

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

<b>GLENN PEACO, et al.,</b>	:	
<b>Plaintiffs,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>GF MANAGEMENT OF</b>	:	
<b>PENNSYLVANIA, INC., et al.,</b>	:	<b>No. 02-7701</b>
<b>Defendants.</b>	:	

**MEMORANDUM AND ORDER**

**Schiller, J.**

**November 13, 2003**

Plaintiffs Glenn and Sandra Peaco brought this action asserting negligence claims against GF Management of Philadelphia, Inc., d/b/a Hotel Brunswick (“Hotel Brunswick”), and product liability claims against DaimlerChrysler Corporation (“DaimlerChrysler”) due to an automobile accident.<sup>1</sup> Thereafter, Defendants brought cross-claims against each other. Presently before this Court is DaimlerChrysler’s motion for summary judgment on the product liability claims asserted by Plaintiffs and Defendant Hotel Brunswick.<sup>2</sup>

**I. BACKGROUND**

On October 7, 2000, Plaintiff Glenn Peaco was a passenger in a 2000 Dodge Ram Wagon B3500 (the “van”), manufactured by DaimlerChrysler, that was involved in a motor vehicle accident.

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<sup>1</sup> Merchant’s Rent-A-Car, Inc. was originally a defendant in this action but was dismissed from the case by stipulation of all parties.

<sup>2</sup> Plaintiffs have not responded to Defendant DaimlerChrysler’s motion for summary judgment, relying instead on the arguments as set forth in Defendant Hotel Brunswick’s response.

The van had been purchased by the Brunswick Hotel on or around July 20, 2000 and was used to transport hotel guests to various locations in the vicinity of Lancaster, Pennsylvania. (Def.'s Mot. for Summ. J. at 3; Bloutz Dep. at 27.) Although the van was less than three months old at the time of the accident, it had already been driven in excess of 35,000 miles due to its frequent use. (Def.'s Mot. for Summ. J., Ex. E (Vehicle Damage Appraisal).) George Glew, an employee of the Hotel Brunswick and the operator of the van at the time of the accident, claims that the van suddenly accelerated when he placed it into gear, causing it to travel approximately fifty feet into the wall of the hotel's garage. (Glew Dep. at 62-65.) Mr. Glew contends that his feet remained on the floor of the van during the entire episode and that he never placed his feet on the accelerator or brake pedal. (*Id.* at 65.) Plaintiff Glenn Peaco corroborates Mr. Glew's testimony to some extent, stating that he saw Mr. Glew's feet remain flat on the floor of the van during the van's acceleration into the garage wall. (Peaco Dep. at 73-75.)

Since the accident, no party has been able to substantiate Mr. Glew's description of the events with evidence of a mechanical malfunction in the van. Mr. Glew admits that he never experienced a similar problem with the van nor had he ever heard any other drivers complain about such an event. (Glew Dep. at 28.) The three other Hotel Brunswick employees who were deposed in connection with this action also reported that they had never heard of nor experienced a similar incident. (Payne Dep. at 11-12; Bloutz Dep. at 15; Hanna Dep. at 14, 19.) The property damage appraisal report produced after the accident does not describe any mechanical problems relevant to the van's alleged automatic acceleration, (Def.'s Mot. for Summ. J., Ex. E), and repairs conducted several months later do not refer to any repairs to the van's mechanical systems, (*Id.*, Ex. I). Furthermore, the experts hired by Plaintiffs and Defendant DaimlerChrysler, who inspected the van

and reviewed the reports of the accident and the repair records, failed to identify any defects in the van's mechanical systems that would support the malfunction Mr. Glew described. (*Id.*, Ex. J, K.) Although Defendant Hotel Brunswick's expert listed several hypothetical defects that could potentially cause a vehicle to automatically accelerate, he also failed to identify any such defective conditions in the van. (Def. Hotel Brunswick's Resp., Ex. C.)

After repairs were completed in May 2001, the van was placed back into regular service. (Bloutz Dep. at 19.) The van has now been driven over 200,000 miles and, according to the deposition testimony of the Hotel's General Manager, David Payne, there have been no complaints of automatic acceleration since December 14, 2001, when he began his tenure at the hotel. (*Id.*, Ex. K; Payne Dep. at 11-12.)

