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**Breaking Legal Developments** in Fire Investigation



## Breaking Legal Developments

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**EXECUTIVE SUMMARY:**    This weekly newsletter covers:

1. [ILLINOIS COURT OF APPEALS REVERSES JURY VERDICT THAT WAS IN FAVOR OF GENERAL MOTORS BASED IN PART ON TRIAL COURT IMPROPERLY EXCLUDING PLAINTIFF'S EXPERTS' TESTIMONY WHERE PLAINTIFF'S EXPERTS DID NOT ACTUALLY CONDUCT TESTING TO SUPPORT THEIR DESIGN DEFECT CLAIMS](#)

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(1) ILLINOIS COURT OF APPEALS REVERSES JURY VERDICT THAT WAS IN FAVOR OF GENERAL MOTORS BASED IN PART ON TRIAL COURT IMPROPERLY EXCLUDING PLAINTIFF'S EXPERTS' TESTIMONY WHERE PLAINTIFF'S EXPERTS DID NOT ACTUALLY CONDUCT TESTING TO SUPPORT THEIR DESIGN DEFECT CLAIMS

**Brief Summary**

In *Sobczak v. General Motors Corp.* (Ill. App. 2007), the Illinois Court of Appeals reversed a jury verdict that was in favor of General Motors involving a defective 1999 Chevy Astro Van that caught fire. Plaintiff presented expert testimony that there was a design defect in the Subject Van because, among other things, the aluminum shielding provided in the muffler area was insufficient. More specifically, the aluminum shielding had a lower melting point in comparison to stainless steel, which Plaintiff asserted should have been used. Plaintiff's experts based their opinions on the testimony and testing conducted by General Motors, but did not conduct their own testing. The trial court excluded Plaintiff's experts testimony, asserting prior case law required the experts to personally conduct testing to support their design defect opinions. The Illinois Court of Appeals reversed this decision and remanded to the trial court for a new trial permitting such expert testimony.

**Detailed Facts and Ruling**

Plaintiff Krzysztof Sobczak (Sobczak) filed suit against defendant General Motors Corporation (GM). His fourth amended complaint alleged five counts against GM: strict product liability (count I), negligence (count II), *res ipsa loquitur* (count III), breach of express warranty (count IV), and breach of implied warranty (count V). The trial court directed verdicts for GM on counts II, III, IV and V. The trial court also directed a verdict for GM with respect to part of Sobczak's strict liability claim (count I), but allowed a portion of that claim to reach the jury. After hearing all of the evidence, the jury found in favor of GM. Sobczak now appeals. For the following reasons, we reverse and remand.

Sobczak filed a fourth amended complaint containing 31 counts against seven defendants, GM, Rizza

Chevrolet, Gemini Conversions, Inc., and four manufacturers of automotive parts, for injuries he sustained as a result of a fire that ignited in his YF7 configured 1999 Chevy Astro M/L van. Prior to trial, Sobczak's claims against six of the defendants were either dismissed or settled. Sobczak proceeded to trial against GM only.

At trial, Sobczak sought to prove that GM defectively designed the heat shields, muffler and fuel management system for the YF7 configured M/L van and negligently designed the van's heat shields. At the conclusion of Sobczak's case in chief, GM presented a motion for a directed verdict and the trial court entered directed verdicts in favor of GM and against Sobczak on Sobczak's negligence, *res ipsa loquitur*, express warranty and implied warranty counts. With regard to Sobczak's strict liability claim, the trial court directed a verdict for GM except with respect to the alleged design defect concerning the fuel management system.

Following the presentation of the evidence by GM, the jury returned a verdict in favor of GM and against Sobczak on the remaining count. This timely appeal followed.

At about 9 p.m., on August 28, 1999, Sobczak drove his father's Chevrolet Astro van (YF7 configured, M/L model) to pick up his cousin Arthur. Sobczak and Arthur went to two nightclubs over the course of several hours. Sobczak consumed at least five beers in that time period. Sobczak and his cousin left at 2 a.m., and went back to Sobczak's house. At 4:30 a.m., Arthur woke Sobczak so that Sobczak could drive him home.

