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

JOSE PINEDA	:	CIVIL ACTION
	:	
v.	:	
	:	
FORD MOTOR COMPANY	:	NO. 04-3359

ORDER AND OPINION

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: December 19, 2006

By Order and Opinion of November 15, 2006, I granted in part defendant Ford Motor Company's Motion In Limine and for Summary Judgment in this diversity product liability action. Although I granted the *limine* portion of the motion, I refrained from deciding whether summary judgment was appropriate, pending further submissions from the parties. Now, for the reasons set forth below, I will grant summary judgment in favor of Ford Motor Company ("Ford").

I. Factual and Procedural Background

Jose Pineda, a mechanic, sought to recover damages caused by an injury he sustained when the glass broke on the rear liftgate of a Ford vehicle upon which he was working. In the complaint he filed, Pineda alleged that the 2002 Ford Explorer was designed and/or manufactured defectively. Complaint at ¶ 15. He also alleged a failure to warn. Id. at Count II.

In discovery, Pineda produced a report authored by Craig D. Clauser, an engineer with experience in materials analysis and systems failure analysis. Clauser C.V., Plaintiff's Exhibit A at the Daubert Hearing. In his report, Clauser wrote on both design defect and failure to warn. Id.

Ford then filed its motion *in limine* and for summary judgment, in which it maintained that Clauser's testimony did not meet the criteria set forth in Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993). I held a Daubert hearing on September 28, 2006. At the hearing, counsel for Pineda explained that Pineda was dropping his claim of a design defect in the vehicle itself, and going forward only on the claim that the instruction manual was defective.

Based on my conclusion that Clauser was not qualified to testify on a failure to warn issue, I granted the *limine* portion of Ford's motion. I also noted the lack of acceptable expert testimony on the actual cause of the glass breakage, writing: "[D]espite the strict liability nature of a products liability case, a warning defect cannot be shown without any evidence as to whether it warned of something that actually caused the plaintiff's injury." Order and Opinion of November 15, 2006, at 10.

I held the summary judgment portion of the motion in abeyance, specifying in my Order that Plaintiff was to file, within two weeks of the date of the Order, "an additional response addressing the issue of whether he can withstand summary judgment without expert testimony." Id. at 11. Ford would be permitted to reply to that response within ten days. Id.

On November 29, 2006, the day Pineda's additional response was due, his counsel sought a telephonic conference with the Court. At his request, I granted him an extension of time until December 13, 2006. As of the date of the present decision, however, no response has been filed. For that reason, I now proceed to decide the summary judgment portion of Ford's motion.

II. Legal Standards

A. Summary Judgment

Summary judgment is warranted where the pleadings and discovery, as well as any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Pr. 56. The moving party has the burden of demonstrating the absence of any genuine issue of material fact. Celotex Corp.. v. Catrett, 477 U.S. 317, 323 (1986).

When ruling on a summary judgment motion, the court must construe the evidence and any reasonable inferences drawn from it in favor of the non-moving party. Anderson v. Liberty Lobby, supra at 255; Tiggs Corp. v. Dow Corning Corp., 822 F.2d 358 , 361 (3d Cir. 1987). Nevertheless, Rule 56 "mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, supra, at 323.

B. Expert Witnesses In Product Liability Cases

Under Pennsylvania law, which controls in a diversity case such as this, "a plaintiff must present expert testimony when laymen would lack the necessary knowledge and experience to render a just and proper decision." Jones v. Toyota Motor Sales, USA, Inc., 282 F. Supp.2d 274 (E.D. Pa. 2003), citing Raysely v. Zanders, 22 Pa. D. & C. 4th 566, 567 (C.C.P. Lehigh Cty. 1003).

Expert evidence is not necessary:

> if all the primary facts can be accurately and intelligibly described to the jury, and if they, as men of common understanding, are as capable of comprehending the primary facts and of drawing correct conclusions from them as are witnesses possessed of special or peculiar training, experience, or observation in respect of the subject under investigation.

Padillas v. Stork-Gamco, Inc., 186 F.3d 412, 415-416 (3d Cir. 1999), quoting Salem v. United States Lines, 370 U.S. 31, 34-35 (1962).

III. Discussion

In this case, laypeople would lack the necessary knowledge and experience to know whether Ford's manual was defective for failure to warn. In the cases cited in my earlier opinion, engineering experts, and in one case a human factors psychologist, were not allowed to testify in failure to warn cases where they had not (a) designed an alternative warning; (b) compared the criticized warning with material from other manufacturers; or, crucially (c) tested the allegedly defective warning or the proposed alternative warning on users of the product. Willis v. Besam Automated Entrance Systems, Inc., Civ. A .No. 04-913, 2005 WL 2902494 at *9 (E.D. Pa. Nov. 3, 2005); Mause v. Global Household Brands, Inc., Civ. A. No. 01-4313, 2003 WL 2241600 at ** 5-6 (E.D. Pa. Oct. 20, 2003); Milanowicz v. The Raymond Corporation, 148 F. Supp. 2d 525, 541 (D.N.J. 2001).

