IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-CA-01924

PAMELA LYNN LAWSON **APPELLANT**

V.

HONEYWELL INTERNATIONAL, INC.
(f/k/a AlliedSignal, Inc.) **APPELLEE**

On Appeal from the Circuit Court of Wayne County, Mississippi
Civil Action No. CV-2009-81-W

BRIEF OF APPELLEE, HONEYWELL INTERNATIONAL, INC. (f/k/a Allied Signal, Inc.)

(Oral Argument Requested)

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. The Appellant, Pamela Lynn Lawson

2. The Appellee, Honeywell International, Inc.

3. Chrysler LLC (formerly DaimlerChrysler Company, LLC, formerly DaimlerChrysler Corporation)

4. Key Safety Systems, Inc. (f/k/a Breed Technologies, Inc.)

5. Counsel for Pamela Lynn Lawson, Edward A. Williamson, Esq. and Christopher M. Posey, Esq. of The Edward A. Williamson Law Firm

6. Counsel for Pamela Lynn Lawson, Kathryn Dickerson, Esq. of Dickerson & Dickerson

7. Counsel for Honeywell International, Inc., Edward J. Currie, Jr., Esq. and Joseph W. Gill, Esq. of Currie Johnson Griffin Gaines & Myers, P.A.

8. Counsel for Honeywell International, Inc., Randal R. Cangelosi, Esq. and John E. Heinrich, Esq. of Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman, LLP

9. Dan Davee, Rule 30(b)(6) designee of Honeywell International, Inc.

10. Counsel for Chrysler LLC, William C. Hammack, Esq. of Bourdeaux & Jones, LLP

11. Counsel for Key Safety Systems, Inc., Edward J. Currie, Jr., Esq. and Joseph W. Gill, Esq. of Currie Johnson Griffin Gaines & Myers, P.A.

12. Counsel for Key Safety Systems, Inc., Brian T. Smith, Esq. and Michael Cooney, Esq. of Dykema Gossett PLLC

13. Honorable Lester F. Williamson, Jr., District 10 Circuit Court Judge and his staff attorney, Katie Bradshaw

Respectfully submitted, this the 14th day of April, 2011.

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Counsel for Appellee, Honeywell International, Inc.

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II. Whether the trial court properly granted summary judgment in Defendant/ Appellee, Honeywell International, Inc.'s, favor because Honeywell neither manufactured nor sold the product at issue.

III. Whether the trial court properly granted summary judgment in Defendant/Appellee, Honeywell International, Inc.'s, favor because Honeywell never had control over the product at issue.

STATEMENT OF THE CASE

Pamela Lynn Lawson ("Lawson") filed an Amended Complaint in the Circuit Court of Wayne County, Mississippi, alleging that she was injured as a result of being ejected from the1999 Jeep Cherokee she was driving. (CP. 11-30). Lawson alleged that she was involved in a single-vehicle accident when she lost control of the of the vehicle and ran off of the roadway. (CP. 14). According to Lawson, she was thrown from the vehicle because her seatbelt became disengaged due to its allegedly defective design. (CP. 14).

Lawson initially sued Chrysler LLC ("Chrysler"), as the alleged manufacturer of the Jeep Cherokee, and Key Safety Systems, Inc. ("Key Safety"), as the alleged manufacturer of seatbelt buckle. In her Amended Complaint, Lawson joined Defendant/Appellee, Honeywell International, Inc. ("Honeywell"), alleging that it is liable as the original designer of the model seatbelt which Key Safety used in manufacturing Lawson's seatbelt. (CP. 17, 24). The Amended Complaint asserted causes of action against Honeywell for Strict Liability - Defective Design (Count 1); Negligence (Count 2), and Negligence Per Se (Count 3). (CP. 17-26).

On July 2, 2010, Honeywell filed its Motion for Summary Judgment, or, in the alternative, Motion for Partial Summary Judgment[1] ("Motion for Summary Judgment"). In its motion, Honeywell noted that there is no dispute that Honeywell neither manufactured nor sold the seatbelt buckle at issue, nor ever had control of the seatbelt buckle. (CP. 54-58). Honeywell asserted that, even assuming *arguendo* that it was the original designer of the seatbelt buckle (which it has

[1] Honeywell argued in its alternative Motion for Partial Summary Judgment that it could not be held liable for punitive damages in this case even if it otherwise could be held liable under Plaintiff's asserted claims. (CP. 56).

consistently denied), Lawson still could not maintain any of her claims against it under Mississippi law. (CP. 54-58).

The trial court entered an Order granting Honeywell's Motion for Summary Judgment. (CP. 234-41). The trial court first held that Lawson's defective design product liability claims were governed exclusively by the Mississippi Products Liability Act ("MPLA"), Mississippi Code Annotated § 11-1-63. (CP. 234-41). The court further held that, as a matter of law, Honeywell, an alleged non-manufacturing designer, could not be held liable to Lawson under the plain language of the MPLA. (CP. 234-41). Lawson filed a Motion for Reconsideration, which the trial court denied. (CP. 242-49; 268-72).

Chrysler was severed from this action due to bankruptcy, and Lawson settled her claims against Key Safety. Therefore, upon denying Lawson's Motion for Reconsideration, the trial court entered Final Judgment dismissing Honeywell with prejudice. (CP. 273). Thereafter, Lawson filed her notice of Appeal, appealing to this Court the Final Judgment, Order granting Honeywell's Motion for Summary Judgment, and Order denying her Motion for Reconsideration. (CP. 275).

STATEMENT OF THE FACTS

The specific product at issue in this case is a Gen-3 seatbelt buckle that was manufactured by Key Safety, sold by Key Safety to Chrysler, and installed by Chrysler in the1999 Jeep Cherokee Lawson was driving when she had a single-vehicle rollover accident on July 31, 2005. (CP. 13-14). Lawson alleged that she was wearing the seatbelt at the time of the accident, but that it became disengaged due to the allegedly defective design of the Gen-3 buckle, and that she was ejected from the vehicle as a result. (CP. 13-14). As shown below, the undisputed evidence clearly demonstrates that Honeywell neither manufactured nor sold Lawson's Gen-3 seatbelt buckle, nor ever had any control of the buckle.

Prior to a 1999 merger with Honeywell, Inc., Honeywell existed as AlliedSignal, Inc. ("AlliedSignal"). (CP. 92). AlliedSignal had a safety restraints division that, before October 1997, manufactured Gen-3 seatbelt buckles for Chrysler. (CP. 82, 92). While it is in fact the case that Chrysler designed the Gen-3 buckle, for the sake of its Motion for Summary Judgment (and, thus, for this appeal) Honeywell has assumed *arguendo* that it (*i.e.*, AlliedSignal) was the original designer of the Gen-3 buckle model.[2] (CP. 55, 82-86).

In October 1997, AlliedSignal exited the occupant restraints business when it sold its safety restraint business to Breed Technologies, Inc..[3] (CP. 83). Thus, when Honeywell came into corporate existence, "AlliedSignal had already divested itself of its safety restraints division," and

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[2] "The exterior geometry of the GEN 3 buckle was specifically designed by Chrysler which prepared a clay model of its design for that buckle and required Honeywell to follow Chrysler's design when manufacturing GEN 3 buckles for Chrysler . . . ." (CP. 84).

[3] Breed Technologies became Key Safety after bankruptcy reorganization.

"Honeywell was not a party to any further transactions concerning its former safety restraints division." (CP. 88-89).

Honeywell was not involved with, nor did it manufacture or sell, seatbelt systems for the 1999 Jeep Cherokee. (CP. 81). Rather, the undisputed evidence demonstrates that the seatbelt buckle in the 1999 Jeep Cherokee at issue was manufactured by Key Safety (formerly Breed Technologies)[4] in or around October 1998, approximately one year after Honeywell (AlliedSignal) stopped manufacturing seatbelt buckles. (CP. 83, 86, 90).

Not only is the evidence undisputed that Honeywell neither manufactured nor sold the specific Gen-3 buckle at issue, Lawson never even alleged such in her Amended Complaint. Rather, Lawson specifically alleged that Key Safety, and not Honeywell, manufactured and sold the Gen-3 buckle at issue here. (CP. 13, 14, 18, 19).[5] There is no allegation in the Amended Complaint that Honeywell ever participated in the manufacture or sale of the actual seatbelt buckle that went into the 1999 Jeep Cherokee at issue.

[4] Breed Technologies became Key Safety after bankruptcy reorganization.

