

## Crashworthiness Claims in the Comparative Fault Era

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Following an accident or collision involving a product, the injured party may sue an array of potential defendants, including not only persons directly involved in the accident but also any property owners, businesses, and governmental entities that arguably played some role in causing the accident.

To varying degrees, individuals, property owners, businesses, and governments typically carry some kind of insurance, but, perhaps, not enough in the eyes of an injured party once coverage limits and sovereign immunity or statutory caps are taken into account. Therefore, to maximize the potential recovery, an injured party may also join parties he or she views as responsible for a “second collision,” specifically, manufacturers of the car, motorcycle, tractor, helmet, seatbelt, car seat, or another product conceivably involved in the collision that purportedly failed to adequately protect the injured party.

The Eighth Circuit’s decision in *Larsen v. General Motors Corp.*, 391 F.2d 495 (8th Cir. 1968), validated the notion that a product-related accident can involve, in a legal sense, more than the impact between two vehicles, or a bicycle rider and the pavement below, or some other combination of persons or objects. In *Larsen*, the court held a manufacturer has a reasonable duty of care in the design of its product, “consonant with the state of the art to minimize the effect of accidents.” *Id.* at 503. So arose what is now known as the “crashworthiness doctrine,” defined as “the legal concept which imposes liability based on the construction or design of a product which causes enhanced or greater injuries in the course of or following an initial accident or collision brought about by some independent cause.” *Bass v. General Motors Corp.*, 150 F.3d 842, 846 (8th Cir. 1998).

Sometimes referred to as “enhanced injury” or “second collision” claims, crashworthiness claims are generally pursued when a device in a vehicle fails during an accident, resulting in “enhanced” or greater injuries than would have occurred if the device worked properly. Under such a theory, product manufacturers have an obligation to minimize damages in crashes or collisions to ensure their products are “crashworthy,” thus preventing enhanced injuries. *Lovett ex rel. Lovett v. Union Pac. R.R.*, 201 F.3d 1074, 1079 (8th Cir. 2000).

Notably, the crashworthiness doctrine developed concurrent with a state-based movement to abolish contributory fault in favor of comparative fault in tort claims. A survey of the law in various states reveals that courts have not uniformly reconciled the two developments. Indeed, in cases based on claims of strict product liability, courts across the nation have struggled with whether to compare the fault of the design with the plaintiff’s fault in causing the collision. This article discusses the legal landscape for crashworthiness claims in various jurisdictions to aid practitioners’ analyses of the admissibility of evidence of comparative fault related to a product liability claim.

### *Majority View: Evidence of Comparative Negligence Allowed*

The modern trend of the majority of jurisdictions is to allow the jury to consider evidence of a plaintiff’s comparative negligence in causing the initial collision for purposes of reducing a plaintiff’s recovery for enhanced injuries. *See Bravo v. Ford Motor Company*, 2001 WL 477275, \*2–3 (Conn. Super. Ct. 2001); *see also Montag v. Honda Motor Co.*, 75 F.3d 1414, 1419 (10th

Cir. 1996); *Meekins v. Ford Motor Co.*, 699 A.2d 339, 343 (Del. Super. Ct. 1997); *Whitehead v. Toyota Motor Corp.*, 897 S.W.2d 684 (Tenn. 1995). In holding there is “no good reason” why a jury should not compare a plaintiff’s initial negligence with a fault in the design of a product, the *Montag* court reasoned as follows:

In every crashworthiness case, the jury will be required to determine how much of a plaintiff’s injuries resulted from the initial collision and how much of the injuries were the result of a second collision. ...Thus, to an extent, the jury is already comparing the plaintiff’s and the defendant’s behavior in order to determine causation. Requiring the jury to make a similar determination for the purpose of damages is certainly reasonable.

