

SUMMER 2017 NEWSLETTER

PRODUCTS LIABILITY UPDATE

By Rocky Little

1. *vRide, Inc. v. Ford Motor Co.*, No. 05-15-101377-CV (Tex.App.—Dallas) February 2, 2017.

This is an appeal from a summary judgment that addresses whether the underlying lawsuit was a “products liability action” for purposes of statutory indemnity under Chapter 82 of the Texas Civil Practice and Remedies Code. Cernosek was injured in a vehicle accident during which he was a passenger in a vRide van which was manufactured by the Ford Motor Company. Cernosek filed suit against vRide, and those parties settled. vRide sued Ford to recover its settlement payment to Cernosek pursuant to Chapter 82 of the Civil Practice and Remedies Code governing a manufacturer’s duty to indemnify a seller for products liability. Chapter 82 states that “a manufacturer shall indemnify and hold harmless a seller against loss arising out of a products liability action, except for any loss caused by the seller’s negligence, intentional misconduct, or other act or omission such as negligently modifying or altering the product, for which the seller is independently liable. Chapter 82 defines a products liability action as any action against a manufacturer or seller for recovery of damages arising out of personal injury, death, or property damage allegedly caused by a defective product whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories. Ford filed a motion for summary judgment contending that the petition filed by Cernosek was not a products liability action for purposes of statutory indemnity pursuant to Chapter 82.

The purpose of Chapter 82 is to protect innocent sellers by assigning responsibility for the burden of products liability litigation to the manufacturer of the product. When a petition alleges that a manufacturer’s product is defective, an innocent seller who suffers a loss is protected under the indemnity provisions of Chapter 82. Whether the plaintiff has asserted a products liability action so as to trigger the duty to indemnify is determined from the allegations in the plaintiff’s petition. The duty to indemnify is triggered by allegations of a defect in the product at issue. Although Chapter 82 does not define “defective product,” the Supreme Court of Texas has defined it to mean “a product unreasonably dangerous because of a defect in marketing, design, or manufacturing”. A marketing defect claim alleges a failure to warn of a product’s potential danger when there is a duty to warn. A design defect claim alleges that there was a safer alternative design that in reasonable probability would have prevented or significantly reduced the risk of the claimant’s injury, property damage, or death without substantially impairing the product’s utility. A manufacturing defect claim alleges that the finished product deviated, in terms of its construction or quality, from the specifications or planned output in a manner that rendered the product unreasonably dangerous.

Cernosek’s petition alleged among other things, that vRide failed to provide vehicles with side curtain or side canopy airbag systems, failed to provide vehicles with state of the art safety systems, and failed to provide vehicles with rollover curtains. However, Cernosek’s petition did not allege that the van was unreasonably dangerous, or that the van was defective due to

marketing, design, or manufacture. The trial court granted Ford's Motion for Summary Judgment, and the Dallas Court of Appeals affirmed the judgment, holding that Cernosek's petition did not allege a products liability action. Consequently, Ford was not required to indemnify vRide for its loss/settlement payment to Cernosek.