

## SUMMER 2013 NEWSLETTER

### PRODUCTS LIABILITY UPDATE

By Rocky Little

1. *Charbonnet v. Shami*, No. 04-12-00711-CV (Tex. App. – [4<sup>th</sup> Dist.] San Antonio, June 12, 2013).

Charbonnet was diagnosed with a medical condition that causes rapid loss of all hair on one's body. There is no treatment for the condition, and it is likely permanent. The hair-loss condition was allegedly caused by chemicals in hair coloring and treatment products that were applied by a stylist at 8:45 a.m. and removed at 2:00 p.m. One of the issues addressed by the Court of Appeals is whether the release signed by Charbonnet was enforceable.

Charbonnet was a model who had the hair products applied at a hair show, and the document she signed granted permission to use photos of her for marketing purposes, and also release Farouq Systems from any future liability caused by services or products provided at the hair show. The Court examined whether the release provided **fair notice** that she was releasing Farouq Systems from liability for negligence causing future injury. The court held that, because the document containing the release was only about half of a page in length and contained only two paragraphs, and because the language of the release was legible and distinguished from the surrounding texts in multiple ways, it was sufficiently **conspicuous** to put a reasonable person on notice of its existence and terms. Therefore, the release was enforceable, and Charbonnet's claims were barred as a matter of law.

2. *Estate of Muniz v. Ford Motor Co.*, No. 04-12-00263-CV – (Tex. App. – [4<sup>th</sup> Dist.] San Antonio, June 12, 2013).

Muniz was killed when she was run over by her Ford F-150 pickup truck as she attempted to re-enter the truck after exiting to open a gate. As she was re-entering the truck, the truck started moving in reverse, and as a result of losing her footing, the truck ran over her torso. It was alleged that there was a design defect allowing the F-150 to be placed in "false-park" by shifting between reverse and park. Although the truck temporarily remained stationary in "false-park," it was alleged that the pickup re-engaged itself in reverse when Muniz was re-entering the truck.

One of the issues the court addressed was whether proof of other incidents or accidents are admissible in a product defect case. The court identified three restrictions pertaining to the admissibility of such evidence. First, the other incidents must have occurred under reasonably similar conditions and circumstances. To prove the proper predicate in a product defect case, the proponent of the evidence must establish that the defect that caused the other incidents was similar to the defect allowed in the case at hand.

Second, evidence of similar incidents is inadmissible if it creates undue prejudice, confusion, or delay. Prolonged proof of what happened in other accidents cannot be used to distract a jury's attention from what happened in the case at hand.

Third, the relevance of other accidents depends on the purpose for offering them. Other accidents may be relevant to show whether a product was defective or unreasonably dangerous or that a manufacturer was on notice of prior or continuing problems with the product. If the other accidents are offered to prove a product was defective or unreasonably dangerous, only accidents occurring before the production and sale of the product are admissible, not accidents occurring afterwards because whether product was defective must be judged against the technological context existing at the time of its manufacture.

**3. *Rukmi Indah Idniarti v. Bell Helicopter Textron, Inc.*, No. 02-12-00045-CV (Tex. App. – [2<sup>nd</sup> Dist.] Fort Worth, May 9, 2013).**

This wrongful death suit arose from a February 2001 helicopter crash. The helicopter was assembled by IPTN, an Indonesian company operating under a licensing agreement with Bell. The Indonesian Forestry Department purchased the helicopter, but it was maintained by PT Dayajasa Transindo Pratama when it crashed. After being dismissed several times, the case was reinstated on June 23, 2009 with an initial trial date set for November 2010. Several extensions were granted before final summary judgment in November 2011. Bell filed a motion for no-evidence summary judgment claiming that Idniarti had produced no evidence:

- a) of the cause of the accident or that a defect existed in the helicopter, thus defeating Idniarti's strict product liability theories of unsafe design, manufacturing defect, and inadequate warning;
- b) that any express warranty was made by Bell, or breached by Bell, or that an implied warranty existed;
- c) of a misrepresentation made by Bell; or
- d) that a duty was owed to Idniarti by Bell, or breached by Bell, under either general negligence or strict products liability theories.

The trial court granted the no-evidence summary judgment motion in all respects and the Fort Worth Court of Appeals affirmed.