

2010-CA-01924

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
No. 2010-CA-01924**

PAMELA LYNN LAWSON

APPELLANT

v.

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

APPELLEE

**APPELLANT'S PRINCIPAL BRIEF
(ORAL ARGUMENT REQUESTED)**

**APPEAL FROM THE CIRCUIT COURT FOR THE
TENTH JUDICIAL DISTRICT OF WAYNE COUNTY, MISSISSIPPI**

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CERTIFICATE OF INTERESTED PARTIES

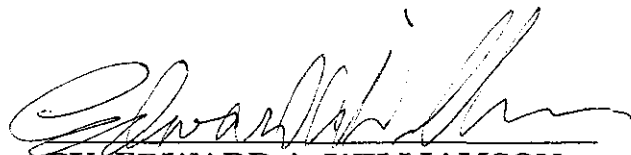
The undersigned counsel of record to the Appellant certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order for the Justices of the Supreme Court and/or the Judges of the Court of Appeals to evaluate possible disqualification or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

1. The Appellant, Pamela Lynn Lawson.
2. The Appellee, Honeywell International, Inc. (f/k/a AlliedSignal, Inc.).
3. Pamela Lynn Lawson's trial counsel, Edward A. Williamson and Christopher M. Posey of The Edward A. Williamson Law Firm.
4. Pamela Lynn Lawson's trial co-counsel, Honorable Kathryn Dickerson of Dickerson & Dickerson.
5. The Appellees trial and appellate counsel, Honorable Edward J. Currie, Jr. and Honorable Joseph W. Gill of Currie, Johnson, Griffin, Gaines & Myers.
6. The Appellees trial and appellate co-counsel, Honorable Randal R. Cangelosi and Honorable John E. Heinrich of Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman, LLP.
7. Honorable Lester F. Williamson, Jr., District 10 Circuit Court Judge and his staff attorney, Katie Bradshaw.

8. Chrysler LLC trial counsel, Honorable William C. Hammack of Bourdeaux & Jones, LLP, severed from this action.
9. Chrysler LLC (formerly DaimlerChrysler Company, LLC, formerly DaimlerChrysler Corporation) and all their respective officers, directors, shareholders, etc.
10. Honeywell International, Inc. (f/k/a AlliedSignal, Inc.) and all their respective officers, directors, shareholders, etc.
11. Dan Davee, as a 30(b)(6) designee for Honeywell International, Inc. and shareholder of Exponent, Inc.
12. Key Safety Systems, Inc. (f/k/a Breed Technologies, Inc.) trial co-counsel, Honorable Brian T. Smith and Honorable Michael Cooney of Dykema Gossett PLLC.
13. Key Safety Systems, Inc. (f/k/a Breed Technologies, Inc.) and all their respective officers, directors, shareholders, etc.

Respectfully submitted, this the 10th day of February, 2011.

PAMELA LYNN LAWSON



BY: EDWARD A. WILLIAMSON
Attorney for the Appellant

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STATEMENT OF THE ISSUES

This products liability case involves the following issues on appeal:

1. Whether a designer of a defectively designed product, Defendant, Honeywell International Inc., can ever be a co-manufacturer and joint tortfeasor with the producing manufacturer under the *Mississippi Product Liability Act* of Miss. Code Ann. Section 11-1-63(a)(i)?
2. Is a negligent, non-manufacturing, designer of a defective product subject to common law tort liability for damages proximately caused by its negligent design? Does the *Mississippi Product Liability Act* derogate the common law tort of negligent design in Mississippi?

STATEMENT OF THE CASE

Though the issues are narrow and straight forward, this is a case of first impression for our State. For that matter, this writer can find no case in any jurisdiction that has decided a case “on all fours,” interpreting any Products Liability Act, with the operable facts of this case, including the cases cited by the Defendant in support of its Motion for Summary Judgment in the Trial Court below.

A. Course of Proceedings and Disposition Below

The Plaintiff sought damages in her Complaint against Defendant, Honeywell International, Inc., (hereafter referred to as “Honeywell”), under the Mississippi Product Liability Act, (hereafter referred to as the “MPLA”), and under common law negligence.

This appeal is taken from the Trial Court’s dismissal of the Plaintiff’s case against Defendant, Honeywell, on their *Motion for Summary Judgment, or in the Alternative, Motion for Partial Summary Judgment by Defendant, Honeywell International, Inc.* In sustaining the Defendant’s Motion for Summary Judgment, the Trial Court held that, as a matter of law, a designing entity, which did not actually produce the defectively designed product, can never be considered a manufacturer, a co-manufacturer if you will, under the MPLA. The Trial Court further held that the MPLA excluded any liability claim based on the common law tort of negligent design, and granted Honeywell’s Motion for Summary Judgment dismissing the Plaintiff’s case entirely.

The Trial Court held that Honeywell was neither subject to liability under the MPLA, “However, under the current language of the MPLA, this Court cannot hold that the Defendant Honeywell is a manufacturer under the statute.” (R. p. 271) nor subject to

liability under the common law tort of negligent design, “[t]his statute [the MPLA] provides the exclusive remedy for products liability actions in Mississippi.” (R. p. 237).

This civil action was filed by Plaintiff, Pamela Lynn Lawson, hereafter referred to as “Plaintiff” or “Pamela Lawson,” initially joined Chrysler LLC, Honeywell, and Key Safety Systems, Inc. Chrysler LLC was severed from this action because of its bankruptcy. Plaintiff has resolved her action against former Defendant, Key Safety Systems, Inc.

For purposes of the Motion to Dismiss, Honeywell did not contest; “assumed *arguendo*,” that the defective buckle was designed by Honeywell, (R. p. 55 ¶6,); nor did it contest that the buckle was defectively designed; referring to the “defective condition,” and simply alleged that, “Honeywell cannot be liable” (R. p. 56 ¶10). Honeywell’s Motion for Summary Judgment did not challenge nor bring into issue Plaintiff’s proof as to any other element required by the MPLA, nor as set out in *Williams v. Bennett*, 921 So. 2d 1269 (Miss 2006). (R. pp. 55. 56).