## **II. STANDARD OF REVIEW**

Summary judgment is appropriate when the admissible evidence fails to demonstrate a dispute of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c) (1994); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). When the moving party does not bear the burden of persuasion at trial, the moving party may meet its burden on summary judgment by showing that the nonmoving party's evidence is insufficient to carry its burden of persuasion at trial.<sup>3</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Thereafter, the nonmoving party demonstrates a genuine issue of material fact if sufficient evidence is provided to allow a reasonable jury to find for him at trial. *Id.* at 248. In reviewing the record, "a court must

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<sup>3</sup> References to "the nonmoving parties" within this memorandum include both Plaintiffs and Defendant Brunswick Hotel.

view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Armbruster v. Unisys Corp.*, 32 F.3d 768, 777 (3d Cir. 1994). Furthermore, a court may not make credibility determinations or weigh the evidence in making its determination. *See Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000); *see also Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 665 (3d Cir. 2002).

### III. DISCUSSION

To prevail on a claim of strict product liability for a manufacturing defect in Pennsylvania, a plaintiff must prove that: (1) the product was defective; (2) the defect existed when it left the hands of the defendant; and (3) the defect caused the harm. *Dansak v. Cameron Coca-Cola Bottling Co., Inc.*, 703 A.2d 489, 495 (Pa. Super. Ct. 1997). When a plaintiff cannot present direct evidence of a manufacturing defect, however, she may proceed on a malfunction theory of products liability. *Id.* As the Pennsylvania Superior Court explained in *Dansak* and the Third Circuit has since reiterated, a plaintiff establishes a prima facie case under the malfunction theory if she presents a case-in-chief evidencing that: (1) the product malfunctioned; (2) plaintiffs used the product as intended or reasonably expected by the manufacturer; and (3) the absence of other reasonable secondary causes. *Id.* (citing *O'Neill v. Checker Motors Corp.*, 567 A.2d 680, 682 (Pa. Super. Ct. 1989)); *Altronics of Bethlehem, Inc. v. Repco, Inc.* 957 F.2d 1102, 1105 (3d Cir. 1992). "From this circumstantial evidence, a jury may be permitted to infer that the product was defective at the time of sale." *Ducko v. Chrysler Motors Corp.*, 639 A.2d 1204, 1205 (Pa. Super. Ct. 1994).

A prima facie case under the malfunction theory does not require expert testimony explaining

how the product was defective or how the defect arose from the manufacturer or seller. *Dansak*, 703 A.2d at 496. In fact, a plaintiff need not articulate a specific defect; rather, she may sustain her burden by producing circumstantial evidence of the defect, which includes the fact of the malfunction itself. *Id.* The Pennsylvania Superior Court in *Dansak* articulated a non-exclusive list of circumstantial evidence that a plaintiff may marshal for support: (1) the malfunction of the product; (2) expert testimony as to a variety of possible causes; (3) the timing of the malfunction in relation to when the plaintiff first obtained the product; (4) similar accidents involving the same product; (5) elimination of other possible causes of the accident; and (6) proof tending to establish that the accident does not occur absent a manufacturing defect. *Id.* Thus, in order to withstand summary judgment in this case, the nonmoving parties must demonstrate the occurrence of a malfunction and raise an inference of a defect by eliminating abnormal use or reasonable, secondary causes for the malfunction. *Hamilton v. Emerson Elec. Co.*, 133 F. Supp. 2d 360, 375 (M.D. Pa. 2001); *Dansak*, 703 A.2d at 496. I find that although the nonmoving parties have provided sufficient evidence to establish the first element of their prima facie case, they have failed to raise the inference of a manufacturer's defect.

#### **A. Product Malfunction**

Accepting as true all facts presented by the nonmoving parties and granting them the benefit of all inferences therefrom, a jury could find that the van malfunctioned based on Glenn Peaco's and Mr. Glew's testimony that the van performed in an abnormal manner. *See Schlier v. Milwaukee Elec. Tool Corp.*, 835 F. Supp. 839, 842 (E.D. Pa. 1993) (finding that "a jury could find evidence of a malfunction, based on plaintiff's testimony that the power saw performed in an abnormal way.") Mr. Glew, the driver of the van, testified that he placed the van in drive while his feet remained on

the floor and that the van unexpectedly accelerated into the wall of the hotel's garage. (Glew Dep. at 62-65, 94.) Furthermore, Mr. Peaco corroborated Mr. Glew's testimony, stating that he saw Mr. Glew's feet remain on the floor of the van as the van accelerated for approximately fifty feet. (Peaco Dep. at 65-66, 68-71, 74-75.)

