is not conclusive). Georgia's pattern jury charge on this issue provides as follows:

"In determining whether a product was defective, you may consider proof of a manufacturer's compliance with federal or state safety standards or regulations and industrywide customs, practices, or design standards. Compliance with such standards or regulations is a factor to consider in deciding whether the product design selected was reasonable considering the feasible choices of which the manufacturer knew or should have known. However, a product may comply with such standards or regulations and still contain a design defect." 62.670, *Suggested Pattern Jury Instructions*, Vol. I: Civil Cases, 5th ed. (2014)

While compliance with federal law can give rise to preemption defenses in some circumstances, absent a federal preemption defense the law in Georgia is relatively clear that compliance with industry standards is an important, but non-dispositive factor in the *Banks* analysis. Nevertheless, other courts have ruled that compliance with industry standards is conclusive, particularly when coupled with weak or no evidence of a defect. Those cases are discussed below. These cases provide a mechanism for Georgia defense lawyers to persuade courts to extend *Banks* beyond its current parameters, at least in negligence cases.

III. Negligence Cases

A product's compliance with well-developed industry standards is most likely to preclude a manufacturer's liability in design defect cases based on negligence. In *Vermett v. Fred Christen & Sons Co.*, 138 Ohio App. 3d 586, 741 N.E.2d 954 (6th Dist. Lucas County 2000), for instance, the plaintiff's hand was crushed while he was operating a press brake machine, and he sued the manufacturer for negligence alleging the machine was defectively designed. The court held the machine's compliance with industry and safety standards, specifically ANSI, was "a compelling factor" in considering the reasonableness of the manufacturer's design choice and precluded the manufacturer's liability for negligent design as a matter of law, 138 Ohio App. 3d at 609. In *Howard v. Omni Hotels Management Corp.*, 203 Cal. App. 4th 403, 136 Cal. Rptr. 3d 739 (2012), a bathtub manufacturer that complied with industry standards met the applicable duty of care to the plaintiff hotel guest regarding slipperiness of the tub and was thus entitled to summary judgment on the plaintiff's negligence claim based on design defect.

In two cases applying Virginia law, the Fourth Circuit held that while compliance with industry custom and usage does not automatically absolve a manufacturer or seller of a product from negligence liability, such compliance "may be conclusive" when there is no evidence to show the product was not reasonably safe or the relevant industry custom or standard was not reasonably safe.

In *Alevromagiros v. Hechinger Co.*, 993 F.2d 417, (4th Cir. 1993), the plaintiff was injured when a ladder on which he was standing fell. He sued the manufacturer of the ladder alleging it was negligent in defectively designing the ladder. In determining whether the ladder was unreasonably dangerous, the court considered industry safety standards and the reasonable expectations of consumers, which could be established through evidence of actual industry practices. See 993 F.2d at 420. The court "recognize[d] that conformity with industry custom does not automatically absolve a manufacturer or seller of a product from liability. Nevertheless, a product's compliance with industry custom 'may be conclusive when there is no evidence to show that it was not reasonably safe.'" *Id.* at 420 n.6 (quoting *Turner v. Manning, Maxwell & Moore, Inc.*, 216 Va. 245, 251, 217 S.E.2d 863, 868 (1975)). The Fourth Circuit affirmed the lower court's grant of a directed verdict for the manufacturer because the plaintiff failed to present any evidence the ladder did not meet industry standards. The plaintiff's expert never performed recommended tests to determine whether the ladder conformed to industry standards, testified to no customs of the trade, referred to no literature in the field, and did not identify the reasonable expectations of consumers. See *id.* at 421.