B. Facts

STANDARD OF REVIEW

As the Court’s dismissal was strictly based on questions of law, the standard of review on this appeal is *de novo*, *Williams v. Bennett* 921 So. 2d 1269, ¶9 (Miss. 2006). “The standard of review of a trial court’s grant of a summary judgment motion is *de novo*. *Stuckey v. Provident Bank*, 912 So. 2d 859, 864 (Miss. 2005) (citing *Miller v. Meeks*, 762 So. 2d 302, 304 (Miss. 2000), *Short v. Columbus Rubber & Gasket Co.*, 535 So. 2d 61, 63 (Miss. 1988).”

FORESEEABILITY

They **should have seen it coming**, when the fateful decision was being made by AlliedSignal, Inc., hereafter referred to as "AlliedSignal," and Chrysler to re-design the Gen-2 safety belt buckle that had been standard in Chrysler's Jeep Cherokees. (R. pp. 170, 181). AlliedSignal, now named, Honeywell International, Inc., completed a new design, and made the necessary design drawings, and computer models for a new named Gen-3. (R. pp. 133, 134, 137, 173, 250). The primary difference in the new buckle, from the Gen-2, was that it moved the encasing cover down so that it left the release button exposed. (R. pp. 144 - 152, 163).

They should have known it was coming when they first looked at the design drawings, which showed the obvious design defect and the danger to drivers and automobile occupants. (R. pp. 5, 133, 196, 199); (R. p. 205 ll. 7-9). The release button was obviously exposed to inadvertent release by elbow contact or from other objects. (R. pp. 120, 122, 165).

They **knew this was going to happen**. (R. p. 202 ll. 16-25; R. p. 204 ll. 22-25; R. p. 205). Two crash tests had demonstrated the danger. (R. p. 194). In 1997, Honeywell, then known as AlliedSignal, sold the defective design by which the unsafe safety belt buckle was fabricated, along with the entire AlliedSignal safety restraint product line to Breed Technologies, Inc., now known as Key Safety Systems, Inc. (R. pp. 192-194). Honeywell knew of, but did not tell Breed Technologies, Inc. of, the crash tests in which the buckle failed. (R. p. 194).

The actual design plat, still bearing AlliedSignal's insignia, was utilized by Breed Technologies, Inc., to produce the defectively designed Gen-3 buckle which failed the Plaintiff. (R. pp. 191, 192). **Sure enough, it happened**. The inevitable tragedies

occurred; one of which - this is one of 60 lawsuits filed because of the design defect - was to the Plaintiff. About mid-day, July, 31, 2005, Plaintiff, Pamela Lawson, was violently thrown from her Jeep Cherokee as she was driving to her mother's home. The tragedy was the result of Honeywell's conscious disregard for her safety. (R. p. 119; R. p. 202, ll. 22 -25; R. p. 203, l. 25).

For these purposes, there is no argument that the buckle was not defectively and negligently designed, but Plaintiff presented ample evidence to support her *prima facie* case in that regard. See Plaintiff's expert engineer, G. L. Rhodes', deposition at p. 402 ll. 21, 22. (R. p. 200).

THE FORESEEABLE HARM CAUSED

Plaintiff, Pamela Lawson, was driving her 1999 Jeep Cherokee on July 31, 2005 on Highway 63 in Wayne County, Mississippi. She lost control of her Jeep Cherokee; it left the Highway and rolled over. During the roll-over, the defective Gen-3 seatbelt buckle, which she had properly strapped into, disengaged, and she was ejected because the negligently defective design and unreasonably dangerous safety belt buckle failed to restrain her. As a result of the ejection, the Plaintiff was severely and permanently injured and sustained profound and debilitating physical injury, impairment, disfigurement, disability, medical expenses in excess \$600,000.00 dollars, and a similar amount of future medical expenses approximating \$600,000.00, as well as loss of earnings and future earning capacity in excess of \$800,000.00, as a direct and proximate result of the defectively designed Gen-3 seatbelt buckle. (R. pp. 28, 234, 235, 267, 268).

THE DEFENDANT'S NAME CHANGE

Defendant, Honeywell, and AlliedSignal, merged in 1999 and took the name of Honeywell International, Inc. (R. p. 92).

SUMMARY OF THE ARGUMENT

The MPLA either covers Honeywell or it does not. If "design" is implicit as a constituent part of manufacture, then it does. To the Plaintiff, that makes sense and seems to be the only conclusion dictated by the logic and plain meaning of the Act itself. If however, "design/er" is not subsumed by and is not a part of "manufacturer," then the MPLA has no effect on the liability of Honeywell, at all, and cannot bar a negligence action. In the latter case, Plaintiff's common law action against Honeywell, for its negligent and unreasonably unsafe design should stand.

The applicable part of the statute in question is as set out hereafter:

"§11-1-63. Product liability actions; conditions for liability; what constitutes a defective product.

Subject to the provisions of Section 11-1-61, In any action for damages caused by a product except for commercial damage to the product itself:

(a) The 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:

(i) ~~1. The product was defective because it deviated in a material way from the manufacturer's specifications or from otherwise identical units manufactured to the same manufacturing specifications, or~~

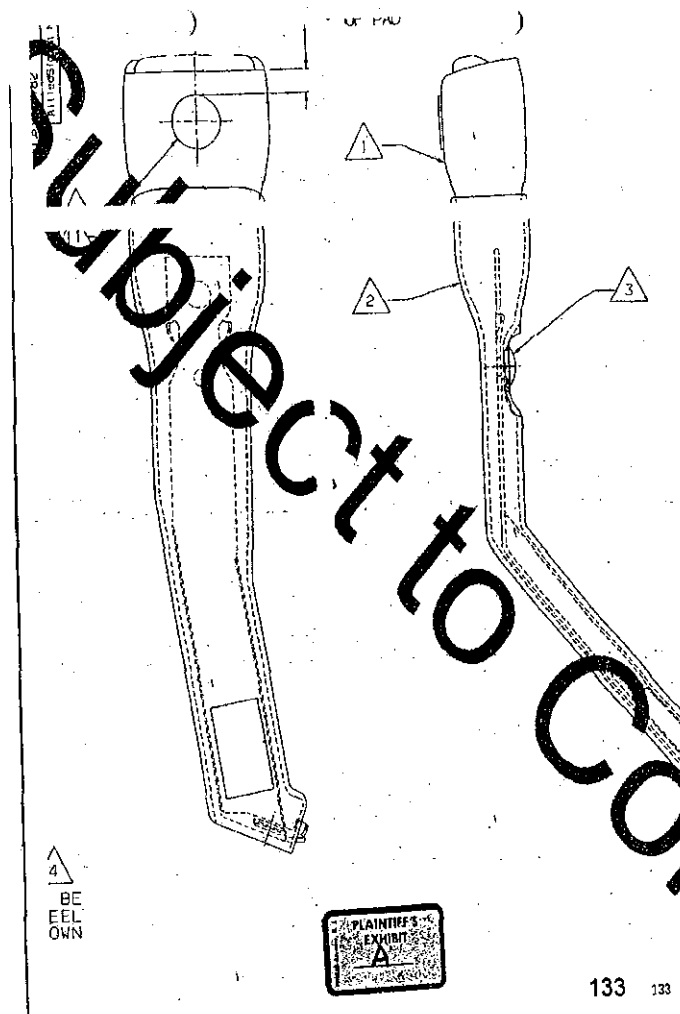
~~2. The product was defective because it failed to contain adequate warnings or instructions, or~~

3. The product was designed in a defective manner, or



~~4. The product breached an express warranty or failed to conform to other express factual representation upon which the claimant justifiably relied in electing to use the product; and~~

The Defendant had total control of the entire design when it elected to sell it, along with its entire product line, to Breed Technologies, Inc., now named Key Safety

Systems, Inc. That design was never changed; the insignia (shown on the next page) was even still on it¹ when Breed used it to make Plaintiff's buckle, shown below:



¹ See Meyers deposition at p. 25, ll. 5-22 (R. p. 253) and p. 26, ll. 2-16 (R. p. 191). When printed to full scale, the blueprint prints onto approximately 10 pages, which must be taped or stapled together to view. For this reason, the two sections are only photocopies of sections from the blueprint. The section that shows AlliedSignal's insignia located in the bottom right corner of the blueprint is the second image. So, although these are 2 printed pages, they are actually from a single document that would consist of many one page sections, when printed on an office printer.

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2

The MPLA imposes liability on a “manufacturer or seller” of a defective product. This civil action travels under and is subject to section (i)3 of the Act, which requires proof that, “The product was **designed** in a defective manner” It surely makes no sense for the Legislature to require that a product be designed in a defective manner in one of its liability setting prongs, and yet exclude from coverage the very entity that designed the defective product. It surely makes eminent sense that the Legislature would have assumed that Webster’s, and the commonly understood definitions of both “manufacturer” and “design” in enacting the statute were self explanatory.

The position taken by the Defendant is that the negligent designer: (1) is not included within the MPLA, on one hand, and (2) the common law tort of negligent

² Key Safety Systems’ designee, Terrie Meyers, at Page 25 of her deposition, identified the graphics as the “end item drawing,” used to manufacture the buckle, and at Page 27 identified the AlliedSignal insignia on the drawing. (R. pp. 190-191, 253).

design is pre-empted by the MPLA, on the other. The Defendant's interpretation that the Act eliminates the common law tort of negligent design has no support in the words of the statute, and violates the rule of statutory construction that holds that statutes which are in derogation of the common law shall be strictly construed against the limiting of the common law. *Mississippi Milk Commission v. Winn-Dixie Louisiana, Inc.*, 235 So. 2d 684 (Miss. 1970). But, the real problem with Honeywell's position is that it runs afoul of settled Mississippi case law. In 2006, our Court in *Williams v. Bennett* 921 So. 2d 1269, 1272 ¶13 (Miss. 2006) explained, "In 1993, the Mississippi Legislature promulgated the Products Liability Act codified what had formerly been common law strict liability."

While Plaintiff maintains that the design itself is, and must be considered, an instrumental part of any manufacturing process in product liability settings, candor requires that she acknowledge that Courts have gone both ways, some imposing strict liability in addition to liability for negligent design, under what some Courts call a "link in the chain" concept, *Fortman v. Hemco*, 211 Cal.App.3d 241, 259 Cal. Rptr. 311 (1989), and others not. For example, while imposing common law tort liability, and applying Illinois law, the United States District Court for the Northern District of Illinois held in, *Milford v. Carriers.*, F.Supp.2d 987, (N.D. Ill. 2002) that a designer was not a manufacturer subject to strict liability, but was the provider of a service, but was subject to liability for its negligent design, "[I]t was clearly foreseeable that CCI would **manufacture** . . . To claim that one who **designs** a car hauler has no duty to make it reasonably safe for the person . . . [who is to use it] is simply untenable." *Id.* at 989.

ARGUMENT

I. THE DESIGNER OF A DEFECTIVELY DESIGNED PRODUCT, DEFENDANT HONEYWELL, UNDER THE FACTS PRESENTED HERE, IS A CO-MANUFACTURER AND JOINT TORTFEASOR UNDER MISS. CODE ANN. SECTION 11-1-63(a)(i)3 OF THE MISSISSIPPI PRODUCT LIABILITY ACT

THE KEY WORDS OF THE STATUTE

As there is no definitions section in the applicable statute, Miss. Code Ann. § 11-1-63, the *Mississippi Products Liability Act*, the resolution to both the issues presented here comes down to the plain meaning of the words in the statute. The legislature used words with commonly understood meanings to draft the statute. The definition of the word, “manufacturer,” as used by the Legislature of this Statute and the word “design,” as intended by the Legislature in its enactment of the MPLA take center stage. There being no formal definition section of the act, it would seem obvious that the Legislature didn’t think a special definition was necessary: that the ordinary understanding of the words “manufacturer” and “design,” as commonly used, and as set out in Webster’s was sufficient.

A survey of Webster’s formal definitions of the two words, “manufacture” and “design” is revealing. The word “**manufacture**,” for example, in Webster’s is couched in such phrases as, “[t]he process of making . . . esp, when carried on systematically. . . ;” as a verb in the second definition, “to produce according to an organized plan” Similarly, the word, “**design**,” in Webster’s is defined, alternately, as, “construct according to plan;” “make a drawing, pattern or sketch;” “to draw plans for, to conceive or execute a plan.” *Merriam Webster’s Collegiate Dictionary*, 10th (1993) and 11th (2006) Editions.

When one considers common usage and the definitions in Webster's, it seems clear that the legislature intended that the MPLA include designer within the statutory meaning of manufacturer: it takes two to tango and two elements to manufacture. Our Legislature, in acting the MPLA, used those two concepts inseparably, almost interchangeably, as they relate to the process of manufacturing any item. Our Legislature intended to produce an Act in the MPLA that covered products liability "from stem to stern," from conception to finished product to civil action; from design to fruition of that design. Did they accomplish that objective? Honeywell says yes, but no.

DEFECTIVE DESIGN IS THE KEYSTONE OF LIABILITY

The branch of statutory liability under which the Plaintiff's action travels, subsection (i)3 of the Act, requires that the product have been, "**designed** in a defective manner." **The bad design is the keystone** of the cause of action under the Act, and if the producer who simply follows that design is liable for fabricating the bad design into a dangerous product, then the designer which had exclusive control of the designing of the product, and which fomented the danger by its defective design, must be too. The lead dancer must be liable, along with the following partner; it takes two to tango.

No manufacturing process - from simple, home-spun ones like the 'quilting bees' my grandmother and her friends had using a pattern, cut and drawn before the first stitch, to the highly technological products of today, with micro chips, heat sensors, steel springs, and safety belt release buttons - can be done without first having some type of sketch, drawing, template, blueprint or, if you will, a "design" of the end product. From that observation, we see that the formulation of a design before production, and assembly of the end product from that design, is a substantial and necessary part **of the manufacturing process** of that product.

HONEYWELL WAS SUBSTANTIALLY INVOLVED IN THE PROCESS

The facts of this case support the conclusion that Honeywell was an active participant in the manufacturing process of the actual Gen-3 buckle, which is the subject of this litigation. Honeywell prepared, formulated and finalized the end product design drawing for the actual Gen-3 seatbelt buckle installed in the Plaintiff's 1999 Jeep Cherokee, and as an active safety restraint manufacturer, had been the exclusive manufacturer of the Gen-3. It knew of its dangerous propensities, and that it would be installed into Jeep Cherokees to be driven by folks like Plaintiff, Pamela Lawson, when it sold its product line, designs, plats, computer models, and drawings to Breed Technologies, Inc.

In this case, Honeywell, then known as AlliedSignal, developed, designed, crash-tested, received reports of failed crash-tests and injuries and manufactured the Gen-3 buckle for a number of years, such that it was in the best position to know about known and potential dangers and to advise Breed Technologies, Inc. From the deposition testimony of Key Safety Systems, Inc.'s, 30(b)(6) Corporate Representative, Terrie Meyers:

"Question: I want to ask first about the lower right hand corner, and ask was this AlliedSignal as I see insignia on that as received from AlliedSignal after the purchase? A. Yes, this was - - this drawing was received from AlliedSignal. p. 26 ll. 1 - 9. (R. p. 190).

Question: And as well this mockup or sketch here . . . is a sketch of the Gen 3 Buckle, is that correct?

Yeah. This . . . that you're pointing to there is . . . the end item drawing for the buckle assembly. p. 26 ll. 10-14. (R. p. 190).

Question: Did you manufacturer this buckle - and once again - I mean this one that was involved in this case in the Jeep Cherokee that Pamela Lynn Lawson was driving - did you manufacturer that driver's seat Gen-3 buckle according to this sketch.

A. Yes. I would call it a drawing. p. 27 ll. 21. (R. pp. 191, 192, 281).

Question: When that purchase was made, did AlliedSignal realize that you were going to be in the business of manufacturing the buckles that they had been manufacturing? Did they understand that that was the purpose of Breed, now Key Safety Systems. Making that purchase? (R. p. 192).

A. Yes, I would say so. p. 29 l. 1, (R. p. 193).

Question: Did they understand that you would be using that design or that drawing?

A. ... the designs that were part of the business came with it. p. 29 ll. 11-13 (R. p. 193). A. And it was purchased in order to be in the business of manufacturing those part ... the Gen 3 buckle?

A. Yes. p. 29 l. 17. (R. p. 193).

Further, answering at Page 29, Lines 11-13:

"Key Safety Systems purchase - - when they purchased this business, the designs that were part of the business came with it." (R. p. 193).

The actual drawing by AlliedSignal was received in evidence in its entirety and marked as Exhibit 2 to the corporate designee's testimony. p. 25 ll. 14-19... (R. p. 253).

Question: Does Key Safety Systems, Incorporated have notice . . . of the release of a Gen 3 seatbelt buckle in two crash tests conducted by the National highway Safety Administration in 1997 . . . ?

A. Both those tests were conducted before Key Safety Systems was in the seatbelt business, but I was not able to find any records that reference them.

Q. You didn't receive any information from AlliedSignal at the time that you purchased this about those crash tests?

A. No, sir. (R. p. 194).

WHEN THE DESIGNER IS NOT THE PRODUCING MANUFACTURER; "LINKS IN THE CHAIN"

When the designer and producer of a defective product are two separate entities, as is the case *sub judice*, is the entity, which designs a defective product, the safety seatbelt buckle in this case, to be immune from liability against it as a joint tortfeasor for foreseeable harm proximately caused to users of that product under the statute? Because the MPLA supplants 402 (A) liability, an analysis of how the designer was treated under that strict liability rationale seems appropriate, especially since no body of jurisprudence on this issue has developed in our Country under the Product Liability

Acts. We point out hereafter, that the cases cited by the Defendant below are not factually close to those *sub judice*.

Some Courts refer to a design as a conscious part of the overall development of a product, and therefore inextricably intertwined with the manufacturer of it. For example, The Supreme Court of Texas in *Arceneaux v. Lykes Bros. Steamship*, 890 S.W.2d 191 (Tex.1994), held:

“A defendant who designs a product as a conscious part of the overall development of that product may be subjected to strict product **liability** or **liability** for negligence, even though the **designer** never actually manufactures the product or holds title to it.’ *See also Alm v. Aluminum Co. of America*, 717 S.W.2d 588, 590-91 (Tex.1986), *judgment modified on other grounds*, 785 S.W.2d 137 (Tex.), *cert. denied*, 498 U.S. 847, 111 S.Ct. 135, 112 L.Ed.2d 102 (1990) (a non-manufacturer designer may be held liable, at least in negligence) at pp. 195, 196.”

Other Courts have referred to the concept of imposing liability on the designer as, a “link in the chain.” The California Appellate Court in *Fortman v. Hemco*, 211 Cal. App. 3d 241, 259 Cal. Rptr. 311 (1989), refers to a “link in the chain” concept to describe liability for all entities which become a link in the [manufacturing] chain. Strict liability is applicable to such entities which are ‘a link in the chain’ of getting goods from the manufacturer to the ultimate user or consumer. A relevant comment from, the *Restatement of Torts* supplanted by our MPLA seems illustrative of the point, “A very basic concept of products liability is that the economic consequences of product defects should be placed upon those best able to avoid such defects.” *Restatement (Second) of Torts* § 402(A) cmt. c (1965). “Strict liability devolves upon all parties who have mutually participated, in a dependent, interrelated way, in designing, assembling, and marketing the offending product.” (*Silverhart v. Mount Zion Hospital*, 20 Cal.App.3d 1022, 1026, 98 Cal. Rptr. 187 (1971); *Gehl Brothers Manufacturing Co. v. Superior*

Court, 183 Cal.App.3d 178, 186, 228 Cal. Rptr. 19 (1986). That concept seems to be the reason for the design defect requirement in the MPLA.

The Gen-3 buckle used in Plaintiff, Pamela Lawson's, 1999 Jeep Cherokee was made from Honeywell's design. It shows the protruding and unprotected release button without modification. It was sold by Honeywell, with the full knowledge that it would be used to manufacture the Gen-3 buckle for the Jeep Cherokee. The Gen-3 **design** by Honeywell was a "link in the chain" of production of the Gen-3 buckle.

NOTWITHSTANDING THE PRESENTATION OF DEFENDANT'S POSITION AS A 'MATTER OF LAW,' WHETHER HONEYWELL SUBSTANTIALLY PARTICIPATED IN THE MANUFACTURING PROCESS BY ITS ACTIONS IN THIS CASE IS A QUESTION FOR THE JURY

Although 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. Plaintiff contends that Honeywell-AlliedSignal, by all its actions, put itself in the role of joint manufacturer of the safety belt buckle that was produced by Breed Technologies, Inc. and put into Plaintiff, Pamela Lawson's, 1999 Jeep Cherokee. Honeywell's actions were an indispensable part of the manufacturing process of this Gen-3 belt buckle.

A jury should be have been allowed to decide if Honeywell was substantially involved in the manufacture of this Gen-3 buckle, the one that failed Plaintiff, Pamela Lawson, as to make it a co-manufacturer, a joint tortfeasor. The deposition testimony of Terrie Meyers, which fully supported and made a jury question of the Plaintiff's contentions, has been detailed above at pages 13 and 14 of this brief, and will not be re-inserted here.

In the case *sub judice*, Defendant, Honeywell, sold the Gen-3, its design and the entire product line, giving no notice of the then known dangers of the design, with full

knowledge and foreseeability, that it would be used to manufacture the Gen-3 design and sold for installation into Jeep Cherokee automobiles. Therefore, it was substantially involved with the builder of the buckle, making it a co-manufacturer and joint tortfeasor in this products liability, design defect claim.

THE DEARTH OF CASE LAW SUPPORTING HONEYWELL'S POSITION

From the Plaintiff's point of view, the fact that the Defendant cited *Williams v. Bennett*, 921 So. 2d 1268 (Miss 2006), highlights the scarcity of case authority to support its position that designers cannot be held accountable under the MPLA. The case simply did not so hold. To the contrary, it supports the Plaintiff's contention that the Act simply supplanted strict liability. "In 1993, the Mississippi Legislature promulgated the Products Liability Act and codified what had formerly been common law strict liability." See *State Stove Manufacturing Co. v. Hodges*, 189 So. 2d 113, 824 ¶13 (Miss. 1966).

The Defendant, Honeywell, cited below and, no doubt will rely on again, one case, *Potwara v. Grip*, 725 A.2d 697 (N.J. Super. Ct. 1999), a New Jersey case, for the proposition, under a Products Liability Acts substantially the same as ours, a designer that did not also produce a product, that is to say, did not put together the product at issue, cannot be held subject to liability under Product Liability Statutes similar. Yes, *Potwara*, held that the designer in that case was not subject to the reach of the statute, but that holding did not reach the facts of this case. In that case the purchaser of its product line had substantially modified and "re-designed," the safety helmets from that designer's earlier design, and stamped its company logo on the re-design,

"[I] use the RG-9 shell as a pattern for the RG-4 shell, trimming away the lower portion to **create a shorter design**. The shells of both helmets were made of the same material, polycarbonate, in approximately the same thickness. Once the RG helmet shell was trimmed, **a new mold**

was made. Land Tool also trimmed the polystyrene shock lines of the RG-9 so it would fit the new shorter RG-4 shell. Except for the length, the liners for the RG-9 and RG-4 were interchangeable. The chin strap of the RG-9 was **redesigned** to create a v-shaped dual strap to stabilize the shorter helmet. The chinstrap of the RG-9 was **redesigned** to have a rather wide spread attachment point to stabilize the shorter helmet.”

Potwara, 725 A.2d 697 at 391. (emphasis added)

Even so, Plaintiff submits that the *Potwara* Court got it wrong. The Missouri Legislature took corrective action and amended the Act after that decision to more specifically include designers.