[5] At one point in the Amended Complaint Lawson even alleged that Key Safety designed the Gen- 3 buckle. (CP. 18).

SUMMARY OF THE ARGUMENT

I. The trial court correctly held that the MPLA is the exclusive remedy for Lawson's alleged defective design product liability claims.

The trial court correctly held that this case is governed exclusively by the MPLA, as Lawson's claims against Honeywell are based solely on her allegation that the seatbelt buckle at issue was a defectively designed product. The MPLA expressly states that it applies to "**any** action for damages caused by a product except for commercial damage to the product itself." MISS. CODE ANN. § 11-1-63 (emphasis added). As a matter of statutory construction, the MPLA's use of the broad and unrestricted word "any" clearly reveals the Mississippi legislature's intent to abrogate common law negligence causes of action for defectively designed products. The legislature's intent is also revealed by the fact that it specifically carved out an exception to the statute, stating that the MPLA shall not "eliminate any common law defense to an action for damages caused by a product." MISS. CODE ANN. § 11-1-63(i). Had the legislature not intended for the MPLA to subsume common law negligence causes of action for defective products, this exception would be unnecessary and superfluous. Moreover, Mississippi courts have repeatedly held that the MPLA provides the exclusive remedy for product liability actions in Mississippi, *see, e.g., Simmons v. Ford Motor Co.*, No. 5:05cv28-DCB-JMR, 2006 WL 3760521, at *2 (S.D. Miss. Dec. 15, 2006); *McSwain v. Sunrise Medical, Inc.*, No. 2:08cv136KS-MTP, 2010 WL 502734, at *11 (S.D. Miss. Feb. 8, 2010); *Lovitt v. Wal-Mart Stores, Inc.*, No. 2:04CV192-D-B, 2006 WL 1423071, at *4 (N.D. Miss. May 16, 2006); *Williams v. Bennett*, 921 So. 2d 1269, 1273 (Miss. 2006). Lawson's attempt to distinguish such cases is without merit.

II. The trial court properly granted summary judgment in Honeywell's favor because Honeywell neither manufactured nor sold the product at issue.

The plain language of the MPLA unambiguously imposes liability **only** on the "manufacturer or seller" of a defective product. *See* MISS. CODE ANN. § 11-1-63(a). Mississippi courts have rejected attempts to impose liability on non-manufacturers/non-sellers under the MPLA. Because it is undisputed that Honeywell was neither the "manufacturer" nor the "seller" of the seatbelt buckle at issue, Honeywell cannot be liable under the MPLA. Lawson's argument that the term "manufacturer" as used in the MPLA encompasses non-manufacturing original designers is without merit, as it is inconsistent with certain provisions of the MPLA and contrary to case law interpreting the MPLA. *See, e.g., Lovitt*, 2006 WL 1423071, at *4; *Harris v. Newman Machine Co.*, 641 F. Supp. 146, 148 (S.D. Miss. 1986); *Green v. Allendale Planting Company*, 954 So. 2d 1032, 1040 (Miss. 2007). Likewise, courts in other jurisdictions that have addressed this issue have held that non-manufacturing "designers" in Honeywell's position cannot be held liable under similar product liability statutes and common law. *See, e.g., Affiliated FM Insurance Company v. Trane Company*, 831 F.2d 153 (7th Cir. 1987) (applying Wis. law); *Barbour v. Dow Corning Corp.*, No. X06CV930301054S, 2002 WL 983346 (Conn. Super. Ct. Apr. 19, 2002); *Felker v. McGhan Med. Corp.*, 36 F. Supp. 2d 863 (D. Minn. 1998) (applying Ariz. law); *Healy v. McGhan Medical Corp.*, No. CA975320, 2001 WL 717110 (Mass. Super. Ct. Mar. 29, 2001); *Potwora v. Grip*, 725 A.2d 697 (N.J. Super. Ct. 1999); *Mechanical Rubber and Supply Company v. Caterpillar Tractor Company*, 399 N.E.2d 722, 723 (Ill. Ct. App. 1980).

III. The trial court properly granted summary judgment in Honeywell's favor because Honeywell never had control over the product at issue.

Under the MPLA, a plaintiff must prove that the defective condition of the product existed "at the time the product left the control of [the defendant]." MISS. CODE ANN. § 11-1-63(a)(i)(3).

Thus, for a defendant to be held liable under the MPLA, the subject product necessarily must have been under that defendant's control at some point in time. It is undisputed that the allegedly defective seatbelt buckle at issue was *never* under Honeywell's control. Honeywell did not even exist until approximately one year after Honeywell's predecessor, Allied Signal, sold its safety restraints business to Breed Technologies, Key Safety's predecessor, and exited the safety restraints business altogether. Moreover, after AlliedSignal sold its safety restraints business to Breed Technologies (Key Safety's predecessor), Honeywell no longer had any control over the alleged design of the seatbelt (assuming, *arguendo*, that it ever had any control over the design). Honeywell cannot be held liable to Lawson under the MPLA because it is impossible for Lawson's seatbelt to have been in an alleged defective condition at the time that it left Honeywell's control, because it was never in Honeywell's control in the first place. Numerous jurisdictions have reached the same conclusion in similar cases. *See, e.g., Milford v. Commercial Carriers, Inc., 210 F. Supp. 2d 987, 991 (N.D. Ill. 2002); Felker v. McGhan Med. Corp.*, 36 F. Supp. 2d 863 (D. Minn. 1998) (applying Ariz. law); *Healy v. McGhan Medical Corp.*, No. CA975320, 2001 WL 717110 (Mass. Super. Ct. Mar. 29, 2001); *Potwora v. Grip*, 725 A.2d 697 (N.J. Super. Ct. 1999).

STANDARD OF REVIEW

Summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." M.R.C.P. 56(c). All evidentiary matters before the court are reviewed in "the light most favorable to the party opposing the motion." *Webb v. Braswell*, 930 So. 2d 387, 395 (Miss. 2006). The moving party bears the burden of showing that there is no genuine issue of material fact. *Id.* However, summary judgment forces the party opposing the motion to present some modicum of material evidence and specific facts indicating that there are genuine issues for trial. *Stuckey v. Provident Bank*, 912 So. 2d 859, 866 (Miss. 2005); *Benson v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 762 So. 2d 795, 799-800 (Miss. Ct. App. 2000). For a genuine issue of fact to exist, the evidence must "matter in an outcome determinative sense" and be "such that a reasonable jury could return a verdict for the nonmoving party." *Armistead v. Minor*, 815 So. 2d 1189, 1191-92 (Miss. 2002); *Page v. Wiggins*, 595 So. 2d 1291, 1295 (Miss. 1992). On a motion for summary judgment, the movant and non-movant maintain burdens of production that parallel the same burdens of proof they would have at trial. *Watson v. Johnson*, 848 So. 2d 873, 877 (Miss. Ct. App. 2002) (citing *Collier v. Trustmark Nat'l Bank*, 678 So. 2d 693, 696 (Miss. 1996)). Furthermore, "[s]ummary judgment is appropriate where a non-moving party who will bear the burden of proof at trial fails to establish the existence of an essential element of his case." *Gorman-Rupp Co. v. Hall*, 908 So. 2d 749, 757 (Miss. 2005).

"In reviewing a trial court's grant or denial of summary judgment, the well-established standard of review is *de novo*." *Waggoner v. Williamson*, 8 So. 3d 147, 152 (Miss. 2009) (citing *One South, Inc. v. Hollowell*, 963 So. 2d 1156, 1160 (Miss. 2007)). "The trial court's decision to grant

summary judgment will be affirmed if the record before the trial court shows that there is no genuine issue of material fact and that the movant is entitled to a judgment as a matter of law." *Estate of Guillotte v. Delta Health Group, Inc.*, 5 So. 3d 393, 396 (Miss. 2009).

ARGUMENT

I. The trial court correctly held that the MPLA is the exclusive remedy for Lawson's alleged defective design product liability claims.

The trial court correctly held that this case is governed exclusively by the MPLA. However, Lawson argues that the MPLA merely applies to strict liability products liability actions, and that "[n]o language in the Act implies that" it "reach[es] into common law negligence actions." (*See* Appellant's Principal Brief, at p. 20). This position is clearly incorrect as the MPLA expressly states that it applies to "**any** action for damages caused by a product except for commercial damage to the product itself." MISS. CODE ANN. § 11-1-63 (emphasis added). Mississippi courts properly have applied the plain language of the MPLA repeatedly to hold that this statute provides the exclusive remedy for products liability actions in Mississippi.