If a trained engineer or human factors expert is not permitted to reach an opinion in these circumstances, lay jurors who will not be presented at trial with alternative warnings (because there will not be a warnings expert), and who will not have tested the defective or proposed warnings, certainly cannot be permitted to do so.

In Willis, the court granted summary judgment in favor of the defendant once the expert was excluded, under the law of the District of Columbia requiring expert testimony where a subject presented is "so distinctly related to some science, profession, business or occupation as to be beyond the ken of the average layman." 2005 Wal 2902494 at *14. Similarly, in Milanowicz, summary judgment was granted after the expert was excluded, in the absence of other evidence supporting claims of design defect and failure to warn. 148 F. Supp. 2d at 541-42.

On the other hand, in Padillas, supra, the Court of Appeals for the Third Circuit ruled that a trial court erred in granting summary judgment in a products liability case where the plaintiff lacked an expert. 186 F.3d at 415. That case, however, involved a whirling blade on a chicken-cutting machine without a proper guard – clearly a dangerous situation. See Oddi v. Ford Motor Co., 234 F.3d 136, 159 (3d Cir. 2000). The manual for the 2002 Ford Explorer does not present such an obvious hazard.

Moreover, in Padillas, the Court of Appeals noted that, aside from the expert report, the plaintiff had offered as evidence two writings by the defendant, pre-dating the accident, and noting that the machine presented a safety hazard, as well as evidence that the defendant's sister company manufactured an essentially similar machine with a guard over the blade. 186 F.3d at 415. Pineda has not provided any evidence, other than Clauser's testimony, which would permit a jury to conclude that the manual was defective.

Finally, it is clear that the jury could not conclude that the manual was defective in the absence of any evidence that the allegedly defective warning was causally connected to Pineda's injury, i.e., that the subject matter of that warning caused the shattering of the glass. As noted

above, Pineda had already withdrawn Clauser's testimony in this regard by the time of the Daubert hearing. This was probably a result of the fact that, as I wrote in my earlier opinion: "Clauser has done no testing on the actual vehicle, on an alternative vehicle, in simulated conditions, or even in a comparison to the liftgate design of other vehicles, to substantiate his opinion" regarding a design defect. Order and Opinion, supra, at 10.

In Oddi v. Ford Motor Co., supra, a case alleging a defectively designed truck, the Court of Appeals for the Third Circuit affirmed a lower court's grant of summary judgment after a design witness was excluded. The Oddi court wrote:

> We do not believe that a juror could look at the front bumper and the flooring of the cab of the truck Oddi was driving and reasonably conclude, not only that its design was defective, but also that testing would have disclosed the defect and that it could have been remedied.

234 F.3d at 159.

Much less could a jury look at an operations manual and reasonably conclude that the glass pane in the liftgate window of a vehicle broke because an improper procedure was utilized for replacing the glass, and also that the manual language describing the procedure caused the accident, and that different language would have prevented it. As the Oddi court put it, "such conclusions are within the peculiar competence of experts." Id.; see also Jones, supra, and Marino v. Maytag Corporation, Civ. A. No. 02-2085, 2004 WL 3704398 (W.D. Pa. 2004).[1]

[1] In Jones, the Honorable Bruce W. Kauffman of this court cited Padillas, but found that a jury could not determine the crashworthiness of a vehicle: "without expert testimony, a jury would be left to speculate over the design features of Plaintiff's hypothetical operator restraint system, how the restraint system would have performed in a dynamic collision scenario, and whether such a restraint system would have lessened the injuries that Plaintiff would have suffered from the impact with the workplace pole." 282 F. Supp. 2d at 277. Similarly, the Marino judge cited Padillas, but concluded that a jury could not decide whether a dishwasher was defectively designed without expert testimony: "The jurors would have to speculate about the cause of the injury. How could they determine as a matter of fact that the injury was caused by the design of the motor shield and not by something else? Jurors in this situation would lack the necessary knowledge and experience to render a just and proper decision."

IV. Conclusion

Because, in the absence of expert testimony, a jury could not render a just and proper decision as to whether a defect in the Ford manual caused Padilla's injuries, summary judgment is appropriately granted in favor of defendant. Accordingly, I now enter the following:

O R D E R

AND NOW, this 19th day of December, 2006, upon consideration of Ford Motor Company's Motion to Exclude the Testimony of Craig Clauser and Motion for Summary Judgment, filed in this case as Document No. 14, as well as the Daubert hearing held on September 28, 2006, and the absence of a supplemental filing by the Plaintiff, I hereby ORDER that Ford Motor Company's Motion is now GRANTED IN ITS ENTIRETY; and it is further

ORDERED that Summary Judgment is granted in favor of defendant Ford Motor Company. The Clerk of Court is hereby directed to close this case for statistical purposes.

BY THE COURT:

/s/Jacob P. Hart

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE