

STRICT LIABILITY

Handout

PRODUCTS LIABILITY -- CAUSATION

Austria v. Bike Athletic Co., 107 Or App 57, 810 P2d 1312, rev. denied, 312 Or 80 (1991)

FACTS

In September, 1985, Richard Austria was a 16 year old high school junior. One day, Richard was injured during football practice when the knee of a teammate struck the front of Richard's helmet. Dazed by the collision, Richard walked off the field and seemed to suffer few ill effects. Two weeks later he suffered from severe headaches and on October 1, he collapsed during football practice.¹ A CT scan indicated that surgery was necessary to relieve a subdural hematoma. The surgery was successful but, as a result of his injuries, Richard is severely impaired physically and, to lesser degree mentally.

Through his guardian ad litem Richard sued the manufacturer of the helmet alleging that the helmet's defective designs caused his injuries. There was evidence about how and why the plaintiff was struck, what a football helmet is supposed to do, that the hematoma resulted from the kind of trauma helmets were designed to prevent, that properly designed helmet would have greatly reduced the likelihood of a hematoma, and that defendant's helmet was not designed to reduce that likelihood. At issue is whether there is sufficient evidence to hold Bike Athletic Co. liable for Richard's injuries.

¹Note: A subdural hematoma is a tumor or swelling containing blood occurring in or near the brain.

HANDOUT QUESTIONS

1. If you were the plaintiff, John Austria, what arguments could you make to persuade the jury that the defendant, Bike Athletic Co., should compensate you for Richard's injuries?
2. If you were defendant, Bike Athletic Co., what arguments could you make to persuade the jury that you should not be held liable for causing Richard's injuries?
3. How do you think the trial court should rule?
4. In order to be compensated, do you think that the plaintiff should have to prove:
 - (a) the amount of force received by Richard as a result of the blow; or
 - (b) the amount of force that he would have received if he had been wearing a helmet of alternative design; or
 - (c) the amount of force required to cause the type of head injury he suffered.
5. Who do you think should decide this case, the judge or the jury? Why?
6. Why do you think that the manufacturers of football helmets are strictly liable for injuries caused by defective helmets?
7. After reading the actual case, answer the following:
 - a. How did the Oregon Court of Appeals rule?
 - b. What reasons did the court give for its decision?
 - c. Compare and contrast your decision with what the court decided.
 - d. Do you think your decision was better than the one the court made? Why?
 - e. How should the Oregon Supreme Court rule on appeal?

Austria v. Bike Athletic Co., 107 Or App 57, 810 P2d 1312, rev. denied, 312 Or 80 (1991)

Oregon Court of Appeals

FACTS

In September, 1985, Richard Austria was a 16 year old high school junior. One day, Richard was injured during football practice when the knee of a teammate struck the front of Richard's helmet. Dazed by the collision, Richard walked off the field and seemed to suffer few ill effects. Two weeks later he suffered from severe headaches and on October 1, he collapsed during football practice. A CT scan indicated that surgery was necessary to relieve a subdural hematoma. The surgery was successful but, as a result of his injuries, Richard is severely impaired physically and, to lesser degree mentally.

Through his guardian ad litem Richard sued the manufacturer of the helmet alleging that the helmet's defective designs caused his injuries. There was evidence about how and why the plaintiff was struck, what a football helmet is supposed to do, that the hematoma resulted from the kind of trauma helmets were designed to prevent, that properly designed helmet would have greatly reduced the likelihood of a hematoma, and that defendant's helmet was not designed to reduce that likelihood. At issue is whether there is sufficient evidence to hold Bike Athletic Co. liable for Richard's injuries.

ISSUE

To be compensated for injuries resulting from a defective football helmet, does a plaintiff have to prove the amount of force involved in the incident, that the force would have been applied to the head with a helmet of alternative design, and the amount of force required to cause the head injury in question?

WHAT HAPPENED AT TRIAL?

The jury relied on the evidence presented to them and returned a verdict in favor of the plaintiff, John Austria.

HOW DID THIS CASE GET TO THE OREGON APPEALS COURT ?

The defendants, Bike Athletic Co. appealed the jury verdict arguing that the trial court erred in denying their motions for directed verdict, because there was insufficient evidence of causation.

ARGUMENTS

The plaintiff claimed that the football helmet was defective in not distributing the force of a foreseeable blow. The plaintiff argued that testimony from the football coach and medical evidence was sufficient proof of causation and that the jury verdict should not be overturned.