A. Mississippi courts have held that products liability claims are governed exclusively by the MPLA.

Since the enactment of the MPLA, "products liability claims have been specifically governed by statute, and a claimant in presenting her case, must pay close attention to the elements of the cause of action and the liability limitations enumerated by the statute." *Williams v. Bennett*, 921 So. 2d 1269, 1273 (Miss. 2006). *See also Simmons v. Ford Motor Co.*, No. 5:05cv28-DCB-JMR, 2006 WL 3760521, at *2 (S.D. Miss. Dec. 15, 2006) ("When the Mississippi legislature promulgated the Mississippi Products Liability Act ('MPLA') in 1993, it manifested its intent to preclude common law products liability claims. Accordingly, a plaintiff must use the MPLA as a roadmap when pleading and proving her claim.") (internal citation omitted)). "The MPLA's plain language indicates

that its provisions apply to **all product liability actions**, regardless of whether the focus is the manufacturer's care or the product's final condition." *McSwain v. Sunrise Medical, Inc.*, No. 2:08cv136KS-MTP, 2010 WL 502734, at *11 (S.D. Miss. Feb. 8, 2010) (emphasis added). *See also Lovitt v. Wal-Mart Stores, Inc.*, No. 2:04CV192-D-B, 2006 WL 1423071, at *4 (N.D. Miss. May 16, 2006) (citing *Williams*, 921 So. 2d at 1273) ("Products liability actions in Mississippi are governed exclusively by statute.").

B. As a matter of statutory construction, the MPLA expresses the legislature's intent to abrogate common law negligence causes of action for defective products.

As noted above, the MPLA plainly states that it applies to "**any** action for damages caused by a product . . . ." MISS. CODE ANN. § 11-1-63 (emphasis added). Nothing in the MPLA restricts the types of products liability actions governed by the statute solely to those that sound in strict liability, as argued by Lawson. Rather, the MPLA broadly states that "any" products liability action is governed by the statute. As a matter of statutory construction, the term "any" is all-inclusive, *i.e.*, "any" means "every" and "all." *See Price v. Time, Inc.*, 416 F.3d 1327, 1336 (11th Cir. 2005) ("The United States Supreme Court and this Court have recognized on many occasions that the word 'any' is a powerful and broad word, and that it does not mean 'some' or 'all but a few,' but instead means 'all.'"); *see also Torres v. O'Quinn*, 612 F.3d 237, 246 (4th Cir. 2010) (citing Webster's New Universal Unabridged Dictionary, 96 (1st ed. 2003) ("defining 'any' as 'every; all'"); *United States v. Maxwell*, 285 F.3d 336, 341 (4th Cir. 2002) (citing Webster's Third New International Dictionary 97 (2d ed. 1981)) ("the word 'any' means 'all'"); *State v. Harris*, 693 P.2d 750, 751 (Wash. Ct. App. 1985) ("Washington courts have repeatedly construed the word 'any' to mean 'every' and 'all'."). Thus, where the MPLA states that "any" products liability action is governed by the statute, it means that "all" products liability actions are governed by the statute. The clarity of this language leaves no

room for Lawson to argue that any of her product liability causes of action fall outside the scope of the MPLA. "[W]here [a] statute is plain and unambiguous, there is no room for construction." *Corporate Management, Inc. v. Greene County*, 23 So. 3d 454, 465 (Miss. 2009) (quoting *Kerr-McGee Chem. Corp. v. Buelow*, 670 So. 2d 12, 17 (Miss. 1995)). "When construing the meaning of a statute, [the Court] must look at the words of the statute." *Id.* (quoting *Adams v. Baptist Mem'l Hosp.-Desoto, Inc.*, 965 So. 2d 652, 656 (Miss. 2007)). *See also Coleman v. State*, 947 So. 2d 878, 881 (Miss. 2006) ("When the words of a statute are plain and unambiguous there is no room for interpretation or construction, and we apply the statute according to the meaning of those words.").

Furthermore, the MPLA expressly states that "[n]othing in this section shall be construed to eliminate any common law defense to an action for damages caused by a product." MISS. CODE ANN. § 11-1-63(i). This provision demonstrates the legislature's understanding that the MPLA eliminated the common law products liability causes of action such that it was necessary to include language specifically preserving common law defenses. While the legislature carved out an exception for common law defenses, it did not do so with respect to any common law causes of action. This is further evidence that the Mississippi legislature intended the MPLA to abrogate all common law causes of action for negligent design of a product.

C. Lawson's attempt to distinguish cases holding that the MPLA is the exclusive remedy for products liability claims in Mississippi is without merit.

Lawson's attempt to distinguish the some of the case law relied upon by Honeywell in support of its position on this issue is without merit.[6] For instance, Lawson argues that "[t]here seem

[6] It should be noted that Lawson has made no effort to discredit Honeywell's reliance on *Simmons*, 2006 WL 3760521, at *2, which, as noted above, held that the MPLA was an expression of the Mississippi legislature's manifest "intent to preclude common law products liability claims," and *McSwain*, 2010 WL 502734, at *11, which, as noted above, held that the plain language of the MPLA "indicates that its

to be no relevant facts in *Williams* to this case on the substantial issues" because "*Williams* was a suit a [*sic*] against a pawn broker-seller; did not join a designer; did not even allege the common law tort of negligent design; and, lacked proof on many of the required statutory elements." (*See* Appellant's Principal Brief, at p. 21). First, the status of the entities sued in *Williams* (*i.e.*, whether seller, manufacturer, *etc.*) is irrelevant to the issue of whether the MPLA applies to all design defect claims involved in *Williams*, where the Court examined such claims exclusively under the terms of the MPLA. *See* 921 So. 2d at 1272-78. Second, while it is true that the plaintiff in *Williams* did not "allege the common law tort of negligent design," this is because no such cause of action exists in Mississippi post adoption of the MPLA. According to the Court:

> In Mississippi, the legislature has codified the requirements unique to a design defect claim and laid out an explicit blueprint for claimants to prove when advancing such a claim. When claimants do not fulfill their statutory obligation, they leave the courts no choice but to dismiss their claims . . . .

Id. at 1277. Third, the fact that the plaintiff in *Williams* "lacked proof on many of the required statutory elements" only shows how that case is similar to the case *sub judice*, as Lawson likewise lacks proof on multiple statutory elements under the MPLA.

Lawson also attempts to discredit Honeywell's reliance on *Lovitt v. Wal-Mart Stores, Inc.*, 2006 WL 1423071, at *4, which, as noted above, held that "[p]roducts liability actions in Mississippi are governed exclusively by statute." However, the full extent of the distinction that Lawson cites is that *Lovitt* "involved defective doors at a Wal-Mart store." (*See* Appellant's Principal Brief, at p. 22). The fact that a different product was involved in *Lovitt* than in the present case is of no relevance. Thus, Lawson's attempt to distinguish *Lovitt* is completely without merit.

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provisions apply to all product liability actions . . . ."

Lawson's attempts to distinguish *Green v. Allendale Planting Company*, 954 So. 2d 1032 (Miss. 2007) and *Harris v. Newman Machine Company*, 641 F. Supp. 146 (1986), also fail. (*See* Appellant's Principal Brief, at pp. 21-22). While Lawson asserts that *Green* was "the primary Mississippi Supreme Court case relied on by [Honeywell] in the Trial Court, in support of its position that Mississippi does not recognize the common law tort of negligent design," this assertion is incorrect. (*See* Appellant's Principal Brief, at pp. 21). Honeywell cited *Green* for an entirely different proposition in relation to the restriction of the MPLA to defendants "engaged in the actual production or the sale of goods," which will be discussed below with respect to Honeywell's second stated issue on appeal. (CP. 259). Likewise, Honeywell has never cited *Harris* for the proposition which Lawson claims Honeywell did in her Principal Brief. Thus, Lawson's attempts to muddy the water regarding Honeywell's reliance on *Green* and *Harris* should be afforded no weight whatsoever.

D. The Mississippi cases upon which Lawson relies or may rely are distinguishable.

In support of her proposition that common law negligent product design causes of action remain intact notwithstanding the MPLA, Lawson cites *Dickerson Construction Company, Inc. v. Process Engineering, Inc.*, 341 So. 2d 646 (Miss. 1977); *Magnolia Construction Company, Inc. v. Mississippi Gulf South Engineers, Inc.*, 518 So. 2d 1194 (Miss. 1998); and *Hobson v. Waggoner Engineering, Inc.*, 878 So. 2d 68 (Miss. 2003). These cases are distinguishable.