After dropping off Arthur, Sobczak noticed that the van was sluggish and was making noises. He turned onto 51st Street to avoid traffic on Archer Avenue. The car stalled on 51st Street and Sobczak tried to start the car by putting the transmission into neutral and turning the key. The car started but the motor sounded like it was "jumping up and down." Sobczak put his foot on the brake pedal and put the van in gear, but the motor died. This occurred about 10 times in 10 minutes. Sobczak started the van once more but smelled something coming from the back. He climbed over the seat and went to the back bench seat. He knelt on the bench seat and started to check around when the seat exploded into flames. His shirt and hair caught on fire. He felt his way back to the driver's seat and tried to open the door. The next thing Sobczak could recall was waking up in the hospital one month after the accident. Sobczak could not recall how he ended up in the passenger seat where firefighters found him nor whether he attempted to unlock the van's doors. .... Sobczak identified Donald Rudny as an expert witness and disclosed in his answer to Rule 213(g) interrogatories (177 Ill.2d R. 213(g)) that Rudny would testify that the shielding provided in the muffler area was insufficient because it was made of aluminum rather than ferritic stainless steel. The melting point of aluminum is 1220 degrees, making aluminum a poor choice of material for shielding, given that exhaust gas temperatures exceeding that temperature are foreseeable and would melt an aluminum shield. In addition, Rudny would testify that the insulation intended to replace the removed tailpipe and muffler heat shield in the YF7 configuration were also insufficient to guard against heat transfer to the floorpan.

Prior to Rudny's testimony at trial, GM filed a motion in limine to prevent him from testifying that the van's heat shielding was defective because it was made of aluminum rather than stainless steel. Defendant argued that Rudny's testimony should be excluded because Rudny "failed to perform any testing to determine whether a ferritic stainless steel muffler attached heat shield would have better prevented the transfer of heat from the muffler." The trial court granted GM's motion to prevent Rudny from testifying in this regard.

Also prior to Rudny's testimony at trial, the parties and the court had a discussion regarding the remainder of his testimony. Sobczak argued that the motion in limine did not prevent Rudny from testifying at trial, as he did in his deposition, that the removal of two of the heat shields in the YF7 configured M/L van left the shielding system insufficient to prevent the ignition of a combustible body, i.e., the foam padding. GM argued that, during the deposition, Rudny never offered an opinion about the heat shielding system other than to opine that it was insufficient because the shields were made of aluminum rather than steel, an issue that the court ruled Rudny could not testify to. The court took the matter under advisement and the parties agreed to revisit the issue in connection with a motion for a

directed verdict.

With respect to the heat shielding system, Rudny testified at trial that the standard of care within the engineering industry is “when you indentify a potential hazard that affects the safety to the passengers, you need to guard against that hazard and prevent it from causing some risk or danger to the occupants of the vehicle.” He also testified at length regarding a breach in the exhaust system of this particular model where the exhaust gas temperature reached in excess of 1400 degrees. With respect to the heat shields, Rudny testified that the heat shielding needs to be able to withstand those temperatures. Rudny essentially testified that the heat shielding system was defective in two respects. Rudny testified that the M/L van with the YF7 configuration, i.e., the M/L van without all four heat shields, was insufficient because it was not able to withstand the temperatures of the exhaust gas that would be expelling from a breach in the exhaust system. Because this shielding system was inadequate, the standard of care was breached.

Rudny testified that he was aware that, in the 1999 model year, the heat shielding for the upfitter configuration for the M/L van, the YF7 configuration, the tailpipe and muffler body-attached heat shields were removed and replaced with insulation. He further testified that removing the tailpipe and muffler body-attached heat shields and replacing them with insulation decreased the guarding of the heat shield system and would not eliminate the hazard created by the exhaust gas escape. Concluding his testimony, Rudny stated that “the shielding” would have been a proximate cause of Sobczak's injuries.