The defendant argued that there was no medical evidence of causation. The defendant argued that there was insufficient evidence of the amount of force involved in the incident, the force that would have been applied to the head with a helmet of alternative design, and the amount of force required to cause the head injury in question.

WHO WON

The plaintiff won. There was sufficient evidence to allow the jury to conclude that the helmet caused the injury.

HOW THE COURT EXPLAINED IT DECISION

The Oregon Court of Appeals held that there was sufficient evidence to allow the jury to conclude that the helmet caused the injury based on the football coach's testimony and the medical evidence.

This is an important case for plaintiffs. The court rejected the defendant's direct evidence approach and said that it was permissible to establish with other probative evidence the sufficiency of an impact to do damage or the insufficiency of a product's resistance to impact. There was evidence about how and why Richard was struck, what a football helmet is supposed to do, that the injury is resulted from the kind of trauma helmets are designed to prevent, that properly designed helmets would have reduced the likelihood of injury and that the defendant's helmet was not adequately designed to reduce that likelihood. Thus plaintiffs are not required to prove by direct medical evidence that the defendant's product caused their injuries, and that they would not have been injured but for the defendant's defective product.

APPLICATION

1. This case discusses the proof of causation necessary to establish strict liability in tort for the manufacture of a defective product.
2. Discuss with students why products liability is a strict liability tort. Ask students to give examples of other activities that should be strict liability.
3. After the students have answered the above questions, ask them to determine whether or not the courts decision benefits consumers.
4. Students may want to know more about products liability law in Oregon. It may be interesting to discuss other duties put on manufactures such as the duty to warn of potential dangers. This brings up recent Oregon case concerning the duty of fishbowl manufacturer to warn purchasers of injuries that could result from carrying a fishbowl while filled with water. *Waddill v. Anchor Hocking, Inc.*, 149 Or App. 464. (1997). The court held that the plaintiffs complaint stated a valid products liability claim that the fishbowl manufacturer was negligent in failing to warn about the fishbowl's propensity to shatter. Have students compare the duty to warn with liability for defective products -- which offers broader consumer protection?
5. Divide students into two groups, one group of consumers and one group of manufactures. Ask them to discuss whether the fishbowl manufacturer should be held liable for the injuries suffered in the *Waddil* case. Also ask what sort of damages should be recoverable. What impact will a finding of liability have on manufacturers in the future? Are there better ways to protect consumers from the dangerous products?
6. This case is also a good starting point to start discussions about breast implant or tobacco litigation.

**John AUSTRIA, as guardian ad litem for
Richard Austria, a minor, and John
Austria and Perla Austria, husband and
wife, Respondents,**

v.

**BIKE ATHLETIC CO., a foreign
corporation, Colgate-Palmolive Co., a
foreign
corporation, and Kendall Research
Center, a foreign entity, Appellants,
and
Renato Pizarro, M.D., Defendant.**

A8707-04478; CA A63376.

Court of Appeals of Oregon.

Argued and Submitted Nov. 21, 1990.

Decided May 1, 1991.

Reconsideration Denied June 26, 1991.

Review Denied Aug. 20, 1991.

Parents of football player severely injured by blow to head during football practice brought suit against designer and manufacturer of football helmet, alleging defective design. The Circuit Court, Multnomah County, Richard L. Unis, J., entered judgment for plaintiffs, and defendants appealed. The Court of Appeals, Deits, J., held that there was evidence from which jury could conclude that player's injuries were caused by defects in football helmet.

Affirmed.

[1] PRODUCTS LIABILITY ⚡60

313Ak60

In order to prove that football player's injuries were caused by defects in football helmet, it was not necessary to prove amount of force received by player as result of blow, amount of force that he would have received had he been wearing helmet of alternative design or amount of force required to cause type of head injury he suffered.

[2] PRODUCTS LIABILITY ⚡83

313Ak83

Evidence, when combined with inferences

drawn therefrom, was sufficient to allow jury to conclude that defective helmet caused football player's head injury; there was evidence about how and why player was struck, what a football helmet is supposed to do to reduce consequences of collision, that hematoma resulted from precisely kind of trauma that helmets are designed to prevent, that properly designed helmet would have greatly reduced likelihood of hematoma and that helmet was not adequately designed to reduce that likelihood.