Dickerson Construction and *Magnolia Construction* involved professional liability claims against architects or engineers for faulty designs with respect to real property construction projects. These cases have nothing to do with whether common law negligence causes of action exist as to defectively designed *products*. Neither case used the term "product" even once. The MPLA clearly

does not apply to the professional (*i.e.*, non-product) liability claims asserted in these cases, such that there was no issue as to whether the MPLA abrogated the common law negligence claims asserted therein. Therefore, both *Dickerson Construction* and *Magnolia Construction* are completely irrelevant to the issue currently before the Court.

Hobson is distinguishable in part, and otherwise is supportive of Honeywell's position. Like *Dickerson Construction* and *Magnolia Construction*, *Hobson* involved professional liability claims against an engineer for faulty designs with respect to a real property construction project. The project was not a "product" such that the MPLA did not apply to the professional liability claims against the engineer. However, *Hobson* also involved a claim for negligent design against the manufacturer of a product that was used in the construction project. The Court of Appeals examined the negligent product design claim exclusively under the provisions of the MPLA. *Hobson*, 878 So. 2d at 79-80. As such, *Hobson* actually supports Honeywell's position that all claims for defectively designed products come within the exclusive scope of the MPLA.

While Lawson has not cited *Watson Quality Ford, Inc. v. Casanova*, 999 So. 2d 830 (Miss. 2008), to the extent that she may rely on this case in her rebuttal brief, such reliance would be misplaced. In *Watson Quality Ford*, the plaintiffs filed suit against Ford Motor Company and Watson Quality, alleging that "Watson Quality had negligently failed to repair the malfunctioning components" of a Ford van which Casanova was driving when an accident occurred. *Id.* at 833. The plaintiffs initially asserted the following causes of action against the defendants: "negligence, gross negligence, strict liability (manufacturing and design), strict liability (failure to warn), breach of implied warranty of merchantability, and breach of implied warranty of fitness for a particular purpose." *Id.* However, the plaintiffs agreed to dismiss "the gross-negligence and strict liability

claims against both parties" and "their negligence claim against Ford." *Id.* However, with respect to the plaintiffs' "negligence claim [**for negligent repair**] against Watson Quality," the Court stated:

> Defendants argue that Casanova's exclusive remedy is to bring an action under the Mississippi Products Liability Act ("MPLA"). We disagree. We find no statutory requirement that makes the MPLA the exclusive remedy for claims of malfunctioning automobiles. Moreover, this Court previously has held that breach of implied warranty claims are not barred by the MPLA.

Id. (internal citation omitted).

The Court's holding in *Watson Quality Ford* that the MPLA is not "the exclusive remedy for claims of malfunctioning automobiles" is not inconsistent with other decisions holding that the MPLA is the exclusive remedy for product liability actions. Rather, the Court's holding in *Watson Quality Ford* focused on the plaintiffs' claims for breaches of implied warranties (contract actions, *i.e.* not negligence-based product liability actions) and negligent repair (a non-product liability action). The Court's decision in *Watson* does not suggest that a plaintiff may assert a common law claim for negligent design of a product separate from and in addition to her design defect claim under the MPLA, as Lawson would have this Court do for the first time in this case. Otherwise, any plaintiff whose defective design claim is legally insufficient under "the elements . . . and the liability limitations enumerated by the [MPLA]," *see Williams*, 921 So. 2d at 1273, could nevertheless recover for a design defect by merely asserting that her cause of action falls under common law and not the MPLA. This is not the law. A plaintiff asserting a design defect claim cannot simply avoid meeting the requirements of the statute by maintaining that her claim is made pursuant to common law rather than the MPLA.

Similarly, while Lawson has not cited *R.J. Reynolds Tobacco Company v. King*, 921 So. 2d 268 (Miss. 2005), to the extent that she may rely on this case in her rebuttal brief, such reliance likewise would be without merit. In *R.J. Reynolds*, the plaintiff filed suit against several cigarette

manufacturers following her decedent's death from lung cancer. The plaintiff included the following causes of action in her complaint: "(1) fraudulent misrepresentation; (2) conspiracy to defraud; (3) strict liability; (4) negligence; (5) gross negligence; (6) negligent misrepresentation; (7) breach of express warranty; (8) breach of implied warranty of fitness; (9) deceptive advertising; and (10) wrongful death." *Id.* at 270. The trial court granted the manufacturers' motion for summary judgment based on the MPLA's inherent characteristic defense as to plaintiff's claims for strict liability, negligence, gross negligence, breach of express warranty, and breach of implied warranty of fitness. However, the trial court denied the manufacturers' motion for summary judgment on such basis with respect to the plaintiff's other claims. On appeal, the manufacturers argued that the MPLA's inherent characteristic defense also applied to those causes of action for which the trial court did not grant summary judgment in the manufacturer's favor. This Court disagreed, noting that while the the inherent characteristic defense of the MPLA "precludes all tobacco cases *based upon products liability*," it does not preclude "*all* tobacco cases, which could be based on other possible theories of recovery," such as the plaintiff's claims for fraudulent misrepresentation, conspiracy to defraud, negligent misrepresentation, deceptive advertising, and wrongful death resulting from such. *Id.* at 272 (emphasis in opinion).

As is the case with *Watson Quality Ford, supra*, this Court's holding in *R.J. Reynolds* is not inconsistent with other decisions holding that the MPLA is the exclusive remedy for product liability actions. Rather, *R.J. Reynolds* affirmed the exclusivity of the MPLA in "cases based upon product liability." *R.J. Reynolds*, 921 So. 2d at 272. As in *Watson Quality Ford*, the Court in *R.J. Reynolds* merely held that the MPLA does not apply to non-product liability claims. *See id.* ("First, the inherent characteristic defense [of the MPLA] applies only to a products liability action. One would not expect to see this defense pled in any other type of liability action. . . . [N]o products liability

claim is presently before the Court in the case sub judice."). The Court's decision in *R.J. Reynolds* does not suggest that a plaintiff may assert a common law claim for negligent design of a product separate from and in addition to her design defect claim under the MPLA. To the contrary, *R.J. Reynolds* indicates that the MPLA applies to **all** product liability claims. *See id.* (citing *Lane v. R.J. Reynolds Tobacco Co.*, 853 So. 2d 1144, 1150 (Miss. 2003) ("The Court finds that the Legislature intended to eliminate products liability claims stemming from tobacco use. Strictly applying [the MPLA, and its inherent characteristics defense], the Court finds that state law definitively precludes this lawsuit."). Like *Watson Quality Ford, R.J. Reynolds* is distinguishable from the present case in that the **only** claims Lawson has asserted against Honeywell are product liability claims. While Lawson has labeled one of her product liability claims as a "negligence" cause of action, it is clear that this is a product liability claim governed exclusively by the MPLA.

E. Certain non-binding federal district court cases taking positions contrary to the plain language of the MPLA were incorrectly decided.

Additionally, while Lawson has not cited such cases, some (but by no means all) Mississippi federal district courts have held that, in spite of the plain language of the MPLA, the statute does not preclude common law negligent claims based on defective products. *See, e.g., Rials v. Philip Morris, USA*, No. 3:06CV583BA, 2007 WL 586796 (S.D. Miss. Feb. 21, 2007); *Hodges v. Wyeth-Ayerst Labs.*, No. 3:00CV254WS, 2000 WL 33968262 (S.D. Miss. May 18, 2000); *Childs v. General Motors Corp.*, 73 F. Supp. 2d 669 (N.D. Miss. 1999); *Taylor v. Gen. Motors Corp.*, No. 1:96CV179-B-A, 1996 WL 671648 (N.D. Miss. Aug. 6, 1996). ***But see*** *Walker v. George Koch Sons, Inc.*, 610 F. Supp. 2d 551, 562-63 (S.D. Miss. 2009) ("Several district courts in this circuit have concluded that negligence claims premised on defective products are governed by the MPLA and therefore need not be considered separately. . . . As a result, the Plaintiffs' negligence claims do not survive apart

from their MPLA claims . . . ."); *Simmons v. Ford Motor Co.*, No. 5:05cv28-DCB-JMR, 2006 WL 3760521, at *2 (S.D. Miss. Dec. 15, 2006) (discussed *supra*); *Lundy v. Conoco Inc.*, No. 3:05cv477-WHB-JCS, 2006 WL 3300397, at *2 (S.D. Miss. Nov. 10, 2006) ("The Court finds that the failure to warn/inadequate warnings claims, regardless of the fact that Plaintiffs labeled one claim "products liability" and the other "negligence", are both governed by the [MPLA]."); *Lovitt v. Wal-Mart Stores, Inc.*, No. 2:04CV192-D-B, 2006 WL 1423071, at *4 (N.D. Miss. May 16, 2006) (discussed *supra*).