In *Wilder v. Toyota Motor Sales, U.S.A., Inc.*, 23 Fed. Appx. 155, (4th Cir. 2001), the plaintiff sued Toyota for negligence, claiming he was injured when his truck's airbag deployed several minutes after the truck was involved in a collision. Since the collision was of sufficient force to cause the airbag to deploy immediately, the

plaintiff claimed there was a defect in the airbag system. The Fourth Circuit affirmed summary judgment for Toyota, finding the plaintiff failed to offer any evidence to prove there was a defect, what the defect was, or how the defect occurred. See 23 Fed. Appx. at 156. By contrast, Toyota presented expert testimony that the airbag system on the truck was well designed, well tested, complied with industry standards, and not defective. See *id.* at 157. Citing its similar decision in *Alevromagiros*, the court stated, “While conformity with industry custom does not absolve a manufacturer or seller of a product from liability, such compliance may be conclusive when there is no evidence to show that the product was not reasonably safe.” *Id.* To rebut Toyota’s evidence of compliance with industry standards, the plaintiff must have offered evidence as to “actual industry practices, knowledge at the time of other injuries, knowledge of dangers, published literature, and ... direct evidence of what reasonable purchasers consider defective.” *Id.* Because the plaintiff failed to present such evidence, there was no evidence the airbag system contained a defect that rendered it unreasonably dangerous. See *id.* In *Mears v. General Motors Corp.*, 896 F. Supp. 548, 552 (E.D. Va. 1995), the Court held that while compliance with industry practices does not conclusively establish a product’s safety, a manufacturer seldom will be liable for failing to adopt safety measures no other member of industry employs. The court in *Brobbey v. Enter. Leasing Co. of Chicago*, 404 Ill. App. 3d 420, 935 N.E.2d 1084, 1093 (2010), held “[i]n a negligence action, a defendant may rebut plaintiff’s proof by showing its exercise of reasonable care through evidence of its testing and inspection procedures, or evidence that it complied with industry custom and practice.” In *Blue v. Environmental Engineering, Inc.*, 215 Ill. 2d 78, 293 Ill. Dec. 630, 828 N.E.2d 1128 (2005), the plaintiff worker was injured when he stuck his foot into a trash compactor and sued the trash compactor’s manufacturer alleging negligence. In generally considering whether the risk-utility analysis applies to negligence claims, the Illinois Supreme Court suggested compliance with industry standards may be an absolute defense to a claim of negligence. “[A] plaintiff raising a negligence claim must do more than simply allege a better design for the product; he must plead and prove evidence of a standard of care by which to measure a defendant’s design and establish a deviation from that standard.” 828 N.E.2d at 1141. Thus, in a negligence action a plaintiff must prove an alternative design that was the standard in the industry at the time the product was manufactured and that the defendant’s product design deviated from that standard. Under the court’s reasoning, therefore, a defendant can defend against a negligent design claim by showing its product design conformed to the standard in the industry. Because the plaintiff in *Blue* presented no evidence of the industry standard or that the defendant’s product breached it, he failed to prove his negligence claim. See *id.* at 1143.

IV. Cases Alleging Both Negligence and Strict Liability

Several other cases give considerable weight to evidence of a product’s compliance with industry standards in analyzing claims for both negligence and strict liability. In *Lamb v. Kysor Indus. Corp.*, 305 A.D.2d 1083, 759 N.Y.S.2d 266 (4th Dept. 2003), for instance, the plaintiff was injured while using a bridge saw and sued the manufacturer for strict liability and negligence, alleging a lack of adequate guarding on the saw. The court held the defendants established as a matter of law the saw was not defectively designed, through expert testimony that the saw guard met industry standards at the time of its manufacture and that a larger guard would have defeated the functional utility of the saw. See 305 A.D.2d at 1084. Because the plaintiff failed to rebut that evidence, the court granted summary judgment to the defendants on the plaintiff’s strict liability and negligent design claims. See *id.*

In *Holst v. KCI Konecranes Int’l Corp.*, 390 S.C. 29, 699 S.E.2d 715 (Ct. App. 2010), the court affirmed the lower court’s grant of summary judgment to a crane manufacturer on the plaintiff’s negligence and strict liability claims, finding the crane’s design complied with applicable industry safety standards and, for that reason, the crane was not defective or unreasonably dangerous. See 699 S.E.2d at 720. While the court recognized that a product’s conformity with industry standards is not conclusive of the product’s safety, as a practical matter “the cases where a member of industry will be held liable for failing to do what no one in his position has ever done before will be infrequent.” *Id.* at 721 (quoting *Bragg v. Hi-Ranger, Inc.*, 319 S.C. 531, 544, 462 S.E.2d 321, 329 (Ct. App. 1995)).