In support of its Motion for Summary Judgment, Defendant, asserting that the designing entity should escape coverage by, and liability under, the MPLA Defendant relied, in the Trial Court, on *Potwara*, distinguished above, and three breast implant cases, *Healey v. McGhan Medical Corp.*, 2001 WL 717110 (Mass. Super. Ct. 2001); ***Barbour v. Dow Corning Corp.*, 2002 WL 983346 (Conn. Super. Ct. 2002),** and a Federal District Court case applying Arizona law, ***Felker v. McGhan Med. Corp.*, 36 F.Supp.2d 863 (D. Minn. 1998) (applying Arizona law).** Of the breast implant cases, only *Felker* even discussed design. So, on their face, there can be no precedential value in either *Healey* or *Barbour*. (R. p. 55).

In *Felker*, the Plaintiff had joined McGhan III and 3M, alleging that 3M was liable because it transferred its product line to McGhan III, which made and continued to make the product, breast implants. The court pointed out that when breast implants were first marketed, “Donald McGhan was an engineer for Dow Corning.” *Felker* at p. 12. He and some others formed McGhan Medical Corp., to design and make breast implants, which was purchased by 3M. *Id.* Then McGhan bought back his original design and made the implants from his own, original, design. *Felker* cannot be considered to be of precedential value here.

Contrary to the proof in the cases discussed above, the undisputed testimony of the producer's 30(b)(6) representative, Terrie Meyers, in this case, quoted extensively above on pages 13 and 14 of this brief, shows that Honeywell, at the time of the sale and delivery of its restraint business and design drawings for Gen-3 seat belt buckles, knew the purchaser was going to use the exact drawings to and make safety buckles according to that design for the ultimate purpose of putting them into 1999 Jeep Cherokees. (R. pp. 190-194). The actual design drawing bearing the insignia of AlliedSignal was received in evidence in its entirety and marked as Exhibit 2 to the corporate designee's deposition testimony. Meyers deposition p. 26 ll. 14 - 22. (R. pp. 252, 253).

II. WHETHER THE MPLA DOES OR DOES NOT INCLUDE A NEGLIGENT DESIGNER OF A DEFECTIVE PRODUCT WITHIN ITS COVERAGE, THAT NEGLIGENT DESIGNER IS, NONETHELESS, SUBJECT TO SUIT UNDER THE GENERAL COMMON LAW CAUSE OF ACTION BASED ON NEGLIGENCE

THERE IS NO IMPLIED DEROGATION OF THE COMMON LAW IN THE MPLA

Honeywell claims that the **MPLA** excludes civil actions against designers based on injuries caused to consumers by negligently designed, defective products that cause serious harm, but at the same time says that a designer has immunity under the MPLA. It says that a designer, which did not itself produce its design into the fabricated product, cannot be a joint tortfeasor under the Act, nor under common law negligence with that actual producing "manufacturer;" and, by necessary implication, that the designer is immune. That is not what the Act says, nor what our Supreme Court holds. Justice Carlton speaking for a unanimous Court held that the MPLA codified "common law strict liability," *Williams v. Bennett*, 921 So.2d 1268, 1272 ¶13 (Miss 2006). The opinion thereby defined the extent of the Act's coverage.

A common law action for negligently inflicted harm pre-existed both the *Restatement of Torts* 402(A) and the MPLA strict liability actions; neither abolished or restricted it. The common law action for negligence exists concurrently with and in the absence of either strict liability under the Statute or under 402(A). The MPLA simply supplanted the *Restatement of Torts* 402(A) liability; it does not reach into common law negligence actions. No language in the Act implies that it does.

One thing is seems sure here, either the Legislature included designers in its statutory scheme or it did not. We think that they did; it seems to be the far better interpretation that designers are covered by, and are liable under the Statute in cases like this. Why else would the key to liability under subsection 3 of the Act be defective design? But, just as surely, if designers are not covered under the MPLA, the existing common law of tort, negligence, does cover them. Statutes which are in derogation of the common law are to be strictly construed against the limiting of the common law. *Mississippi Milk Commission v. Winn-Dixie Louisiana, Inc.*, 235 So. 2d. 684 (Miss. 1970). If the legislature intended to change the common law of negligence, they would have said so.

The Defendant strained to present authority in the Trial Court for its proposition that the MPLA is the exclusive remedy in Mississippi for Plaintiffs whom have been injured by defective and unreasonably unsafe products. (R. p. 55). It relied on four cases; none of them support that position. Those four cases are: *Green v. Allendale Planting Co.*, and *KBH Corp*, 954 So. 2d 1032 (Miss. 2002); *Lovitt v. Wal-Mart Stores, Inc.*, WL 1423071 (N.D. Miss 2006); *Harris v. Newman Machine Company*, 641 F. Supp. 146(1986) and *Williams v. Bennett*, 921 So. 2d 1268 (Miss 2006) are discussed below.

Williams was also referred to by the lower Court, and though surely comprehensive and instructional, it is not supportive of any of Defendant's contentions. After all, *Williams* was a suit 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. There seem to be no relevant facts in *Williams* to this case on the substantial issues.

After reading the primary Mississippi Supreme Court case relied on by the Defendant in the Trial Court, in support of its position that Mississippi does not recognize the common law tort of negligent design, *Green v. Allendale Planting Co.*, and *KBH Corp*, 954 So. 2d 1032 (Miss. 2002), there is only one conclusion a reader can come to: what possible connection to this case can there be, and why on earth was it relied on in this case? The case involved a suit by an injured farm hand against his employer for an unsafe job site and failure to provide a safe work tool. Of course, this Court held that the MPLA, "[d]oes not provide a cause of action for defective design against an employer who merely purchased a product." *Id.* at 8 ¶21 (emphasis added). The employer had not had any hand, none at all, in designing and producing the "Mule Boy," a tractor-pulled and powered farm implement, which allegedly caused the injury.