The non-binding federal district court cases opining that the MPLA does not preclude common law negligence claims based on defective products are contrary to the plain language of the MPLA and were incorrectly decided. The court in *Jowers v. BOC Group, Inc.*, No. 1:08-CV-0036, 2009 WL 995613, at *2, n. 8 (S.D. Miss. Apr. 14, 2009), *vacated in part on other grounds*, *Jowers v. Lincoln Electric Co.*, 617 F.3d 346 (5th Cir. 2001), noted that the federal district courts arriving at the conclusion that the MPLA does not abrogate negligence claims "are (1) all issued by federal courts taking their best *Erie* guess as to what Mississippi state law requires; and (2) for the most part, older than the state court cases suggesting otherwise . . . ."[7] In reviewing the state and federal case law addressing the issue, the court in *Jowers* concluded that "the greater weight of the somewhat-mixed authority holds that negligence-based claims of product defect **are abrogated by the MPLA**." *Id.* at *4 (emphasis added). This conclusion is in-line with (1) the plain language of the MPLA; (2) this Court's decision in *Williams v. Bennett*, 921 So. 2d 1269 (Miss. 2006) and other Mississippi state

[7] The court cited the following cases as controlling Mississippi Supreme Court decisions: *Nunnally v. R.J. Reynolds Tobacco Co.*, 869 So. 2d 373, 380-82 (Miss. 2004) (affirming the "trial court['s] deni[al] of proffered negligence instructions and submi[ssion of] the case to the jury solely on the theory of strict liability" product defect); *Palmer v. Volkswagen of Am., Inc.*, 905 So. 2d 564 (Miss. Ct. App. 2003), *reversed in part on other grounds*, 904 So. 2d 1077 (Miss. 2005) (affirming trial court's directed verdict on common law claims where the trial court concluded that "they were 'redundant because the court was instructing the jury on the [plaintiff's statutory] claims . . . under the MPLA'"); *Hunter v. Gen. Motors Corp.*, 729 So. 2d 1264 (Miss. 1999) (affirming the trial court's decision to instruct the jury on the plaintiff's strict products liability claims but not his negligence claims).

appellate decisions, *e.g.*, *Glenn v. Overhead Door Corp.*, 935 So. 2d 1074, 1078 (Miss. Ct. App. 2006) (applying the MPLA to all of plaintiff's defective product design claims even though the plaintiff asserted both strict liability and negligence theories of liability); and (3) various state and federal district court decisions in Mississippi.

Based on the foregoing analysis and authorities, the trial court correctly held that Lawson's exclusive source of recovery for her alleged defective design product liability claims, regardless of how they are labeled, is through the MPLA. Therefore, the trial court's decision on this issue should be affirmed.

II. The trial court properly granted summary judgment in Honeywell's favor because Honeywell neither manufactured nor sold the product at issue.

A. The MPLA imposes liability only on the "manufacturer or seller" of a defective product.

Applying the plain and unambiguous words of the MPLA to the case *sub judice*, it is clear that Lawson cannot maintain a product liability action against Honeywell, an alleged designer, because it is undisputed that Honeywell was neither the "manufacturer" nor the "seller" of the Gen-3 seat belt buckle at issue.The plain language of the MPLA unambiguously imposes liability **only** on the "manufacturer or seller" of a defective product. The MPLA specifically states that "[t]he **manufacturer or seller** of the product shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the **manufacturer or seller** . . . 3. The product was designed in a defective manner . . . ." MISS. CODE ANN. § 11-1-63(a) (emphasis added). *See also Lovitt*, 2006 WL 1423071, at *4 ("Under the Mississippi Products Liability Act, plaintiffs only have claims against manufacturers and sellers of products."). Applying this plain and unambiguous language, Mississippi courts have rejected plaintiffs' attempts to impose liability on non-manufacturers/non-sellers under the MPLA. *See Green v. Allendale Planting Co.*,

954 So. 2d 1032, 1040 (Miss. 2007) (holding that employer who purchased equipment and provided equipment to employee was not liable under the MPLA as employer was not "engaged in the actual production or the sale of the goods"). *See also Lovitt*, 2006 WL 1423071, at *4 (granting summary judgment to defendant on plaintiffs' product liability claims where defendant was neither seller nor manufacturer of defective doors); *Harris v. Newman Machine Co.*, 641 F. Supp. 146, 148 (S.D. Miss. 1986) (granting summary judgment to defendant on plaintiff's products liability claims were "defendant neither sold nor manufactured the planer").

B. "Manufacturer" does not mean "designer" under the MPLA.

Lawson does not dispute that Honeywell did not sell the specific Gen-3 seatbelt buckle at issue. However, she argues that Honeywell was a manufacturer of the buckle because it (allegedly) was the original designer of the model buckle that Key Safety used in manufacturing the buckle at issue.[8] According to Lawson, "it seems clear that the legislature intended that the MPLA include designer within the statutory meaning of manufacturer." (*See* Appellant's Principal Brief, at p. 12). However, Lawson cites no legal support for this argument, which is contrary to the language of the MPLA and Mississippi case law.

A cursory reading of the MPLA makes it very clear that the term "designer" is not encompassed by the term "manufacturer" in the Act. The language used in the MPLA demonstrates that the Mississippi legislature recognizes a difference between the terms "design" and "manufacture" and their derivatives. As such, had the legislature intended to impose liability on a "designer" it easily could have done so by including the term "designer" with the terms "manufacturer" and "seller" in § 11-1-63(a), so that the statute would impose liability on "[t]he

[8] In making this point, Lawson appears to concede that the MPLA only applies to "manufacturers" or "sellers" of an alleged defective product.

manufacturer or seller **or designer** of the product." *See, e.g., Refrigeration Sales Co., Inc. v. State ex rel. Segrest*, 645 So. 2d 1351, 1352 (Miss. 1994) ("The clear language of the statute does not indicate that 'state' includes the expansive interpretation given by the lower court. . . . The legislature utilized only the word 'state.' Had the legislature intended to mean . . . any political subdivisions, such as cities, counties, or nations, then doubtless that language would have been included."). However, the legislature elected not to include the term "designer" in the category of entities upon which it chose to impose liability under the MPLA. As a matter of statutory construction, Lawson's argument that a "designer" necessarily is a "manufacturer" is without merit.

Furthermore, Lawson's argument that a mere "designer" is a "manufacturer" is contrary to Mississippi case law interpreting the MPLA. According to the Court in *Green v. Allendale Planting Company*, 954 So. 2d 1032, 1040 (Miss. 2007), the MPLA only imposes liability on those "engaged in the **actual production** or the sale of the goods." (emphasis added). Thus, the term "manufacturer" as used in the MPLA has been judicially limited to those who "actual[ly] produc[e] . . . goods." As a mere alleged designer, Honeywell would not be involved in the "actual production" of the seatbelt at issue, which was manufactured by Key Safety (formerly Breed Technologies, Inc.) in or around October 1998, approximately one year after Honeywell (formerly AlliedSignal) stopped manufacturing seatbelt buckles and exited the safety restraints business. Thus, Lawson's argument is without merit.

C. Other jurisdictions have held that non-manufacturing designers like Honeywell cannot be held liable under similar products liability statutes and common law.

Courts in other jurisdictions that have addressed this issue likewise have held that non-manufacturing "designers" cannot be held liable under similar products liability statutes and common law.

1. New Jersey

For example, in *Potwora v. Grip*, 725 A.2d 697 (N.J. Super. Ct. 1999), the plaintiff sued, among others, Land Tool Co., Inc. ("Land Tool"), the manufacturer of the allegedly defective RG-4 helmet at issue, and Lear Siegler Diversified Holdings Corporation ("Lear Siegler"), the successor-in-interest to Royal Industries, Inc. ("Royal"). Royal was the alleged designer of the helmet, and had previously manufactured a predecessor model of the helmet (the R-9) before selling its helmet-manufacturing division and the helmet design to Land Tool.[9] The plaintiff's lawsuit was brought under the New Jersey Products Liability Act ("NJPLA"), N.J.S.A. 2A:58C-1, *et seq.* Like the MPLA, the specific provision of the NJPLA at issue in *Potwora* stated as follows:

> A *manufacturer or seller of a product shall be liable* in a product liability action only if the claimant proves by a preponderance of the evidence that the product causing the harm was not reasonably fit, suitable or safe for its intended purpose because it: . . . c. was designed in a defective manner.