75 F.3d at 1419.

Additionally, the Third Restatement of Torts advocates that a plaintiff’s comparative negligence be considered in crashworthiness cases for purposes of apportioning responsibility and damages among the parties. *See* Restatement (Third) of Torts, Products Liability § 16; *see also Bravo*, 2001 WL 477275 at \*2 (explaining that “[t]he situation in enhanced injury claims does not differ substantially from other situations in which the defendant’s fault is premised on a failure to protect other persons from the consequences of their own negligent acts”) (quoting *Reed v. Chrysler Corp.*, 494 N.W.2d 224, 231 (Iowa 1992) (Carter, J., concurring in part and dissenting in part)).

The majority’s view discourages the use of different rules for comparing fault in enhanced injury claims, on the one hand, from claims involving negligent failure to warn or to install safety devices, on the other. *Bravo*, 2001 WL 477275 at \*2. The rationale underlying the majority view is that a plaintiff’s fault in producing an occurrence is also a proximate cause of the enhanced injuries sustained, such that “the usual rules” for comparing fault should apply to the enhanced injury portion of the claim. *Id.*

Stated simply, under the majority’s view, no bright-line rule precludes the admission of evidence of comparative fault in enhanced injury claims because the questions that arise in such claims are the same questions that generally arise in product liability claims. *See Whitehead*, 897 S.W.2d at 695. A bright-line rule precluding comparative fault evidence would treat the manufacturer whose defect caused the initial collision differently than another manufacturer whose defect merely enhanced a plaintiff’s injuries: the first manufacturer could assert a plaintiff’s comparative fault to reduce its liability, while the second could not. *Bravo*, 2001 WL 477275 at \*6.

Case law from Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Missouri, Montana, New Hampshire, New York, North Carolina, North Dakota, Oregon, Tennessee, Texas, Vermont, Wisconsin, and Wyoming follows the modern, majority-backed trend, allowing evidence of comparative fault as the best approach

<b>Table 1: Evidence of Comparative Negligence Allowed—Majority View in Enhanced Injury Claims</b>
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- *Huffman v. Caterpillar Tractor Co.*, 645 F.Supp. 909 (D. Colo. 1986)

- *Bravo v. Ford Motor Company*, 2001 WL 477275 (Conn. Super. Ct. 2001)
- *Dannenfelser v. DaimlerChrysler Corp.*, 370 F.Supp.2d 1091 (D. Hawaii 2005)
- *Gerow v. Mitch Crawford Holiday Motors*, 987 S.W.2d 359 (Mo. Ct. App. 1999)
- *Trust Corp. of Montana v. Piper Aircraft Corp.*, 506 F.Supp. 1093 (D. Mont. 1981)
- *McNeil v. Nissan Motor Co., Ltd.*, 365 F.Supp.2d 206 (D.N.H. 2005)
- *Ake v. General Motors Corp.*, 942 F.Supp. 869 (W.D.N.Y. 1996)
- *Hinkamp v. American Motors Corp.*, 735 F.Supp. 176 (E.D.N.C. 1989), *aff'd*, 900 F.2d 252 (4th Cir.1990)
- *Dahl v. Bayerische Motoren Werke*, 748 P.2d 77 (Or. 1987)
- *Duncan v. Cessna Aircraft Co.*, 665 S.W.2d 414 (Tex. 1984)
- *Webb v. Navistar Intern. Transp. Corp.*, 692 A.2d 343 (Vt. 1996)
- *Harvey v. General Motors Corp.*, 873 F.2d 1343 (10th Cir. (Wy.) 1989)

*See also Comparative Negligence of Driver as Defense to Enhanced Injury, Crashworthiness, or Second Collision Claim*, 69 A.L.R. 5th 625 (1999) (citing cases from Alaska, Arkansas, California, Delaware, North Dakota, Tennessee, and Wisconsin)

Courts in some of these states are guided not only by the reasoning espoused above, but also their states' comparative fault statutes mandating the admissibility of comparative fault evidence in enhanced injury cases. Such mandates have the effect of creating a bright-line rule in favor of admissibility, but sometimes limit the definition of "fault." In other states, admissibility is the general rule, but there is some willingness to recognize exceptional circumstances.

