

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN GOWER, JR. and : CIVIL ACTION  
DEBRA GOWER :  
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 V. :  
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 SAVAGE **ARMS**, INC. et al. NO. 99-CV-1572

ORDER AND MEMORANDUM

AND NOW, this 12<sup>←</sup> day of June, 2002, upon consideration of the defendants' motion for summary judgment (Document #87), **as well** as the plaintiffs' opposition thereto, IT IS HEREBY ORDERED AND DECREED that the defendants' motion is GRANTED in part and DENIED in part. The Court will grant summary judgment in favor of the defendants on the plaintiffs' design defect claim but will deny summary judgment on the plaintiffs' manufacturing defect claim.

The plaintiffs sued the defendants based on the defendants' status as successors to the corporation which manufactured the Savage Model 99C rifle at issue in this case. The defendants moved for summary judgment, which the Court granted in part and denied in part.

The defendants also filed a motion in limine to preclude the testimony of the plaintiffs' expert James Mason on the grounds that it failed to meet the requirements for admissibility given in Daubert v. Merrell Dow Pharm., 509 U.S. 579 (1993). The Court granted the defendants' motion, finding that Mr. Mason's testimony was insufficiently reliable to be admitted as evidence. The defendants have now renewed their motion for summary judgment, arguing that the plaintiffs are unable to establish a prima facie strict liability case based on a theory **of** either a manufacturing or a design defect without the testimony of their expert.

In order to establish that a product suffers from a manufacturing defect, a plaintiff must show: (1) that the product was defective; (2) that the defect was the proximate cause of the plaintiff's injuries; and (3) that the defect existed at the time that the product left the manufacturer. See Dansak v. Cameron Coca-Cola Bottling Co., 703 A.2d 489, 495 (Pa. Super. 1997).

In this case, the defendants have conceded that the rifle was defective at the time of the incident in that the safety mechanism did not work. David Findlay, the defendants' expert, explained in his report that the rear portion **of** the safety button was making contact with its guide groove, which prevented the button from moving fully to the rear. **If** the

button is not all the way back, the safety is not fully engaged and the trigger and lever are not reliably locked. Nor do the defendants dispute that the failure of the safety feature caused Mr. Gower's injuries.' The question is whether the plaintiff can carry its burden with respect to the third prong - that the safety mechanism was defective at the time it left the manufacturer.

The defendants argue that the plaintiffs cannot get to a **jury** on this issue because John Gower conceded at his deposition that he could see the full letter "S" at the time that he purchased the rifle and the parties agree that, at an inspection by both parties after the incident, the full **S** could not be seen. This is significant because the full letter S is revealed when the safety button is all the way back and the safety is **fully** engaged. The defendants argue that because Mr. Gower could see the full letter **S** when **he** bought the rifle, it could not have **been** defective when it left the manufacturer. The plaintiffs argue that **Mr.** Gower's deposition testimony on this issue was equivocal, that he testified that he saw the **S**, but

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<sup>1</sup> The dispute has been about what caused the safety mechanism to malfunction. The plaintiffs' expert said that a ridge caused the safety button to come into contact with its guide groove. The **Court** excluded that testimony after a Daubert hearing in a previously issued decision.

explained that he never looked for the full S.

The Court does not believe that whether Mr. Gower saw the full S at the time of purchase is the dispositive issue. For example, if a person saw the full S and two days later, after two uses of the weapon, the safety mechanism malfunctioned in the same way as it did here, that plaintiff would be able to get to the jury on the issue of whether there was a defect at the time of manufacture. The issue is whether the plaintiff can present sufficient evidence in its case-in-chief to eliminate abnormal use or other reasonable, secondary causes for the malfunction, such as wear and tear.<sup>2</sup>