In *Wesp v. Carl Zeiss, Inc.*, 11 A.D.3d 965, 783 N.Y.S.2d 439 (4th Dept. 2004), the court reversed the lower court’s denial of summary judgment to the manufacturer of a surgical microscope on the plaintiffs’ negligence and strict products liability design defect claims. The defendants had met their initial burden on summary judgment by presenting expert testimony that the microscope’s floor stand was state of the art at the time of its design and complied with all applicable industry standards. See 783 N.Y.S.2d at 441. Because the plaintiffs failed to present opposing evidence showing the product was not reasonably safe, the manufacturer was entitled

to summary judgment on the negligence and strict products liability claims. See *id.*

V. Strict Liability Cases

As in *McCoy v. Whirlpool Corp.*, No. CIV.A. 02-2064-KHV, 2003 WL 21554950, *8 (D. Kan. July 8, 2003), and in *Minter v. Prime Equip. Co.*, 356 Fed. Appx. 154, 158 (10th Cir. 2009) (applying Oklahoma law), products liability cases based solely on strict liability, some courts hold that a manufacturer's compliance with industry standards is irrelevant, because the determinative question is whether the product itself is unreasonably dangerous, and industry standards are relevant only in determining whether a manufacturer met its duty of care under a negligence theory. In strict liability cases, plaintiffs are often required under state products liability laws to introduce evidence of a feasible alternative design for the product. Where a plaintiff does so, the challenged product could be found to be defective even if the proposed alternative design was not standard in the industry and no other manufacturer had adopted the alternative design at the time of the product's sale. See *Blue*, 828 N.E.2d at 1142.

On the other hand, federal courts in New York have held compliance with industry standards may be relevant in a strict liability case to the question whether a product was reasonably safe as designed and with respect to the feasibility of alternative designs. See *Rogers v. Westfalia Associated Technologies, Inc.*, 485 F. Supp. 2d 121, 130 n.15 (N.D.N.Y. 2007); *Mustafa v. Halkin Tool, Ltd.*, No. 00-CV-4851(DGT), 2007 WL 959704, *8 (E.D.N.Y. Mar. 29, 2007); *Church Ins. Co. v. Trippe Mfg. Co.*, No. 04 CIV. 6111(HB), 2005 WL 2649332, *2 (S.D.N.Y. Oct. 17, 2005). In addition, in *Surles ex rel. Johnson v. Greyhound Lines, Inc.*, 474 F.3d 288 (6th Cir. 2007) (applying Tennessee law), the plaintiff sued the manufacturer of a bus for strict products liability alleging it should have equipped its busses with passenger seatbelts. The Sixth Circuit affirmed the district court's grant of summary judgment to the manufacturer on the basis that it "complied with all industry and governmental standards in the manufacture and equipping of the bus," and on the basis that "Tennessee common law imposes no duty on a bus manufacturer to equip a bus with passenger seat belts." 474 F.3d at 301. Thus, while the general rule is against the relevance of industry standards in strict liability cases, there are exceptions, and well-developed standards can be strong and persuasive evidence that a particular product is not unreasonably dangerous.

VI. Statutory Presumptions of No Defect

Some states have enacted statutes expressly providing that compliance with customary industry standards results in a rebuttable presumption that the product was not defectively designed or manufactured. See Ky. Rev. Stat. Ann. § 411.310(2). In North Dakota:

"it shall be presumed, until rebutted by a preponderance of the evidence to the contrary, that the product was not defective if the design, methods of manufacture, and testing conformed to the generally recognized and prevailing standards or the state of the art in existence at the time the design was prepared, and the product was manufactured." N.D. Cent. Code § 28-01.3-09 (rebuttable presumption of no defect if the product is in conformity "with applicable industry standards" regarding the "plans, designs, warnings, or instructions for the product or the methods and techniques of manufacturing, inspecting, and testing the product").