Yes, the Court's opinion tracked the statutory language, as did the Plaintiff in her proof, for the proposition that proof that the product was defective, "at the time the product left control of the manufacturer. . . ." is necessary. *Id.* at 8 ¶22. But that begs the question: when and under what circumstances is the designer and its design so enmeshed in the production process that a jury might find that it is a manufacturer also a part of the manufacturing process? *Green* decides a case in which the Plaintiff alleged that the MPLA created a cause of action against the employer who simply buys a work

implement for use in its business; it is not of precedential value here. It holds no value for this issue of first impression.

Neither are *Lovitt v. Wal-Mart Stores, Inc.*, WL 1423071 (N.D. Miss 2006), which involved defective doors at a Wal-Mart store, nor *Harris v. Newman Machine Company*, 641 F.Supp. 146 (1986), a Federal District Court case, judging pre MPLA case law, of any value here in determining the exclusivity issue. The *Harris* court did not even exercise jurisdiction of the case, concluding, “[t]he **due process clause does not permit** subjecting defendant to the jurisdiction of this court.” *Id.* at 2. The *Harris* Court pointed out that the sole Defendant did not manufacture, sell or service the product, a planer; nor was there any proof of a defect in the product. “Therefore, **if the court had in personam jurisdiction** of the defendant, summary judgment would be appropriate” *Id.* at 4. Defendant’s reliance on such case authority represents the dearth of case authority available to Honeywell to establish its position that the MPLA is the exclusive remedy for dangerous products which injured the Plaintiff.

NEGLIGENT DESIGN IS A COMMON LAW TORT IN MISSISSIPPI AND IS NOT DEROGATED UNDER THE MPLA

If a negligent designer of a defectively designed product is not covered within the strict liability provisions of the MPLA, then the Act cannot be said to have pre-empted the common law tort of negligent design: if designers are not covered we do not even start to consider pre-emption. The common law, existing prior to the Act, except as to the obviously pre-empted strict liability set out in *Restatement of Torts* 2d 402(A) liability, as developed by Mississippi case authority, still controls. “In 1993, the Mississippi Legislature promulgated the Products Liability Act and codified what had formerly been common law strict liability and codified what had formerly been common

law strict liability.” *White v. Bennett*, 921 So. 2d 1269, 1272 ¶13. Mississippi law imposes on design professionals, including architects and engineers, the duty to “exercise ordinary professional skill and diligence.” *Dickerson Construction Co., Inc. v. Process Engineering Co., Inc.*, 341 So. 2d 646, 652 (Miss. 1977); see also *Hobson v. Waggoner Engineering, Inc.*, 878 So. 2d 68 (Miss. 2003).

Architects, engineers and other design professionals have a duty to exercise ordinary professional skill and diligence. *Magnolia Const. Co., Inc. v. Mississippi Gulf South Engineers, Inc.*, 518 So. 2d 1194, 1202 (Miss. 1998). Whether there was negligence or defect in the design of product is a question for the jury. *Holmes v. Wink*, 811 So. 2d 330 (Miss. 2001). This case, *Lawson v. Honeywell*, is not a case of a design being made in a vacuum, or simply as an idea; the design was for the specific purpose of making a seat belt buckle to be put into a specific automobile line.

The four elements of proof necessary to establish a jury issue based on negligence in Mississippi, duty, breach of that duty, proximate cause, and damage are familiar, and well settled, *Miss. Dept. of Transp. v. Cargile*, 847 So. 2d 258, 262 (Miss. 2003). A common law action for negligently inflicted harm pre-existed the *Restatement of Torts* 402(A) and the MPLA strict liability actions; neither has abolished nor restricted it. The common law action for negligence exists concurrently with, and in the absence of, either.

A defendant who consciously designs a product as part of the overall development of that product should be subjected to strict product **liability** or **liability** for negligence, even though the **designer** never actually manufactures the product or holds title to it. See *Alm v. Aluminum Co. of America*, 717 S.W.2d 588, 590-91

(Tex.1986), *judgment modified on other grounds*, 785 S.W.2d 137 (Tex.), *cert. denied*, 498 U.S. 847, 111 S.Ct. 135, 112 L.Ed.2d 102 (1990).

Even if this Court determines that a design is not an inherent part of the manufacturing process, under the facts presented here, and that Honeywell is only a purely non-manufacturing designer, the Plaintiffs case against Honeywell still stands. Even if Honeywell designed the Gen-3 seat belt buckle, but its design drawings are not considered products, within the meaning of the MPLA, but “services” or simply negligent acts, the Plaintiff has made out her case of negligent design. Product designers who are not subject to strict liability are still accountable for negligence. *See e.g., Laukkanen v. Jewel Tea Co.*, 78 Ill.App.2d 153, 222 N.E.2d 584, 589 (1966); *Milford v. Commercial Carriers, Inc.*, 210 F.Supp.2d 987 (N.D. Ill. 2002); *Dickerson Construction Co., Inc. v. Process Engineering Co., Inc.*, 341 So. 2d 646, 652 (Miss. 1977); and, *Hobson v. Waggoner Engineering, Inc.*, 878 So. 2d 68 (Miss. 2003).

PLAINTIFF MET HER BURDEN OF PROOF ON NEGLIGENT DESIGN

Plaintiff more than met her burden of proof to establish a *prima facie* case of negligence, as well as defective design under the MPLA. For purposes of the Motion to Dismiss, Defendant, Honeywell, did not contest, “assumed *arguendo*,” that the defective buckle was designed by Appellee, Honeywell; nor did it contest that the buckle was defectively designed, referring to the “defective condition,” and simply alleging that, “Honeywell cannot be liable” (R. pp. 55 ¶6, 56 ¶10). Plaintiff’s expert design engineer, Rhodes, testified, that **one look at the drawings and the new buckle prototype itself, made the design defect obvious**, (R. p. 205 ll. 7–9), and the danger to drivers and automobile occupants foreseeable. (R. pp. 133, 196, 199). The

release button was obviously exposed to inadvertent release. See drawings on page 8 and 9 of this brief and picture of the buckle in the Record. (R. p. 165).