On cross-examination, Rudny testified that the purpose of heat shielding is “to reduce radiant and convective heat to components that may be subject to combustion or excessive temperatures.” If the temperature is high enough, heat transfer can occur, causing the ignition of materials that may lead to a fire. Rudny admitted that with respect to heat management systems, he did not look at a design by another manufacturer for the 1999 model year.

Following Rudny's testimony, GM moved to have Rudny's testimony stricken from the record with respect to the heat shielding system because Rudny failed to identify a standard of care in the automotive industry applicable to the 1999 model year with respect to heat management systems. The court indicated that Rudny failed to articulate a standard of care with regard to the shielding other than saying the shielding was defective because it did not prevent heat from being transferred. However, the court did not rule on GM's motion.

Plaintiff identified Charles Colver as an expert opinion witness in plaintiff's answers to [Supreme Court Rule 213\(g\)](#) interrogatories. Plaintiff disclosed Colver would testify at trial regarding the standard of care; the defects in the van, including the muffler design, heat shielding and air-fuel management system; GM's failure to warn conversion companies of the dangers of removing the heat shields and insulation material; and the cause of the fire. Specifically, Colver would opine that the van's muffler seam was inadequate to withstand foreseeable pressures and should have been welded instead of crimped. Furthermore, Colver would opine that a hole in the muffler was foreseeable but that the YF7 configuration, which removed two heat shields and replaced them with insufficient insulation material, did not provide sufficient protection for the foreseeable high temperatures generated by a hole in the muffler.

During voir dire, Colver testified that he has a doctorate in chemical engineering and has studied mathematics, general engineering and mechanical engineering. Colver had published some articles that touched on the issues of combustion and heat transfer and, therefore, had opinions in this case regarding the muffler. Colver went on to explain that a muffler is a vessel which is fabricated to withstand certain conditions. Parameters are established for the operation of the muffler, which is a pass-through vessel. Colver had been involved in numerous cases that have involved vessels and was familiar with the design process of spot welding, banding and supporting vessels.

Colver also had an opinion regarding guarding which relates to fuel cutoff. Fuel cutoff is simply a high temperature limit switch that senses temperature at a particular point. This switch produces a voltage which can open or close the valve. In this case, the fuel delivery system valve would be closed when a

high temperature is reached. Colver acknowledged that he was unaware of the horsepower of the van and did not know if he had a fuel cutoff valve in his car. He also admitted that he had never designed an exhaust system, had never designed a system for maintaining comfortable floor temperatures in a vehicle, had never designed any vehicle system, had not tested any of the components in this case and had not done any testing on any components in the industry that would be generally relevant to the 1999 model year.

Following voir dire, the trial court found that Colver's testimony was "barred on the whole thing" because "[h]e doesn't have competence to testify about this particular vehicle."

At the close of Sobczak's case in chief, the court directed a verdict in favor of GM and against Sobczak with respect to Sobczak's strict liability claim relating to the heat shielding. The court ruled that Rudny's conclusions that: (1) the shielding that was taken off was insufficient; and (2) the shielding that was put on was insufficient, were speculative without having conducted any tests. The court also entered directed findings for GM with regard to Sobczak's negligence claims relating to the van's fuel management system and heat shielding. The court found that Rudny failed to identify a standard of care within the industry.

... Sobczak next argues that the trial court erred in excluding the testimony of Charles Colver and portions of the testimony of Donald Rudny. Sobczak claims that the exclusion of Colver's testimony was devastating to his case where he would have established the existence of a design defect in the muffler and would have bolstered and expanded upon Rudny's opinions regarding the design defects in the van's heat shielding and fuel management systems. Further, Sobczak urges, Colver would have established the proximate cause of the fire. Sobczak also argues that portions of Donald Rudny's testimony were improperly excluded where Rudny would have testified that the van's muffler-attached heat shield was defective because it was made of aluminum and would have opined regarding an alternative design using ferritic steel. A lengthy recitation of Colver's and Rudny's testimony was included in the "directed verdict" section.