- **Bright-Line Rule in Favor of Admissibility**

Although many states adopting the majority view have comparative fault statutes that establish a bright-line rule in favor of admissibility, some states employ definitional limitations. *McNeil v. Nissan Motor Co., Ltd.*, 365 F.Supp.2d 206 (D.N.H. 2005), illustrates the application of a far-reaching comparative fault statute. In *McNeil*, a federal district court applying New Hampshire law held that a manufacturer could assert a plaintiff's misconduct in an action involving enhanced injuries. In this case, a plaintiff lost control of his vehicle, striking a tree, after which his seat back collapsed rearward, negating the protective effect of the head restraint. The plaintiff alleged the seat back collapsed due to a defective design, which in turn caused a second collision with the vehicle's roof, enhancing his injuries. 365 F.Supp.2d at 209.

The defense sought to introduce evidence of the plaintiff's comparative fault in causing the initial accident: he failed to wear a seatbelt and was intoxicated. The *McNeil* court determined that evidence of comparative fault was admissible to a jury under a New Hampshire statute providing consideration of comparative fault in all tort claims, including strict liability claims. The court found it inappropriate to carve out exceptions to the admissibility of comparative fault evidence for a crashworthiness claim. *Id.* at 211-12.

In contrast, states sometimes limit comparative fault so that evidence that does not meet a statutory definition is inadmissible for any purpose. This principle is evident in the Missouri case *Gerow v. Mitch Crawford Holiday Motors*, 987 S.W.2d 359 (Mo. Ct. App. 1999). In *Gerow*, the driver of a vehicle fell asleep at the wheel, which caused the car to leave the roadway and strike a pillar. After gasoline spilled from the gas tank, the car burst into flames, killing the driver. The driver's survivors alleged the vehicle was defective in the way it incorporated the gasoline tank into the design. *Id.* at 361. At trial, the defendant sought a jury instruction on comparative fault

under Missouri's comparative fault statute. The trial court rejected the proposed instruction because accident events involved an "anticipated use," and there was no evidence the car was not used as intended by the manufacturer. Specifically, evidence the driver fell asleep did not meet the definition of "fault" under the statute. *Id.* at 362.

The court of appeals agreed, holding that "the original or intervening cause is irrelevant so long as the plaintiff's particular use of the product is reasonably foreseeable." *Id.* at 362–63 (citation removed). Additionally, the *Gerow* court held that evidence of unintentional misuse reasonably foreseeable by a manufacturer is irrelevant to an enhanced injury claim, and evidence of comparative fault is inappropriate if the central case issue involves an alleged product defect. *Id.*

*Gerow* with *McNeil* demonstrate the importance of definitions that limit the meaning of "fault." Although both cases involved driver impairment that resulted in a vehicle that struck a fixed object, New Hampshire's statute does not by definition limit comparative fault, while Missouri's statute does. An awareness and proper analysis of such statutory limitations is thus critical when evaluating crashworthiness claims.

- **General Rule of Admissibility with Exceptions**

While the majority of courts reject a bright-line rule against the admissibility of evidence of a plaintiff's comparative fault in crashworthiness claims, some states have also rejected a bright-line rule in favor of admissibility. For example, in *Dannenfelser v. DaimlerChrysler Corp.*, 370 F.Supp.2d 1091 (D. Hawaii 2005), a federal court applying Hawaii law rejected use of a bright-line rule either in favor of or against admissibility.

In *Dannenfelser*, the plaintiff sought recovery only for damages related to "enhanced injuries" caused by a defective airbag. For that reason, she urged the court to preclude the defendant from arguing or eliciting evidence related to her comparative fault for the initial collision. 370 F.Supp.2d at 1094. The district court first considered the rationale underlying the principle that comparative fault in a first collision does not apply in a crashworthiness case. Although the district court found "some logical appeal" to this view, it concluded that such a "broad pronouncement" failed to recognize that the line between injuries caused by a primary as opposed to secondary collision "is rarely so clear as to permit a bright-line exclusion." *Id.*

In addition, the court determined that if injuries caused by the secondary collision are clearly distinguishable from those caused by the primary collision, then fault for the first collision is irrelevant. Thus, the court refused to apply a bright-line rule either in favor of or against the admissibility of evidence concerning a plaintiff's negligence. *Id.* at 1095.

