A Doctrine By Any Other Name: The Putative Rejection of "Crashworthiness" in Virginia Products Liability Law

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Few issues in the modern law of products liability are as practically important and yet as conceptually confused as how to take product misuse into account when determining if a plaintiff may recover for a product-related injury. In some jurisdictions, misuse is treated as an affirmative defense, while in others, a plaintiff must disprove misuse of the product as part of the prima facie case. Even more troublesome is the variation among the states regarding what conduct by a product user constitutes misuse. The variables can include such matters as whether the use is one to which the product is intended to be put (e.g., are all unintended uses “misuses?”), whether the use is reasonably foreseeable (e.g., are reasonably foreseeable but unintended uses “misuses,” or are they instead simply foreseeable uses?), whether the product has been put to its unintended use by the accident victim or a third party (e.g., does the “misuse” operate as a plaintiff’s conduct defense, or as a matter of whether the product was defective, or as a matter of whether the defective condition is a proximate cause of the harm?), and whether the use is unreasonably dangerous (e.g., does the way the product was used have to constitute negligence before it is treated as a “misuse?”).

Furthermore, the role that product misuse plays in any given case depends to a considerable extent on the kind of defectiveness allegation — a manufacturing flaw, a design defect, or a failure to instruct and warn adequately — that is being made. The obligation to design a product to be reasonably safe when misused in a foreseeable manner can be distinguished from the obligation to warn about use in an unintended but foreseeable manner. One might imagine, for instance, a product liability plaintiff being successful in establishing a design defect claim that a vehicle should provide greater protection in the event of a collision, but not being successful in establishing a marketing defect claim that the manufacturer should have warned against lethal the vehicle become involved in a collision.

The strongest lesson that emerges from the product misuse cases is that the terminology that courts use can be an unreliable guide to the ways that the issues are resolved. In a recent case, Slone v. General Motors Corp., the Supreme Court of Virginia waded into the conceptual thicket of product misuse. The Court emerged with a doctrinal position about a product manufacturer’s design defect liability that is sound as a matter of both law and policy, but that position needs to be carefully distinguished from the potentially misleading language in which it was announced.

The plaintiff, Dolor Slone, owned and operated a dump truck consisting of a cab and chassis manufactured by the defendant General Motors Corporation, a dump bed manufactured by the defendant Fontaine Body & Hoist Company, and an overhanging cab shield manufactured and installed by an unknown party. Mr. Slone was injured in an accident that occurred at a Virginia Department of Transportation depot, where he was dumping a load of gravel. Pre-trial discovery about the accident indicated that the ground at the edge of a ramp collapsed while the truck was still some distance from the edge, causing the truck to overturn in a backwards flip, and seriously injuring Mr. Slone as the cab of the truck was crushed. He settled his action against an employee of the depot, leaving the products liability claims against General Motors and Fontaine. The Circuit Court granted the defendants’ motion for summary judgment. The Supreme Court of Virginia unanimously upheld the summary judgment in favor of Fontaine but, by a 5-2 vote, the Court reversed the summary judgment entered for General Motors and remanded the case for further proceedings.

In the context of design defectiveness litigation regarding motor vehicles, a well-established doctrine of “crashworthiness” requires that the manufacturer’s design obligation includes taking reasonable efforts to protect a vehicle’s occupants when the vehicle is involved in a collision. If that doctrine were to be articulated in the terminology of product misuse, it would simply reflect the undeniable reality that exposure to the risk of collision is an inevitable part of the environment in which vehicles are used, and thus involvement in a collision would be designated as a reasonably foreseeable misuse of the product for which reasonable design measures must be taken. After some initial hesitation, the inclusion of a crashworthiness element in vehicle manufacturers’ design obligations has been part of the law of products liability in this country for nearly thirty years.

The Slone decision purported to reject a crashworthiness doctrine for Virginia. Writing for a majority of the Court, Justice Hassell stated that “[w]e find no reason to confuse our well-settled jurisprudence by injecting the doctrine of ‘crashworthiness’ and, therefore, we reject this doctrine.” If that language of the opinion were taken at face value, it could mean that occupants of vehicles involved in collisions were to be denied the benefit of safety precautions that reasonable care
on the part of manufacturers would require to be built into the design of the vehicles. Fortunately for Virginia consumers, the Court’s decision in Slone actually operates in a much more reasonable fashion than the crashworthiness-rejecting language might indicate.