In *Ducko v. Chrysler Motors Corp.*, the Pennsylvania Superior Court deemed similar testimony sufficient to meet the plaintiff's burden on the first element of the prima facie case despite expert testimony refuting the product's defect. 639 A.2d at 1205. In *Ducko*, the plaintiff claimed that, while traveling on the highway, her steering locked and her brakes failed to respond, causing an accident. *Id.* Neither party's experts were able to uncover a defect in the car's steering or brake systems. *Id.* The Superior Court reversed the trial court's grant of summary judgment in favor of the car manufacturer, finding that "Mrs. Ducko's testimony of the erratic performance of the vehicle . . . was sufficient to make out a prima facie case of manufacturing defect." *Id.* at 1207. *See also Dansak*, 703 A.2d at 496-97 (finding that plaintiff's testimony that bottle was broken when she opened its cardboard container could support jury finding that product malfunctioned); *Brill v. Sys. Res., Inc.*, 592 A.2d 1377 (Pa. Super. Ct. 1991) (holding that jury could have inferred a defect from plaintiff's testimony that he was using chair in normal fashion before sudden collapse despite expert testimony that chair was not defective); *Agostino v. Rockwell Mfg. Co.*, 345 A.2d 735, 740 (Pa. Super. Ct. 1975) ("The jury could have properly inferred from [the plaintiff's] testimony that the [blade] guard did not function properly."); *MacDougall v. Ford Motor Co.*, 257 A.2d 676, 680 (Pa. Super. Ct. 1969) (finding that plaintiff's testimony of bizarre steering action "establishe[d] a mechanical malfunction . . . which prevented her from maintaining control of the car"). Thus, the nonmoving parties have established the first element of the prima facie case.

## **B. Absence of Abnormal Use or Other Reasonable Secondary Causes**

Although the nonmoving parties have presented sufficient evidence of the malfunction, they have not provided evidence such that a reasonable jury could find that a defect existed when the van left DaimlerChrysler's control. In order to raise an inference of manufacturer's defect under the malfunction theory, the nonmoving party must demonstrate normal use and the absence of reasonable secondary causes of the malfunction. *Dansak*, 703 A.2d at 495. I find that the nonmoving parties have not sustained their burden of demonstrating the absence of reasonable secondary causes.

The Supreme Court of Pennsylvania has liberally construed the secondary cause element of the prima facie case, allowing a plaintiff to reach the jury if she demonstrates normal use and presents "a case-in-chief free of secondary causes." *Rogers v. Johnson & Johnson Prods., Inc.*, 565 A.2d 751, 755 (1989). This principle was summarized in *Dansak*:

In plaintiff's case-in-chief, plaintiff [need not] negate every theoretically conceivable secondary cause for the malfunction. Rather . . . the plaintiff fails to establish a prima facie case only if the plaintiff does not negate evidence of other reasonable, secondary causes or abnormal use ***that is actually introduced during the plaintiff's case-in-chief***. In other words, the plaintiff fails to establish a prima facie case if, ***based upon his own proof***, more than one cause could account for the accident.

*Dansak*, 703 A.2d at 497 (internal quotation omitted). Thus, to survive summary judgment, a plaintiff need only present a case-in-chief that either contains no evidence of reasonable secondary causes or negates any such evidence that was initially present; the plaintiff need not actively "eliminate" the possibility of reasonable secondary causes. *See Ducko*, 639 A.2d at 1207.

Despite the liberal construction of this standard, however, the Pennsylvania Supreme Court has held that in cases of prolonged use of a product before the alleged malfunction and successful

continued use afterward, the plaintiff cannot meet her burden of presenting a case-in-chief free of secondary causes. *Kuisis v. Baldwin-Lima-Hamilton Corp.*, 319 A.2d 914, 922-23 (Pa. 1974). In such a case, the general rule absolving plaintiff of the burden of presenting direct evidence of a defect does not apply and a jury will not be permitted to infer a defect from the malfunction. *Id.* In *Kuisis*, the Pennsylvania Supreme Court stated:

[Lapse of time and long continued use] in itself is not enough, even when it has extended over a good many years, to defeat the recovery where there is satisfactory proof of an original defect; but when there is no definite evidence, and it is only a matter of inference from the fact that something broke or gave way, the continued use usually prevents the inference that the thing was more probably than not defective when it was sold.