Expert testimony is admissible if the expert is qualified as an expert by knowledge, skill, experience, training, or education and the testimony will assist the trier of fact in understanding the evidence. [Turner v. Williams, 326 Ill.App.3d 541, 552 \(2001\)](#). A circuit court's ruling on the admissibility of expert testimony will not be disturbed absent an abuse of discretion. [Carlson v. City Construction Co., 239 Ill.App.3d 211, 239 \(1992\)](#). Following voir dire, the trial court found that Colver's testimony was "barred on the whole thing" because "[h]e doesn't have competence to testify about this particular vehicle." The court further stated that in accordance with [Volpe v. Iko Industries, Ltd., 327 Ill.App.3d 567 \(2002\)](#), Colver would be barred from testifying because, "[h]e doesn't even know how big of an engine it is. He hasn't done any testing. He's never designed any systems. He has an opinion about the muffler. The muffler, he has never looked at." In addition, the court excluded portions of Rudny's testimony finding that Rudny failed to articulate a standard of care in the industry. Sobczak argues that the trial court misunderstood the holding in Volpe to stand for the proposition that Colver's and portions of Rudny's testimony were inadmissible unless they had personally performed tests as a basis for their opinions.

In Volpe, the plaintiff filed suit against the defendant alleging product liability claims after the plaintiff was severely burned while at work when the top of an oxidizer tank blew and hot asphalt spewed out of the ruptured openings and onto the plaintiff. Prior to trial, the defendant filed a motion to strike an expert's opinion testimony on the basis that the expert was not qualified to render an opinion regarding the oxidizer tank's design. The defendant argued that the expert admitted that he had never designed or seen an oxidizer tank or a deflector device. The defendant also argued the expert's testimony should be stricken because he was of the wrong professional discipline and was not qualified to render an opinion regarding the oxidizer tank's design. The plaintiff responded and argued that the expert was qualified to render an expert opinion regarding the oxidizer tank at issue given his experience with tanks and vessels that hold chemicals. The plaintiff further argued that the expert should be allowed to comment on the configuration of the piping because it could explain how the rupture occurred.

The Volpe court found the trial court did not abuse its discretion in excluding the expert testimony

because the expert opined that the product was defective because it lacked an alternate design without having built a prototype or conducted any tests. [Volpe, 327 Ill.App.3d at 577](#). Furthermore, the court found that the expert admitted that he had not designed a deflector device of the type he testified should have been installed on the tank and had never seen such a device.

We find this case distinguishable from Volpe. In Volpe, the trial court excluded the testimony of the expert because it was based solely on his opinion and not on any conclusive testing. In the case at bar, both experts testified that, although they did not conduct their own tests, their opinions were based on the review of the tests conducted by GM. Charles Colver disclosed in the interrogatories and during voir dire that he had based his opinion on his experience and education, various treatises, testing conducted by GM and GM's publications. Similarly, Rudny testified that his opinions were based on his training and expertise and on specific testing performed by GM. It is both experts' reliance on the testing conducted by GM that allows us to conclude that the trial court may have abused its discretion in excluding Colver's testimony and portions of Rudny's testimony.

Under the circumstances presented here, if Sobczak attempts to introduce Colver and Rudny as experts on remand, we instruct the trial court to reconsider its ruling in regard to excluding their testimony under Volpe. However, we find that the trial court correctly prevented Rudny from testifying as to his opinion that there was no change to the condition of Sobczak's vans' air-fuel control system from the time it left GM to the time of the accident. This conclusory opinion was unsubstantiated and speculative because Rudny had no personal knowledge regarding the time period between when the van left GM's control and when the accident occurred.

(unrelated portions of opinion omitted).

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