The quite unremarkable position taken by the majority in Slone is that a products liability plaintiff must prove that the product was “unreasonably dangerous either for the use to which [it] would ordinarily be put or for some other reasonably foreseeable purpose.” In previous cases, the Court said, it had “implicitly recognized that a manufacturer may be held liable for the foreseeable misuse of its product.” Slone makes explicit that earlier implicit recognition, but without stating that recognition in terms of a requirement that the vehicle must be reasonably crashworthy.

One might reasonably ask whether it makes any difference whether the language in which courts couch their decisions corresponds to the practical operation of those decisions. The suggestion that it ought to matter can be based on a number of grounds. For one thing, this is a court that has displayed considerable sensitivity to linguistic precision. The notion of “crashworthiness” is sufficiently a matter of ordinary language meaning — and sufficiently distinguishable from a notion of “crash-proof” — that the Court might have conceded that a doctrine under that name is appropliatcly implicitly recognized, but that recognition in terms of a requirement that the vehicle must be reasonably crashworthy.

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it would be a defect that was not causally related to the harm to the occupant. Furthermore, affirmative defenses can come into play to reduce or (in this state) to bar a product victim’s recovery. Even a defect that is a proximate cause of a plaintiff’s harm would not be the basis of liability if the plaintiff was negligent and that negligence was a substantial factor in producing the injury.

An examination of Slone reveals a clear and a limited point. The clear point is this: Manufacturers of motor vehicles have to take into account the environment in which their products will be used, and in a society in which fifty thousand people die each year in traffic accidents, that environment unquestionably includes involvement in collisions. The limited point is this: The design obligation to protect occupants of vehicles — whether it is described as crashworthiness or simply as a reasonable protection should not be conceptually difficult in this environment. The issue in a products liability case is whether reasonable care was exercised in the design of a vehicle to protect an occupant from the force that it was subjected to in this accident — that is a matter of proof for the plaintiff to offer. It is to say, however, that the structural integrity of the cab does not disappear from the manufacturer’s design responsibility simply because the truck was involved in an unintended flip. The Slone decision is comfortably located, historically and conceptually, within this state’s long-standing refusal to apply strict liability in tort, and is perfectly consistent with a commitment to recognizing manufacturer liability for culpable design choices.

**Endnotes**

1. See, e.g., Bowling v. Heil Co., 31 Ohio St. 3d 277, 282, 511 N.E.2d 373, 377 (1987): “Currently, two affirmative defenses based upon a plaintiff’s misconduct are recognized. ... [A] defendant is provided with a complete defense if the plaintiff misused the product in an unforeseeable manner.”
5. The leading case adopting a crashworthiness requirement is Larsen v. General Motors Corp., 391 F.2d 495 (8th Cir. 1968). The Evans case cited in the previous note was overruled in Huff v. White Motor Corp., 565 F.2d 104 (7th Cir. 1977).
6. 249 Va. __, 457 S.E.2d at 53.
8. Id. at __, 457 S.E.2d at 54.
9. See, e.g., Merillatt Industries, Inc. v. Parks, 246 Va. 429, 436 S.E.2d 600 (1993) (employee's injury resulting from repetitive stress was neither an "injury by accident" nor a "disease" and thus was not within the scope of the workers' compensation system).
10. 249 Va. at __, 457 S.E.2d at 56 (dissenting opinion).
11. See RESTATEMENT (THIRD) OF TORTS: PRODUC TS LIABILITY § 2(b) (Tentative Draft No. 2, 1995): “A product is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design ... and the omission of the alternative design renders the product not reasonably safe.”
12. Some strictness could be retained under the proposed Restatement provision if liability were to be extended to sellers other than the party whose conduct was actually negligent in the design of the product.
13. The dissenting opinion illustrates the critical importance of how the misuse is described. The dissenters focused on the collapse of the ramp, and treated that as an event that was not foreseeable to the manufacturer of the truck.

The more appropriate question to ask, however, is whether the forces to which the cab of the truck was subjected were similar to those that would be encountered in a collision that involved a rollover. If that question is answered in the affirmative, then the allegedly surprising nature of the sequence of events in the instant case would not relieve the manufacturer of the obligation to take reasonable measures to protect the occupants from those forces.