*Id.* at 923.

In light of this Pennsylvania Supreme Court precedent, Pennsylvania state courts and courts in this District have held that a plaintiff asserting a malfunction theory cannot survive summary judgment if she has successfully used the product for a long time before and after an accident. *See, e.g. id.* (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. Ct. 1993) (where freezer functioned flawlessly during eight years of continuous operation jury could not properly infer defect from occurrence of fire); *Hamilton*, 133 F. Supp. 2d at 377 (where plaintiff used miter saw for over one year and for a large number of cuts, jury could not properly infer defect from malfunction); *Schlier*, 835 F. Supp. at 842 (where plaintiff used saw four or five times per week for five or six months prior to accident, jury could not properly infer defect from fact that accident happened); *Stein v. Gen. Motors Corp.*, 58 Pa. D. & C. 2d 193 (Pa. Ct. Com. Pl. 1972), *aff'd*, 295 A.2d 111 (Pa. Super. Ct. 1972) (complaint dismissed where car

was driven over 17,000 miles and had at least one prior trip to repair shop).

The principle first enunciated in *Kuisis* guides our analysis of this case. At the time of this accident, the van, although recently acquired, had been driven in excess of 35,000 miles and was used to shuttle hotel guests to various locations almost twenty-four hours per day. (Def.'s Mot. for Summ. J., Ex. E (Vehicle Damage Appraisal).) Mr. Glew, one of the primary drivers of the van, admitted in his deposition that he had never experienced any problems with the van, nor had he heard of any such problems from his fellow drivers. (Glew Dep. at 51, 63.) Furthermore, the three Brunswick employees who were deposed in connection with this action were also unaware of any other incidents in which the van automatically accelerated. (Payne Dep. at 11-12; Bloutz Dep. at 15; Hanna Dep. at 14, 19.) The property damage appraisal report, produced four days after the accident, does not contain any information of a mechanical problem that could explain the alleged automatic acceleration. (Def.'s Mot. for Summ. J., Ex. E.) In addition, the records of the van's repair, which occurred several months later, do not refer to any repairs to the van's mechanical systems. (*Id.* at Ex. I.) After the repairs, the Hotel resumed its normal use of the van. (Bloutz Dep. at 19.) The van has now been driven over 200,000 miles and, according to the Hotel's General Manager, there have been no complaints of automatic acceleration since he began working at the Hotel on December 14, 2001. (Payne Dep. at 11-12.) Finally, both of the experts hired by the Plaintiffs and by DaimlerChrysler concluded, after examining the van, accident reports, and repair records, that there were no defects in the van's acceleration control system. (Def.'s Mot. for Summ. J., Ex. J, Ex. K.) Similarly, Defendant Hotel Brunswick's expert was also unable to identify a specific defect in the van. (Def. Hotel Brunswick's Resp., Ex. C.) The extensive successful use of the van both before and after the accident precludes any inference that a defect existed at the time the van left

DaimlerChrysler's control.

After reviewing the evidence in the light most favorable to the nonmoving parties, I find that the nonmoving parties have not presented a case-in-chief free of secondary causes and therefore Plaintiff will not be permitted to proceed on a malfunction theory.

#### **IV. CONCLUSION**

Accordingly, I grant Defendant DaimlerChrysler's motion for summary judgment. An appropriate Order follows.

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

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<b>Plaintiffs,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>GF MANAGEMENT OF</b>	:	
<b>PENNSYLVANIA, INC.,</b>	:	<b>No. 02-7701</b>
<b>Defendants.</b>	:	

**ORDER**

**AND NOW**, this 13<sup>th</sup> day of **November, 2003**, upon consideration of Defendant DaimlerChrysler Corporation's Motion for Summary Judgment, Defendant GF Management of Pennsylvania's response, Defendant DaimlerChrysler's reply thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant DaimlerChrysler Corporation's Motion for Summary Judgment (Document No. 32) is **GRANTED**.
2. Judgment is entered in favor of the Defendant DaimlerChrysler and against Plaintiffs Glenn & Sandra Peaco and Defendant GF Management of Pennsylvania, Inc.

**BY THE COURT:**

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**Berle M. Schiller, J.**