Id. at 702 (quoting N.J.S.A. 2A:58C-2 (emphasis added in opinion)). According to the Court, Royal could not be held liable under the NJPLA because "Royal was neither a manufacturer or a seller of plaintiff's helmet," but "[a]t most it was a designer." *Id.* Thus, the Court held that a mere designer of the product did not fall within the scope of the term "manufacturer" as used in the NJPLA. While Lear Siegler had assumed Royal's liabilities, it could not be held liable under the NJPLA because

[9] Lawson argues that *Potwora* is distinguishable because Land Tool's RG-4 was a "substantially modified and "re-designed" version of Royal's R-9. (*See* Appellant's Principal Brief, at p. 17-18). This latest attempt to muddy the water is without merit. While Land Tool did make some modifications from Royal's original design, the undisputed expert testimony cited in the court's opinion clearly described the modifications a "merely cosmetic" and concluded that the allegedly defective characteristic in the RG-4 at issue was left unchanged from Royal's R-9 original design. *See Potwora*, 725 A.2d at 701. Moreover, for purposes of its analysis, the Court in *Potwora* assumed that Royal was the designer of the specific helmet at issue, and expressly held that a mere non-manufacturing designer could not be held liable under the New Jersey Product Liability Act. *Id.* at 702-04. Therefore, Lawson's attempted distinction misses the mark.

Royal, although the alleged designer and original manufacturer of the helmet model, did not manufacture or sell the particular motorcycle helmet worn by the plaintiff. *Id.* at 704.

Potwora is directly on point, which is why Lawson has to argue that "the *Potwara* [*sic*] Court got it wrong." (*See* Appellant's Principal Brief, at p. 18). The only reasoning Lawson cites for her position that *Potwora* was decided wrongly is "[t]he Missouri [*sic*] Legislature took corrective action and amended the Act after [*Potwora*] to more specifically include designers." (*See* Appellant's Principal Brief, at p. 18). However, this statement is incorrect. The New Jersey legislature enacted New Jersey Statutes Annotated § 2A:58C-8, so as to define "manufacturer" to include "any person who designs," as a supplement to the NJPLA in 1995, prior to the court's *Potwora* decision. However, the supplemented definition did not apply to *Potwora* as the cause of action in that case accrued in 1990, prior to the supplement's effective date. *See Potwora*, 725 A.2d at 699. Thus, the Court in *Potwora* held that a mere original designer could not be liable under the NJPLA as a "manufacturer" absent the Legislature's supplementation of the NJPLA which expanded the commonly understood meaning of "manufacturer" to include "any person who designs." In other words, the term "manufacturer" in a products liability statute does not encompass the term "designer" unless the legislature specifically says that it does. The Mississippi Legislature has not so expanded the definition of "manufacturer" in the MPLA.

2. Massachusetts

As in *Potwora*, the court in *Healy v. McGhan Medical Corp.*, No. CA975320, 2001 WL 717110 (Mass. Super. Ct. Mar. 29, 2001), granted Minnesota Mining and Manufacturing Company's ("3M") motion for summary judgment on the plaintiff's product liability claims because 3M neither manufactured nor sold the allegedly defective product at issue. The facts of *Healy* are as follows: Between 1977 and 1984, 3M manufactured and sold breast implants. However, in 1984, 3M ceased

manufacturing and selling breast implants when it sold its breast implant business to McGhan Medical Corporation ("McGhan III"). In addition to the sale of the business, "3M also provided McGhan III with certain transition sterilization, computer, and manufacturing consulting services following the sale and subleased to McGhan III the property at which the implants were manufactured." *Id.* at *1. The plaintiff, after receiving allegedly defective breast implants "that had been manufactured and sold by McGhan III," sued 3M and others. *Id.* at *2. According to the court:

> Here, plaintiffs have presented no evidence that 3M manufactured or sold the allegedly defective implants.
>
> Plaintiff, argues, however, that even if 3M did not manufacture or sell these particular implants, 3M is liable under a theory of negligent design[10] because McGhan III manufactured and sold products that were identical in design to those manufactured and sold by 3M prior to the divestiture. This argument also must fail. . . . Once 3M had sold its breast implant business to McGhan III, 3M was no longer in a position to exercise any control over the design of the product. *See Felker v. McGhan Medical Corporation et al*, 36 F.Sup.2d 863 (D. Minn. 1998) (when 3M sold product line to McGhan III, 3M sold design as well, and no longer had any control over design).

Id. at *3 (footnote omitted). As such, the court held that 3M was entitled to summary judgment. *Healy* was decided in the absence of a product liability statute in Massachusetts. As such, it reflects that even under a common law standard, "manufacturer" does not include "designer," and a mere original designer cannot be held liable for design defect under product liability law.

3. Connecticut

Likewise, "[i]n similar cases involving 3M, other courts that have considered this factual scenario have dismissed the claims against 3M." *Barbour v. Dow Corning Corp.*, No. X06CV930301054S, 2002 WL 983346, at *3 (Conn. Super. Ct. Apr. 19, 2002) (citing, *inter alia*,

[10] Lawson's statement that *Healy* is of "no precedential value" because it did not discuss design (*see* Appellant's Principal Brief, at p. 18) is blatantly false.

Christian v. Minn. Mining & Mfg. Co., 126 F. Supp. 2d 951 (D.M.D. 2001); *Roberts v. Bioplasty, Inc.*, No. 93-2967, 2000 WL 34487072 (E.D. La. Feb. 11, 2000); *McConkey v. McGhan Med. Corp.*, 144 F. Supp. 2d 958 (E.D. Tenn. 2000); *Felker v. McGhan Med. Corp.*, 36 F. Supp. 2d 863 (D. Minn. 1998) (applying Ariz. law)). In *Barbour*, the court held that 3M could not be held liable under the Connecticut Product Liability Act for the allegedly defective breast implants manufactured by McGhan III .[11] The court held that even though 3M previously may have produced implants of the "exact same design,"[12] it neither sold nor manufactured the specific McGhan III implants at issue. 2002 WL 983346, at *2, n.1. *See also Nunan v. Leathers & Assoc.*, No. CV010452898S, 2002 WL 1816070 (Conn. Super. Ct. July 2, 2002) (holding that defendant design firm which designed the playground at issue could not be held liable under the Connecticut Products Liability Act where the defendant neither manufactured nor sold the playground).

4. Minnesota (applying Arizona law)

Similarly, the Minnesota federal district court in *Felker,* another breast implant case, held that under the applicable Arizona law imposing liability for defectively designed products on "manufacturers and sellers," 3M could not be held liable for the defective design of the implants where it neither sold nor manufactured the specific implants at issue. 36 F. Supp. 2d at 873. The court further noted that "[w]hile 3M may have designed implants prior to 1984, once it sold the breast implant division to McGhan III, it no longer had any control over the design." *Id.*

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[11] As noted by the court, the Connecticut Product Liability Act imposed liability only on the "product seller" and "manufacturer." *See Barbour*, 2002 WL 983346, at *2 (citing CONN. GEN. STAT. § 52-572m(a) and (e)).

[12] Like *Healy*, Lawson's assertion that *Barbour* did not discuss design is false.

Lawson's attempt to distinguish *Felker* is both confusing and meritless. Lawson states that Donald McGhan was the original designer of the breast implants at issue in *Felker*, sold the design to 3M, then bought back his original design from 3M, and manufactured the plaintiffs' breast implants based on his original design. (*See* Appellant's Principal Brief, at p. 18). Thus, according to Lawson, the court in *Felker* held that 3M was not liable for defective design because it was not the original designer of the product at issue. (*See* Appellant's Principal Brief, at p. 18). Lawson's characterization of the facts and holding in *Felker* is mistaken and misleading. In deciding 3M's motion for summary judgment, the court in *Felker* assumed that 3M (not McGhan) was the original designer of the breast implants at issue. *See Felker*, 36 F. Supp. 2d at 873-74 (stating that "while 3M may have designed the implants," and noting that plaintiffs contended "that 3M remains liable for negligent design of the relevant implants," that "3M remains liable because it designed the implants," and that "McGhan III continued to use 3M's initial breast implant designs"). Thus, despite Lawson's argument to the contrary, *Felker* is further persuasive authority for Honeywell's argument that a mere original designer cannot be held liable as a manufacturer for a product defect.