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<sup>2</sup> While the general rule is that lack of direct evidence of a manufacturing defect is not fatal to a plaintiff's case, the Pennsylvania Supreme Court has held that in some cases the "prolonged use factor" looms large enough to obscure all others. See, e.g. Kuisis v. Baldwin-Lima-Hamilton Corp., 319 A.2d 914, 923 (Pa. 1974) (where crane malfunctioned after twenty years **of** rugged use jury could not properly infer that brake locking mechanism was defective when crane was delivered); Woodin v. J.C. Penney Co., 629 A.2d 974, 976 (Pa. Super. 1993) (where freezer functioned flawlessly during eight years **of** continuous operation jury could not properly infer defect from occurrence of **a** fire); Hamilton v. Emerson Electric Co., 133 F. Supp.2d 360, 377 (M.D. Pa. 2001) (where plaintiff used miter saw for over a year and for a large number of cuts jury could not properly infer defect from malfunction); Schlier v. Milwaukee Electrical Tool Corp., 835 F. Supp. 839, 842 (E.D. Pa. 1993) (where plaintiff used saw four or five times a week **for** five or six months prior **to** accident jury could not properly infer **defect** from fact that accident happened). However, **prolonged use does not always preclude a** jury inference that the product was defective when it left the manufacturer. See, e.g., Harley v. Makita USA, Inc., 94-CV-4981, 1997 WL 197936, at \*4 (E.D. Pa. Apr. 22, 1997) (defendant

Although this is a close question, the Court concludes that there is evidence in the record from which a jury could find that there was a defect at the time **of** manufacture.

In his deposition, Mr. Gower testified that the rifle at issue was subjected to minimal wear and tear. Although eight years passed between the time that he bought the rifle and the time that the accident happened, he hunted for one week a year or less during that time. Gower Dep. at **71-72, 81, 98, 130**. After **1994**, he was not able to hunt as often as he had in the past due to a new job; he was limited to "the three days of doe." Gower Dep. at **54, 61, 71-72, 130**.

**Mr.** Gower never used the rifle for target practice, except, it seems, for once each year at the beginning of the hunting season. Gower Dep. at 82, 95-97. **In** total, he fired 100 rounds between the time he bought the rifle and the time **of** the accident. Gower Dep. at **176**. He moved **the** safety **button** from safe to fire approximately fifty times and from fire to safe fifty times. Id.

Mr. Gower never took the rifle apart and he never

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manufacturer not entitled to summary judgment where saw malfunctioned after five years of use); Dorney Park Coaster Co. v. General Elec. Co., 669 F. Supp. 712, 713 (E.D. Pa. 1987) (defendant manufacturer not entitled to summary judgment where deep fat fryer **malfunctioned** after 27 years).

lubricated its inside parts. Gower Dep. at 182-183. After the hunting season was over, he would clean and lubricate the gun, and leave it "open" in the case. He would then close the case, and stand the gun up in the back of his closet. Gower Dep. at 102-103.

Mr. Gower never noticed any signs of wear and tear. The safety always worked smoothly and consistently. Gower Dep. at 105-107, 176-177. Over the course of the eight years, he never had any difficulty pushing the safety back. He would hear a click, he would see the "S," and he would be on his way. Gower Dep. at 105-106. Mr. Gower testified that he heard the safety click into place on the day of the accident. Gower Dep. at 133.

Finally, there is also support in the record for the argument that the reasonable life span of a rifle **is** quite long. The plaintiff's father has a 110-year-old Savage .300, and the plaintiff has one that is 93-94 years old. Gower Dep. at 60.

Turning to the design defect claim, I will grant summary judgment in favor of the defendants. Without expert testimony that the rifle was defective without a detent safety system, or that the lack of a detent caused the accident, the plaintiffs cannot make out a design defect claim. See Oddi v. Ford Motor Co., 234 F.3d 136, 159 (3d Cir. 2000); Cardullo v. General Motor Corp., 378 F. Supp. 890, 893-894 (E.D. Pa. 1974);

Reardon v. Meehan, 227 A.2d 667, 670 (Pa. 1967).

BY THE COURT:

  
Mary Ad McLaughlin, J.