The court in *Coleman v. Rust-Oleum Corp.*, 405 F. Supp. 2d 806 (W.D. Ky. 2005), applied Kentucky's statutory presumption to grant summary judgment to the defendant manufacturer of a spray paint can that exploded, injuring the plaintiff. The court held the spray paint can was not defective because it was manufactured and designed in accordance with industry standards and met the state of the art and because the most probable explanation for the explosion was that the can failed because of repeated impacts on the bottom of the can. See 405 F. Supp. 2d at 810. In states having such statutory presumptions, therefore, un rebutted proof of a product's compliance with clear industry standards likely will be a proper basis for dispositive determination of a product's defectiveness.

VII. Punitive Damages Claims

As with evidence of industry custom and standards in general, compliance with industry guidelines is relevant and admissible, but not conclusive, as to the issue of punitive damages. In *Stone Man, Inc. v. Green*, 263 Ga. 470, 435 S.E.2d 205 (1993), the Georgia Supreme Court held that the defendant's compliance with the law and industry standards tended to show there was no clear and convincing evidence of "willful misconduct, malice, fraud, wantonness, oppression, without entire want of care which would raise the presumption of conscious indifference to the consequences." In *Barger v. Garden Way, Inc.*, 231 Ga. App. 723, 499 S.E.2d 737 (1998), the Georgia Court of Appeals reviewed the trial court's jury charge on compliance with applicable industry standards involving a punitive damages claim. The charge given correctly noted the important distinction between tort

liability for compensatory damages for defective design despite compliance with industry standards, and the general rule of non-liability for punitive damages.

In *Lane v. Amsted Indus., Inc.*, 779 S.W.2d 754, 759 (Mo. App. 1989), evidence of compliance with standards is admissible where plaintiff asserts a claim for punitive damages. Also, in *American Cyanamid Co. v. Roy*, 498 So. 2d 859, 862-63 (Fla. 1986), while

“compliance with industry guidelines should not be taken as conclusive evidence bearing on the question of a corporation’s negligence, such information may certainly bear on whether a party’s behavior represents such an extreme departure from accepted standards of care as to justify punitive damages.”

In *Colombini v. Westchester County Healthcare Corp.*, 24 A.D.3d 712, 808 N.Y.S.2d 705 (2d Dept. 2005), for instance, the plaintiffs sued the manufacturer of an MRI machine, among others, for the death of their child, who was killed when he was struck by a metal oxygen tank that was drawn into the machine’s magnet. The court granted summary judgment to the manufacturer on the plaintiff’s claim for punitive damages, finding the manufacturer complied with all applicable industry and regulatory standards by supplying an instruction manual containing warnings regarding keeping ferrous materials away from the MRI magnet and suggesting warning signs to use at the MRI facility. 24 A.D.3d at 715. The plaintiffs’ evidence, which showed only that the manufacturer was responsible for servicing the MRI machine, did not support a claim for punitive damages against the manufacturer. *See id.* at 715-16.

As one court has stated, “[c]ompliance with industry standards and custom tends to support the defense the [defendant manufacturer] acted with a nonculpable state of mind, and would negate an inference of wanton indifference to the rights of others.” *Nigro v. Remington Arms Co., Inc.*, 432 Pa. Super. 60, 637 A.2d 983, 989 (1993).

VII. Conclusion

Compliance with industry standards can be compelling evidence and may be a manufacturer’s strongest defense in a product liability case. When those standards are well developed, the arguments are even stronger and more persuasive. In some situations, compliance with industry standards should be dispositive as a matter of law. The joint project by the WMIA and WMMA to harmonize global standards is a further step in the right direction for the woodworking industry.

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