5. United States Seventh Circuit Court of Appeals (applying Wisconsin law)

As in the cases discussed above, the United States Seventh Circuit Court of Appeals refused to hold "a non-manufacturing product designer" liable for a design defect in *Affiliated FM Insurance Company v. Trane Company*, 831 F.2d 153, 154 (7th Cir. 1987). The court refused to expand Wisconsin's product liability law, which imposed liability only on sellers and manufacturers of a product, because "such policy decisions are the type of questions that the legislature is in a better position to determine."[13] *Id.* The court noted that the plaintiff in such a situation "is not without a

[13] This case was decided prior to the enactment of Wisconsin's product liability statute, Wisconsin Statutes

remedy," as the plaintiff "may still sue [the product manufacturer]." *Id.* at 155. That logic is directly on point here. The failure of Lawson's cause of action against Honeywell does not leave her without a remedy. She has asserted and settled claims against Key Safety, the manufacturer of the allegedly defective seatbelt buckle.

6. Illinois

In *Mechanical Rubber and Supply Company v. Caterpillar Tractor Company*, 399 N.E.2d 722, 723 (Ill. Ct. App. 1980), the issue on appeal was "whether a designer of a product may be obligated under the theory of strict liability in tort to indemnify the supplier and manufacturer of the product designed" due to a design defect. The court answered this question in the negative. According to the court: "To say that an unreasonably dangerous condition may include design defects does not mean that a party whose only connection to the product is that of the designer is liable under products liability theories." *Id.* This is because mere design of a product is "outside the manufacturing distributing system contemplated by products liability theories." *Id.* at 724. *See also Milford v. Commercial Carriers, Inc.*, 210 F. Supp. 2d 987, 991 (N.D. Ill. 2002) ("A manufacturer may be held strictly liable for defective designs, but it does not follow that a non-manufacturing designer can be as well.").[14]

Annotated § 895.047, which did not become effective until February 1, 2011. Thus, it was decided under Wisconsin common law. Incidentally, Wisconsin's products liability statute also imposes liability only on product manufacturers, sellers, or distributers, and not mere designers. *See* WIS. STAT. ANN. § 895.047(1) and (2).

[14] While Illinois courts have held that a mere designer can be held liable outside the realm of product liability for negligence, they have done so in the absence of any product liability statute like the MPLA, which, as discussed above, specifically subsumes common law negligence claims for design defects.

D. Cases cited by Lawson are distinguishable.

In support of her proposition that a mere designer can be held liable as a "manufacturer" under the MPLA in spite of the plain and unambiguous language of the statute, Lawson cites cases from only two jurisdictions: Texas and California. These cases are distinguishable.

1. The Texas cases cited by Lawson are distinguishable.

Both of the Texas cases Lawson cites, *i.e.*, *Alm v. Aluminum Company of America*, 717 S.W.2d 588 (Tex. 1986) and *Arceneaux v. Lykes Brothers Steamship Company, Inc.*, 890 S.W.2d 191 (Tex. Ct. App. 1994), were decided as a matter of Texas common law without reference to any statute like the MPLA, which expressly distinguishes between manufacturers (which can be held liable) and mere designers (which can not be held liable).[15] Moreover, while *Alm* and *Arceneaux* held that a non-manufacturing designer could be liable for a product defect under Texas common law, neither case held that a designer was a manufacturer, as Lawson is asking this Court to do.[16]

2. The California cases cited by Lawson are distinguishable.

Likewise, the three California cases cited by Lawson in support of her "link in the chain" argument, *i.e.*, *Silverhart v. Mount Zion Hospital*, 98 Cal. Rptr. 187 (Cal. Ct. App. 1st Dist. 1971), *Gehl Brothers Manufacturing Company v. Superior Court*, 228 Cal. Rptr. 19 (Cal. Ct. App. 4th Dist.

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[15] Furthermore, any Texas cases decided under the Texas Products Liability Act, which became effective September 1, 1993, necessarily are distinguishable from the present case. This is because while the Texas Products Liability Act also limits liability to "manufacturers" or "sellers," **unlike the MPLA**, it specifically defines "manufacturer" to include "a designer." *See* TEX. CIV. PRAC. & REM. CODE ANN. § 82.001(2) and (4). This distinction between the Texas Products Liability Act and the MPLA makes all the difference.

[16] Interestingly, the court in *Arceneaux* held that it was "fundamentally unfair and legally illogical to hold the original product designer liable for injuries caused through subsequent copying . . . ." 890 S.W.2d at 196. According to the court: "It is the copying entity [*i.e.*, the entity that actually manufactures the product at issue] who is best able to take into account advances made in the 'state of the art' since inception of the original design." *Id.* The court noted that were the original designing entity to be held liable, it would be like "imposing liability upon the estates of the Wright Brothers for a present day crash of a Boeing 767." *Id.*

1986), and *Fortman v. Hemco*, 259 Cal. Rptr. 311 (Cal. Ct. App. 2d Dist. 1989), were decided as a matter of California common law without reference to any statute like the MPLA, which clearly distinguishes between the terms "manufacture" and "design".

Moreover, neither *Gehl Brothers Manufacturing Company* nor *Silverhart* hold that a designer is a manufacturer for purposes of products liability analysis. Rather, *Gehl Brothers Manufacturing Company* involved a dispute between two co-manufacturers of a product. 228 Cal. Rptr. at 23. Similarly, *Silverhart* did not involve the designer of a product, much less does it hold that a designer is a manufacturer or even a "link in the chain" of the manufacturing process. While *Silverhart* does note that California's common law on strict liability in tort applies to design defects as well as manufacturing defects, the list of entities which it cites as coming within the scope of common law strict liability noticeably fails to include "designer." *See Silverhart*, 98 Cal. Rptr. at 189. Moreover, the court in *Silverhart* noted that "[a]t the very least the defendant in each case [where strict liability in tort was imposed] was a link in the chain of getting goods from the **manufacturer** to the ultimate user or consumer." *Id.* at 190 (emphasis added). Absolutely nothing is said about liability for non-manufacturing designers whose actions necessarily occur outside the chain from "manufacturer to the ultimate user or consumer".

E. Lawson's argument that this is a question for the jury is without merit.

There simply is no genuine issue of material fact for a jury to decide. The question of whether a mere designer of a product can be held liable under the unambiguous terms of the MPLA is a legal question of statutory construction and interpretation for this Court to decide. It is not a factual question for a jury. Despite this, Lawson asserts that "[a]lthough it is presented here, as a question of law, whether Honeywell's participation made it a co-manufacturer under the Act, is also a question of fact for the jury." (*See* Appellant's Principal Brief, at p. 16). This unsupported

statement is without merit. For purposes of its Motion for Summary Judgment (and this appeal) Honeywell, while denying the point, allowed the lower court to assume *arguendo* that it was the original designer of the Gen-3 model buckle. While Lawson now asserts that "Honeywell's actions were an indispensible [*sic*] part of the manufacturing process," (*see* Appellant's Principal Brief, at p. 16) Lawson has never alleged that Honeywell was anything other than or in addition to the original designer of the Gen-3 model buckle. Therefore, Honeywell's "participation" with regard to the product at issue is not in dispute with respect to the issue on appeal, and is irrelevant under the wording of the MPLA.

In sum, the trial court properly granted summary judgment in Honeywell's favor because, as a matter of law, Honeywell cannot be held liable under the MPLA due to the fact that it was not the manufacturer or seller of the subject seatbelt buckle. Even if Lawson could prove that Honeywell originally designed the Gen-3 before its (AlliedSignal's) safety restraints business was sold to Key Safety (Breed Technologies), the fact that it neither manufactured nor sold the specific Gen-3 buckle at issue here is fatal to Lawson's claims.

III. The trial court properly granted summary judgment in Honeywell's favor because Honeywell never had control over the product at issue.