*Minority View: Evidence of Comparative Negligence Is Irrelevant*

Whereas the majority of courts tend to view evidence of comparative fault as always relevant or generally relevant, with allowances for exceptions, a minority of courts maintain that the plaintiff's comparative fault in a crashworthiness case is beside the point. *See, e.g., Reed*, 494 N.W.2d at 230.

The reasoning behind the minority view is that manufacturers have a duty to minimize the injurious effects of a collision. Product engineers do and are expected to go to great lengths to design products that prevent injuries, making their products crashworthy. Most manufacturers crash-test their products; indeed, some are required to do so by law. For instance, federal motor vehicle safety standards require crashworthy vehicles.

According to the minority's view, given vehicle crashworthiness requirements, to consider a plaintiff's fault for an initial collision would effectively eliminate the manufacturer's crashworthiness-related duty. As one legal scholar has observed, manufacturers involved in crashworthiness cases generally have no fault in the initial collision, "thereby insulating a manufacturer from liability in every second collision action." Robert C. Reichert, *Limitations on Manufacturer Liability in Second Collision Actions*, 43 Mont. L. Rev. 109, 118 (1982). Permitting consideration of a plaintiff's fault, it is said, is a disincentive for product manufacturers to strive to create safe products.

Courts in Arizona, Florida, Iowa, Maryland, Nevada, New Jersey, and Pennsylvania have adopted the view that evidence of comparative fault is irrelevant. *See* 69 A.L.R. 5th 625 (citing cases from all of these states except Pennsylvania); *see also Kimco Development Corp. v. Michael D's Carpet Outlets*, 637 A.2d 603 (Pa. 1993) (mentioned *infra*).

Some courts view a plaintiff's comparative fault as irrelevant due to the public policy of holding manufacturers liable as guarantors of their products, while other courts have indicated that mixing comparative fault principles with strict liability principles is similar to mixing water with oil.

- **Manufacturers' Duty as Paramount**

The Florida Supreme Court's statements in *D'Amario v. Ford Motor Co.*, 806 So.2d 424 (Fla. 2001), reflect the view and reasoning of a minority of courts that a plaintiff's comparative fault is irrelevant in crashworthiness cases. In the *D'Amario* decision, the Florida Supreme Court focused on the underlying rationale for imposing liability on manufacturers for secondary injuries caused by defects in their products. *Id.* at 433.

First, because the crashworthiness doctrine presupposes the occurrence of an accident, what caused the accident, according to the minority view, is irrelevant to consideration of the manufacturing defect that caused a protective device to fail. *Id.* at 433–34. Just as accidents are expected, safety devices are expected to work. Second, the jury's attention should not be misdirected from the performance of a potentially faulty device to the conduct that caused an initial collision, such as driving drunk. *Id.* Finally, allowing evidence of comparative fault for an initial collision would unfairly allow manufacturers to introduce mitigating evidence in every crashworthiness case in which a product did not cause the initial collision. *Id.* at 434.

To reach its holding, the court found Florida's medical malpractice law analogous. The court noted that emergency room physicians face patients who have sustained initial injury, and those physicians are still required to meet the requisite standard of care. If a physician falls short of the applicable standard of care and enhances a patient's injuries, the physician is liable for medical malpractice, and the patient's fault in causing the original injury is irrelevant. *Id.* at 436–37. Similarly, the *D'Amario* court reasoned, manufacturers have a duty to build reasonably safe products. Why the manufacturer's product was involved in a crash has no bearing on the manufacturer's duty to design a crashworthy product. *Id.* The analogy between medical malpractice in emergency care and defective design in crashworthiness cases has been used or adopted by courts in other states in the minority, as well as some commentators.

