

November 20, 2016

Law 580: Torts

Section 2

**Oral Argument # 6**

In-class exercise for Wednesday, November 30, 2016

We are in a jurisdiction in which the *only* relevant authority is the material in the casebook on pages 905 to 968. For the purpose of this oral argument exercise, you should assume that any statutes that appear in the Casebook within that page range are statutes adopted by neighboring jurisdictions rather than your jurisdiction.

In August of 2016, Joel's 2009 Honda CRV collided with a Scion sedan that had stopped abruptly at a red light. Joel had been driving 25 mph, well under the speed limit, and he was wearing a seatbelt. The driver of the Scion was not hurt, and neither car was badly damaged. The collision caused Joel's driver's side airbag to deploy. Joel's airbag, manufactured by the Takata corporation, had a defective airbag inflator, which ruptured and spewed shrapnel, piercing and severing the carotid artery in Joel's neck. Joel died instantly.

Joel's estate filed suit against both Takata and Honda. After discovery, Honda and Takata both filed motions for summary judgment. The evidence submitted by Honda and by Takata in support of their respective summary judgment motions, and by Joel's estate in opposition to their motions, tended to show the following facts:

Joel had purchased his Honda CRV as a new car from Fred's Hondas, a large Honda dealership that operates in the midwestern town in which Joel has lived for his entire adult life.

Until recently, 20% of the cars sold in the United States contained airbags manufactured by Takata, which supplied airbags to Toyota, Honda, General Motors, Chrysler, Ford, Audi, Mazda, BMW, Nissan, and Volkswagen. Takata discovered in 2001 that one of its airbags had malfunctioned, but believed the problem was an isolated case. By 2004, it became clear that some number of airbags had the same issue. Takata performed tests, but was unable to determine the nature of the problem. In 2008, Takata reported to automobile manufacturers, including Honda, and to the National Highway Traffic Safety Administration [NHTSA], the federal agency charged with regulating automobile safety, that a small number of airbags installed in 2001, 2002, and 2003 model cars were likely to rupture and spew metal fragments upon inflating. It maintained that the problem was a result of mishandling of the chemicals that triggered the airbag inflator. Honda immediately initiated a recall of the 4000 vehicles that it believed were affected. Six months later, an exploding Takata airbag caused the death of a woman driving a Honda Civic, and Honda expanded the recall to cover an additional 800,000 cars from the 2001, 2002, and 2003 model years.

Testing ordered by the NHTSA ultimately pinpointed the source of the problem: the airbag inflators used ammonium nitrate to create an explosion to inflate airbags. Unfortunately, ammonium nitrate can deteriorate when exposed to heat and humidity. Ammonium nitrate that has deteriorated can generate too forceful an explosion, which may blow apart the inflator's metal canister, spewing shrapnel. Further investigation revealed that the defect affected a far larger number of models than Takata or federal regulators had initially identified, and that the problem persisted in airbags installed in cars since 2003. As a result, federal regulators and car manufacturers have expanded the recall

repeatedly. It now includes millions of vehicles. The airbags have been blamed for more than a hundred injuries and at least a dozen deaths.

In 2014, the NHTSA urged Takata to issue a nationwide recall of all cars with Takata airbags in the affected model years. Takata resisted, insisting that airbag failures had happened only in warm humid climates, and a regional recall would be sufficient. Honda nonetheless issued a nationwide recall of models known to be affected. It announced that it would no longer use Takata-made airbags in any of its vehicles, and called for the appointment of an independent review board to audit Takata's safety testing data. That audit eventually determined that Takata had manipulated the data from its safety tests and understated the extent of the airbag problem.

Because so many cars have been included in the recall, car manufacturers have not been able to secure enough replacement airbag parts to fix all of the recalled vehicles. When scientists determined that the risk of a rupture increased with the age of the car and that ruptures were more likely in cars that operated in warm, humid climates, the NHTSA ordered car manufacturers to give priority to older cars in Southern states. Honda accordingly prioritized repairs of older cars in warmer climates over those that were newer or driven primarily in northern states.

Honda first learned in February of 2016 that the Takata airbags that it had installed in its 2006, 2007, 2008, 2009, 2010, and 2011 model CRVs had the same defect as earlier airbags. It issued a nationwide recall of those vehicles the following day. The February revelations brought to 10 million the number of Honda cars subject to recall for defective airbag inflators. Honda immediately sent registered letters to all owners of CRVs identified in its records, informing them of the recall, and explaining that it did not yet have enough replacement airbag parts for all of the affected cars but was working on securing them as quickly as possible. The letters urged owners to contact their dealers to arrange for free replacement of the airbags as soon as the necessary parts were available. Meanwhile, the letter explained, Honda dealers were authorized to provide free loaner vehicles to Honda owners during the delay.

Joel received the letter, and called Fred's Hondas to put his name on a list of car owners waiting for replacement airbags. He did not ask for a loaner vehicle while he waited, and the dealer did not volunteer to supply one.

At the time of Joel's accident, all available replacement airbag parts were still being shipped to dealers in Southern states. Fred's Hondas had not yet received the necessary parts, and had therefore not yet scheduled the repair of Joel's CRV.

After reviewing the evidence, the trial court denied Takata's motion for summary judgment and granted Honda's motion. Joel's estate appeals from the judgment entered in Honda's favor.

Counsel for Appellant/Plaintiff Joel's estate will have fifteen minutes to argue that the Court of Appeals should reverse the trial court's judgement and remand the case against Honda for trial. Counsel may, if they choose, reserve up to two minutes of that time for rebuttal. After Appellant's argument, counsel for Appellee/Defendant Honda will have fifteen minutes to argue in favor of affirming the trial court's decision. Counsel will be questioned by a designated Court of Appeals.

The oral argument will be held in class on Wednesday, November 30. (We will spend the first 15 minutes of class on teaching evaluations, and will begin the oral argument at 10:35 a.m.) After the argument, each court of appeals (including the designated court) will write an opinion, no more than

250 words long, affirming or reversing the trial court's determination and explaining the reasoning underlying its decision. (Dissenting or concurring opinions are permitted only so long as the total number of words in a Court's opinions does not exceed 250.) Each court must upload a copy of its decision to the folder in Canvas before 5:00 pm on November 30.

Counsel for Appellant/Plaintiff Joel's estate: Henderson

Counsel for Appellee Appellee/Defendant Honda: Maroulis

Designated Court of Appeals: Crouser

Remaining Courts of Appeals: Rollins  
Ervin  
Biles