A separate but related issue which Lawson does not specifically address in her Principal Brief, but which the trial court considered on Honeywell's Motion for Summary Judgment, is whether summary judgment in Honeywell's favor was proper because Honeywell never had control over the product at issue. (CP. 235). Under the MPLA, a plaintiff must prove that the defective condition of the product existed "**at the time the product left the control of [the defendant].**" MISS. CODE ANN. § 11-1-63(a)(i)(3) (emphasis added).[17] Thus, for a plaintiff to prevail against a

[17] *See also* § 11-1-63(f) (emphasis added):

defendant on her claims that a product was defectively designed, she necessarily must prove that the specific product at issue was under the defendant's control at some point in time. Without control over a product, a defendant has no opportunity to correct any alleged defect in the product. In all fairness, and as a matter of public policy, a defendant cannot be held liable for that over which it has no control.

In the present case, the subject Gen-3 buckle was never under Honeywell's control. Key Safety manufactured and sold the subject buckle to Chrysler after Honeywell's predecessor had exited the safety restraints business. (Honeywell itself was never even in the safety restraints business.) Chrysler, in turn, sold the 1999 Jeep Cherokee incorporating the subject buckle. Accordingly, at no point did Honeywell ever control the subject buckle nor did Honeywell place it into the stream of commerce. Therefore, Honeywell cannot be held liable under the MPLA for the allegedly defective Gen-3 buckle at issue.

Numerous jurisdictions have reached the same conclusion. For instance, in *Potwora*, in addition to holding that a mere designer is not a "manufacturer" under the version of the NJPLA which did not specifically define it as such (discussed *supra*), the court also held that it would be

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In any action alleging that a product is defective because of its design pursuant to paragraph (a)(i)3 of this section, the [defendant] shall not be liable if the claimant does not prove by the preponderance of the evidence that **at the time the product left the control of the [defendant]**:

(i) The [defendant] knew, or in light of reasonably available knowledge or in the exercise of reasonable care should have known, about the danger that caused the damage for which recovery is sought; and

(ii) The product failed to function as expected and there existed a feasible design alternative that would have to a reasonable probability prevented the harm. A feasible design alternative is a design that would have to a reasonable probability prevented the harm without impairing the utility, usefulness, practicality or desirability of the product to users or consumers.

improper to hold Royal, the original designer, (or its successor, Lear Siegler) liable under the NJPLA because "the motorcycle helmet worn by plaintiff was **never in the control** of Royal . . . ." 725 A.2d at 703 (emphasis added). According to the court:

> Royal was no longer in the helmet business at the time the alleged defective helmet was manufactured and sold. Under these circumstances, Royal did not place the helmet within the stream of commerce . . . .

Id.

The Courts in the breast implant cases discussed above reach the same conclusion. For example, in *Healy*, the court noted that "where 3M [the original designer] did not manufacture or sell the breast implants that allegedly injured plaintiffs, those implants were never under 3M's control . . . ." 2001 WL 717110, at *4. Likewise, in *Felker*, the Court held as follows:

> 3M sold the breast implant business to McGhan III in 1984, and the Plaintiffs received their implants after this date. Therefore, 3M never had exclusive control over Plaintiff's implants. In fact, 3M had no control over them.

36 F. Supp. 2d at 874. *See also Milford*, 210 F. Supp. 2d at 991 ("Delavan may well have designed the carrier, but the product could not have been defective when it left Delavan's control because there was no product until CCI manufactured it and placed it into the stream of commerce."); *Arceneaux*, 890 S.W.2d at 196 (noting that were the original designing entity to be held liable, it would be like "imposing liability upon the estates of the Wright Brothers for a present day crash of a Boeing 767.").

Similarly, although Indiana's product liability statute, Indiana Code Annotated § 34-6-2-77, unlike the MPLA, statutorily defines "manufacturer" as "an entity who designs," the district court in *Miller v. Honeywell Inc.*, No. IP98-1742-C-M/S, 2001 WL 395149, at *10 (S.D. Ind. Mar. 7, 2001), stated as follows:

> [T]he Court is troubled by the possibility implicit in this discussion that a designer of a product could find itself faced with unending liability for its original design, contrary to the Indiana legislature's apparent intent. If, for example, a third party manufacturer bought the design rights, and then the original designer had nothing more to do with the manufacturing of the product from that day on, it would seem to defeat the whole point of the statute of repose for the original designer to continue to be held responsible indefinitely for actions by the third party over which it had no further control. Indeed, Defendant cites *Goldsmith v. Olon Andrews Inc.*, 941 F.2d 423 (6th Cir. 1991) (applying Ohio's products liability law) which makes precisely that point. The Sixth Circuit held that the original designer was not liable, where that designer discontinued the product and simply made its designs available without licensing, sanctioning, or approving their use. The Court noted that the original designer lacked any control over the activities of the new manufacturer or any ability to ensure conformance with its designs. *Id.*

(Footnote omitted). While this observation of the district court is dictum,[18] it further demonstrate's the unfairness of holding an original designer liable for a product over which it had no control, which is exactly what Lawson is trying to do in the case *sub judice*.

Likewise, in *Fricke v. Owens-Corning Fiberglas Corp.*, 618 So. 2d 473, 474 (La. Ct. App. 1993), the Court held that where Nabisco, ten months before the accident at issue, sold its vinegar business to Burns, Philip and Company, which subsequently sold the specific vinegar which injured the plaintiff, Nabisco could not be held liable for an inadequate warning relating to the vinegar even though Nabisco's former "inadequate warning was adopted in its entirety by Burns, Philips and used by them in the subsequent manufacture and sale of the vinegar." *See also Roberts*, 2000 WL 34487072, at *2 (holding that "[b]ecause 3M did not make or sell the plaintiff's breast implants, 3M did not have a duty to warn about its hazards"). While *Fricke* and *Roberts* do not specifically discuss "control" of the product and involve a failure to warn defect rather than a design defect, the relevant principles are the same. That is, where an original designer/manufacturer sells its business to another

[18] The district court ultimately concluded the original designer's involvement with the product did not end with the design but included further manufacturing and testing of the product at issue. *Miller*, 2001 WL 395149, at *11.

manufacturer which manufactures the specific product at issue, the original designer/manufacturer cannot be held liable for a warning defect (or, in this case, design defect), even if the subsequent manufacturer of the product at issue uses an identical warning (or, in this case, design) as used by the original designer/manufacturer.

It is undisputed that Honeywell had no control over the seatbelt buckle at issue, because the buckle did not even come into existence until one year after AlliedSignal, Honeywell's predecessor, exited the safety restraint business. Moreover, after AlliedSignal sold its safety restraints business to Breed Technologies, Key Safety's predecessor, it no longer had any control over the design of the seatbelt (assuming, *arguendo*, that it ever had any control over the design). *See Healy*, 2001 WL 717110, at *3 ("Once 3M had sold its breast implant business to McGhan III, 3M was no longer in a position to exercise any control over the design of the product."); *Felker*, 36 F. Supp. 2d at 873 (citing *Fricke*, 618 So. 2d at 475) ("[W]hile 3M may have designed the implants prior to 1984, once it sold the breast implant division to McGhan III, it no longer had any control over the design."). Thus, Honeywell cannot be liable to Lawson under the MPLA, as a matter of law. Lawson cannot prove that the seatbelt buckle was in an a defective condition at the time that it left Honeywell's control, because it was never in Honeywell's control in the first place. Therefore, the trial court properly granted summary judgment in Honeywell's favor.

CONCLUSION

Even assuming *arguendo* that Honeywell (*i.e.*, AlliedSignal) designed the allegedly defective Gen-3 seat belt buckle at issue in this case, Lawson still cannot maintain her causes of action against Honeywell under Mississippi law. The MPLA provides the exclusive remedy for Lawson's claims which are based solely on the allegedly defective design of the product at issue. The MPLA limits liability for a defectively designed product to "manufacturers" and "sellers" of the product. Because

it is undisputed that Honeywell neither manufactured nor sold the Gen-3 buckle at issue, Honeywell cannot be held liable under the MPLA. Additionally, because Honeywell never had control over the allegedly defective buckle in the vehicle at issue, it cannot be held liable under the MPLA. As there are no genuine disputes of material fact on these issues, the trial court properly granted Honeywell's Motion for Summary Judgment and dismissed Honeywell from this action with prejudice. Therefore, Honeywell respectfully requests that the trial court's Orders on appeal be affirmed.

This the 14th day of April, 2011.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I, Joseph W. Gill, do hereby certify that I have this day caused to be mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing document to:

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Honorable Judge Lester F. Williamson
Circuit Court of Wayne County, Mississippi
P.O. Box 86
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This, the 14th day of April, 2011.

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