Similarly, Iowa has emphasized the importance of the manufacturer's duty to make a safe product. In *Reed v. Chrysler Corp.*, the court found evidence of a driver's intoxication had no relevance in determining the enhanced injuries caused by a jeep's defectively designed roof. Acknowledging that Iowa's comparative fault statute mentioned strict liability claims, the *Reed* court distinguished crashworthiness claims from strict liability claims, maintaining that crashworthiness cases are "a step removed" from "ordinary" strict liability cases. 494 N.W.2d at 230. The *Reed* court held that the crashworthiness doctrine "proceeds from the belief that a manufacturer has a duty to minimize the injurious effect of a crash, no matter how the crash is caused." *Id.*

- **Incompatibility of Strict Liability and Comparative Fault**

Pennsylvania prohibits the admission of evidence of comparative fault in strict liability claims, thereby barring its use in crashworthiness claims. Perhaps more than any other jurisdiction in the nation, Pennsylvania separates negligence concepts, including comparative fault, from product liability doctrine.

The case *McCown v. International Harvester Co.*, 463 Pa. 13, 342 A.2d 381 (Pa. 1975), set the stage for barring evidence of comparative fault in crashworthiness claims. In *McCown*, the manufacturer conceded its steering mechanism was defective, but asked for consideration of the plaintiff's fault in calculating the damages awarded because the plaintiff's negligence initially caused the collision. 463 Pa. at 15. The court refused, holding that applying a theory of comparative negligence in an area of the law in which liability is not premised on negligence seems "particularly inappropriate." *Id.* at 16 n.3.

As explained in *Staymates v. ITT Holub Industries*, 527 A.2d 140, 143-44 (Pa. Super. Ct. 1987), the *McCown* reasoning that strict liability is incompatible with comparative fault principles preceded the adoption of Pennsylvania's comparative negligence statute. Nonetheless, *McCown* is one of many cases confirming Pennsylvania's "firm belief" that negligence concepts do not belong in product liability cases. *See also Kimco Development Corp. v. Michael D's Carpet Outlets*, 637 A.2d 603, 605-06 (Pa. 1993) (stating that "the underlying purpose of strict product liability is undermined by introducing negligence concepts into it"). In contrast to Florida and other states emphasizing the manufacturer's duty, Pennsylvania's approach focuses on the legal or theoretical concepts involved in a strict liability claim. *Id.*

### *Conclusion*

A review of the law concerning the admissibility of evidence of comparative fault reveals two overarching themes, with jurisdictional nuances. Practitioners faced with crashworthiness claims must carefully review the applicable law of the particular jurisdiction in which a case has been filed to determine its nuances.

The modern trend followed by a majority of courts generally allows admission of evidence of comparative fault, which offers a flexible approach and embraces the reality of crashworthiness claims. A bright-line rule either in favor of or against the admission of such evidence has less appeal because it tends to lead to the creation of exceptions that may in certain instances “swallow the rule.”

Hawaii’s approach, as expressed by the federal court in *Dannenfelsler*, appears balanced, admitting evidence of comparative fault in crashworthiness claims unless the injuries sustained are entirely and solely related to the defect at issue. Generally, injuries sustained in an accident are due to a combination of rapidly sequenced events. For this reason, it usually is impossible to distinguish the injuries caused by a first as opposed to second collision. Furthermore, the first collision will invariably dictate the extent of the enhanced injury. If the injuries are inseparable, then it is only logical that the jury examine fault in the initial collision to appropriately apportion damages.

Finally, extending principles of comparative fault to strict liability serves the goal of equitably allocating legal responsibility for personal injuries. Dean Prosser’s famous statement about the law of torts is as applicable to negligence claims as it is to crashworthiness claims: one should not place upon one party “the entire burden of a loss for which two are, by hypothesis, responsible.” Prosser, *Torts* (4th ed. 1971) § 67 at 433. If courts find that applying comparative fault principles unfairly favors manufacturers in crashworthiness claims, then state legislatures can calibrate the fault apportionment process, rather than eliminating it altogether. As courts grapple with these issues, practitioners should remain mindful of the nuances that exist in the way that different jurisdictions treat crashworthiness claims.

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