[3] PRODUCTS LIABILITY ⚡88

313Ak88

There was sufficient proof to submit to jury allegation that football helmet was improperly designed or manufactured so that it would allow energy of blow to be transmitted to head of user without absorbing sufficient amounts of energy so as to prevent closed head injuries.

[4] PRODUCTS LIABILITY ⚡88

313Ak88

There was sufficient evidence to submit to jury allegation that football helmet was unsafe for its intended purpose because changes to fitting instructions were insufficient or inadequate to warn or instruct users, parents, coaches and school districts on how properly to fit the helmet.

[5] TRIAL ⚡852.1(6)

388k352.1(6)

Verdict form asking whether defendant's helmet was unreasonably dangerous in one or more of the particulars alleged was not inconsistent with court's instructions, despite contention that trial court should have used form that separately presented issue of causation.

****1312 *58** James N. Westwood, Portland, argued the cause for appellants. With him on the briefs were Thomas M. Christ, Miller, Nash, Wiener, Hager & Carlsen and Mitchell, Lang & Smith, Portland.

W. Eugene Hallman, Pendleton, argued the cause for respondents. With him on the brief were Mautz Hallman, Pendleton, and James M. Pippin, Mark R. Bocci and Pippin & Bocci,

medical causation. [FN2] However, three physicians did testify about it. **1314 Dr. Franks, who also treated Richard, testified that the cause of Richard's condition was that he "was injured while playing football." Dr. Pizzaro, a treating physician, who is also a defendant in this action but not a party on appeal, testified that he observed a bump in the area of impact on Richard's *61 head before the major hematoma occurred. [FN3] The testimony about the bump on the spot of impact was consistent with there being a "focal injury," the type that other evidence showed football helmets are intended to prevent by diffusing the direct shock of impact. Dr. Nakano testified that Richard suffered a focal injury and that the injury occurred because "the forces were not distributed."

FN2. Two of defendants' assignments involve their contention that portions of Saczalski's testimony should have been stricken because it involved opinions about medical causation. However, those assignments are without merit, because his testimony was properly limited to engineering issues.

FN3. In their reply brief, defendants argue that he meant "bump" as a description of the collision, rather than as a description of a raised injury on the surface of the head. The testimony could be understood as using the term in the sense of an injury, and the jury was entitled to believe that he meant it in that sense.

Saczalski offered his opinions about the helmet. He testified that the objective of football helmets is to spread and retard impact. He said that the helmet was inadequate for that purpose. He also testified about alternative designs that would achieve the purpose. He testified that the 1,500 severity index (SI) testing standard that was used for the helmet was outside the satisfactory protective safety range and that, for Richard's head size, even the 1,500 SI was satisfied only because of irregularities in the testing process. Saczalski's testimony was supplemented by other witnesses. Defendants' expert neurosurgeon testified that, if one suffers a "skull fracture or bruise of the brain underneath where you were hit," i.e., a focal

injury, "then you know the helmet has not worked." Although that witness also testified that the injury was rotational, rather than focal, there was evidence to the contrary.

In sum, there was evidence about how and why Richard was struck, what a football helmet is supposed to do to reduce the consequences of a collision, that the hematoma resulted from precisely the kind of trauma that helmets are designed to prevent, that a properly designed helmet would have greatly reduced the likelihood of a hematoma and that defendants' helmet was not adequately designed to reduce that likelihood. The trial court's denial of defendants' motion for directed verdict was proper.

[3] Defendants also argue that the trial court should have stricken two paragraphs of the complaint for lack of proof. The first, paragraph 9(c), alleges:

*62 "The helmet was improperly designed or manufactured so that it would allow the energy of a blow to be transmitted to the head of this user without absorbing sufficient amounts of energy so as to prevent closed head injuries."

Contrary to defendants' assertion, there was sufficient proof to submit that allegation to the jury. That evidence, consisting of the testimony of the engineering expert and the physicians, has been discussed above.

[4] The second paragraph that defendants contend should have been stricken, 9(f), alleges:

"The helmet was unsafe for its intended purpose because the 1984 changes to the fitting instructions were insufficient or inadequate to warn or instruct users, parents, coaches and school districts on how properly to fit the helmet."

Defendants assert that the allegation should have been stricken because the coach testified that Richard's helmet fit properly. Plaintiffs' theory, however, is that the coach's concept of a proper fit would have been different if the instructions had included a warning about over-compaction of the helmet's foam lining. There was sufficient evidence to submit the allegation to the jury.