In analyzing her requirement to show both duty and foreseeability, it is important to remember that Plaintiff presented proof that all business contracts and rights to existing products were transferred to Breed Technologies, Inc., the producing manufacturer. She proved that Honeywell, then called AlliedSignal, knew or reasonably should have known that Breed Technologies, Inc. would continue manufacturing the defectively designed and unreasonably unsafe and dangerous Gen-3 seatbelt buckle; and knew that the buckles would continue to be placed into the stream of commerce, (specifically, into Jeep Cherokees) **reaching customers**, such as the Plaintiff. Therefore, Plaintiff established Honeywell's duty to drivers and users of those Jeeps, such that the Plaintiff's ejection and serious personal injuries because of the defectively designed safety belt buckle were reasonably foreseeable to Honeywell. Crash tests had shown the danger to Honeywell. (R. p.194).

The actions of AlliedSignal in selling its designs, plats and computer models to Key Safety Systems, Inc., and the subsequent manufacturing of the safety belt buckle pursuant to the design drawing evinces a **converging of, if not a concert of action between, these joint tortfeasors**. Discussing joint tortfeasors liability the Court in *D & W Jones, Inc. v. Collier*, 372 So. 2d 288, 291 (Miss. 1979) said, "Concert of action on the part of joint tort-feasors [is not necessary to establish that two or more are joint tortfeasors]... "[i]f this be strictly true, then the term 'joint tort-feasors' has been loosely used throughout the years. Then the Court held, "We hold that the separate, concurrent and successive negligent acts of the Appellees which combined to proximately produce

the single, indivisible injury... rendered the Appellees jointly and separately liable." *Id.* at 294.

See, again, the deposition testimony of Terrie Meyers, Corporate Representative of Key Safety Systems, Inc., above and below (R. pp. 191- 194):

"Question: I want to ask first about the lower right hand corner, and ask was this AlliedSignal as I see insignia on that as received from AlliedSignal after the purchase?

A. Yes, this was - - this drawing was received from AlliedSignal. p. 26 ll. 1 - 9 p. 26.(R. p. 190).

Question: And as well this mockup or sketch here . . . is a sketch of the Gen 3 Buckle, is that correct?

Yeah. This . . . that you're pointing to there is . . . the end item drawing for the buckle assembly. p. 26 ll. 10-14. (R. p. 190).

Question: Did you manufacture this buckle - and once again - I mean this one that was involved in this case in the Jeep Cherokee that Pamela Lynn Lawson was driving - did you manufacture that driver's seat Gen-3 buckle according to this sketch.

A. Yes. I would call it a drawing. p. 27 ll. 21. (R. pp. 191, 192, 281).

Question: When that purchase was made, did AlliedSignal realize that you were going to be in the business of manufacturing the buckles that they had been manufacturing? Did they understand that that was the purpose of Breed, now Key Safety Systems. Making that purchase? (R. p. 192).

Yes, I would say so. p. 29 l. 1 (R. p. 193).

Question: Does Key Safety Systems, Incorporated have notice . . . of the release of a Gen 3 seatbelt buckle in two crash tests conducted by the National highway Safety Administration in 1997 . . . ?

A. Both those tests were conducted before Key Safety Systems was in the seatbelt business, but I was not able to find any records that reference them.

Q. You didn't receive any information from AlliedSignal at the time that you purchased this about those crash tests?

A. No, sir (R. p. 194). (emphasis added)

The plaintiff had a right to present her case under those facts to a jury.

Then that design was sold, not as an abstract idea, but to a specific producer with knowledge that it was to be put into a specific vehicle; with knowledge of defects, and knowledge that serious harm could be caused. To Plaintiff this inextricably binds

Honeywell as a co-manufacturer under the Act; and, at the same time wraps it in the bindings of the Mississippi common law of negligent design.

CONCLUSION

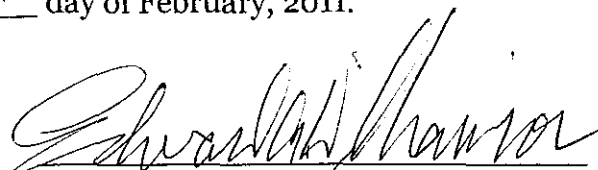
As far as the Legislative intent and the plain meaning in the enactment of, and scope of the MPLA, there can be only one conclusion. The Legislature surely intended to enact a Statute that covered strict liability lawsuits for injuries from defective products 'from stem to stern.' It intended its statutory scheme to be exhaustive and complete – for strict liability; they intended to replace *Restatement of Torts* 402(A). It required that the defective product reach the consumer in a defective condition, unchanged, and unaltered after the manufacture had been completed. If the defective product was produced in accordance with a design, they required that defect in design be proven as an element of liability. Plaintiff established her *prima facie* case under those requirements.

Therefore, the first conclusion should be that, under the MPLA, the designer which designs and sells a dangerously defective design of a product to a producing manufacturer is subject to liability under the MPLA, along with the producing manufacturer which uses that design in the production, without change, under circumstances showing a substantial involvement in the manufacturing process by that designing entity as a joint tortfeasor.

The second conclusion must be that the MPLA does not eliminate the common law tort of negligent design and that the Plaintiff has the right to a jury trial on that basis, too. No reference is made in the Act about eliminating any common law negligence action available to an injured victim of a dangerous product. The MPLA claims no such sweeping intrusion into the Court's function in the jurisprudence of Mississippi, and should not be held to have.

Therefore, this cause should be reversed and remanded for trial under the *Mississippi Products Liability Act* and the common law tort of negligent design.

Respectfully submitted, this the 10th day of February, 2011.


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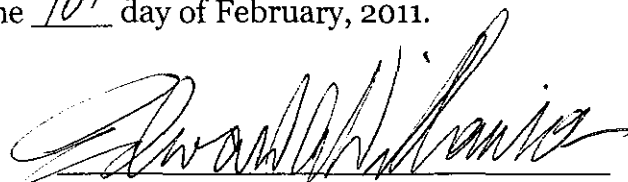
The undersigned counsel hereby certifies that a true and correct copy of the *Appellant's Principal Brief* has been forwarded via regular United States Mail, postage pre-paid, today, to the following addresses:

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Respectfully submitted, this the 10th day of February, 2011.

A handwritten signature in black ink, appearing to read 'Edward A. Williamson', written over a horizontal line.

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