

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Reid Harold Donze,)
)
 Plaintiff,)
)
 v.)
)
)
)
 General Motors, LLC,)
)
)
 Defendant.)
 _____)

C/A No. 6:13-2153-TMC

ORDER OF CERTIFICATION

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S.C. SUPREME COURT

This products liability action arises out of an automobile accident. Plaintiff Reid Harold Donze (“Donze”) brought this action alleging state law claims for strict products liability and breach of warranty against Defendant General Motors, LLC (“GM”).¹ In preparing this case for trial, it has become apparent that there are two issues central to this action which have not been addressed by controlling precedent of the South Carolina appellate courts. As a result, the court finds it appropriate to certify these issues to the South Carolina Supreme Court.

I. Standard

Certification of a question of state law is appropriate when the federal tribunal is required to address a novel issue of local law which is determinative in the case before it. *Grattam v. Board of School Comm’rs*, 805 F.2d 1160, 1164 (4th Cir. 1986). South Carolina Appellate Court Rule 244 provides that the South Carolina Supreme Court:

in its discretion may answer questions of law certified to it by any federal court of the United States . . . when requested by the certifying court if there are involved

¹Donze originally included a negligence claim, but has since dismissed that claim with prejudice.

in any proceeding before that court questions of law of this state which may be determinative of the cause then pending in the certifying court when it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court.

SCACR 244(a). The certification order must set forth: (1) “the questions of law to be answered”; (2) “all findings of fact relevant to the questions certified”; and (3) “a statement showing fully the nature of the controversy in which the questions arose.” SCACR 244(b).

II. Background and Factual Findings

This is a product liability crashworthiness action arising from an automobile accident that occurred at approximately 11:00 a.m. on November 11, 2012, in Greenville County.² Allen Brazell was driving Donze’s 1987 Chevrolet pickup truck and Donze was the front seat passenger. Although in dispute, there is some evidence that Donze and Brazell had been smoking synthetic marijuana, “Spice,” earlier that morning. At an intersection controlled by a stop sign, Donze failed to yield the right-of-way, and pulled directly into the path of a Ford F-350 truck towing a horse trailer. Unable to stop, the Ford struck the Chevrolet and the Chevrolet burst into flames. As a result, Brazell died and Donze was severely burned.³ Donze alleges that GM’s placement of the fuel tanks outside of the Chevrolet truck’s frame constitutes a design defect which made the tank vulnerable in a collision. Donze does not seek recovery for injuries caused by the initial crash. He is seeking recovery only for his enhanced injuries caused by the fire which he alleges was caused by a design defect.

²“Under the crashworthiness doctrine, liability is imposed not for defects that cause collisions but for defects that cause injuries after collisions occur.” *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 453 (4th Cir. 2001) (citing *Mickle v. Blackmon*, 166 S.E.2d 173, 185-87 (S.C. 1969)).

³Brazell is not a party to this action. Brazell’s estate filed a separate action against GM in state court. *Brazell v. GM*, C/A No. 2013-CP-23-06438.

III. Discussion

A. Comparative Negligence

As noted above, in this crashworthiness action, Donze does not raise a claim against GM for injuries resulting from the initial impact. Rather, Donze's claims against GM are for enhanced injuries resulting from GM's alleged negligent design of the fuel tank. *See Jimenez v. DaimlerChrysler Corp.*, 269 F.3d at 452. GM seeks to introduce evidence at trial regarding Donze's own negligence in causing the accident. Specifically, GM seeks to introduce evidence that Brazell was impaired by Spice and that there was a joint enterprise⁴ between Brazell and Donze allowing for Brazell's negligence to be imputed to Donze. Additionally, GM seeks to introduce evidence that Donze was negligent by riding as a passenger in the truck when he knew the driver, Brazell, was under the influence of Spice.⁵

South Carolina state courts have not had the occasion to address whether accident causing comparative fault is appropriately admitted in a crashworthiness case. Over fifteen years ago, the Fourth Circuit Court of Appeals held that the district court did not err in concluding that the cause of the original accident was not relevant because South Carolina had not addressed the issue of whether accident causing comparative fault was relevant in a crashworthiness analysis and that there was a split of authority on the issue. *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d at 454. However, the court in *Jimenez* did not address the merits of the issue. Rather, under an abuse of discretion standard of review, the court simply

⁴In South Carolina, to establish a joint venture or enterprise liability between a driver and passenger, there must be a common purpose or community of interest, and the passenger must have an equal right to control the direction and management of the vehicle. *Lollar v. Dewitt*, 179 S.E.2d 607 (S.C. 1971).

⁵Donze vehemently contests these allegations. However, the court has determined that there are genuine issues of material fact in regard to these issues which the jury will have to decide.

held that the district court did not err in finding the cause of the accident was irrelevant. Almost three years ago, in *Quinton v. Toyota Motor Corp.*, 2013 WL 2470083, * n. 1 (D.S.C. June 7, 2013), United States District Judge J. Michelle Childs addressed the merits of the issue because, although the parties acknowledged there was no South Carolina law on point, the parties also stated that they preferred that the district court ascertain how South Carolina courts would rule on the issue. Judge Childs concluded that evidence of causation in regard to the original accident was admissible in a crashworthiness case. However, there is no controlling South Carolina precedent as to whether a plaintiff's accident causing comparative fault may be asserted as an affirmative defense in a crashworthiness case.

In other jurisdictions, there remains a split of authority on the issue. And a recent majority of courts have held that comparative fault applies in crashworthiness cases. *See e.g. Dannenfleser v. DaimlerChrysler Corp.*, 370 F.Supp.2d 1091, 1096 (D. Haw. 2005) (noting that “it would appear that the majority of courts to address this issue have found that comparative negligence principles do apply in crashworthiness and second collision cases.”); *Wolf v. Toyota Motor Corp.*, C/A No. N11C-080-149-RRC, 2013 WL 6596833, *5 n.53 (Del. Super. Ct. Dec. 9, 2013)(setting out twenty states which allow the fault of the plaintiff or other defendant to be considered in crashworthiness cases).

B. Public Policy Bar

GM also argues that in South Carolina, the public policy that bars impaired drivers from recovering for injuries which result from their own conduct is applicable in this crashworthiness case.⁶ GM primarily relies on two cases: *Tobias v. Sports Club, Inc.*, 504 S.E.2d 318 (S.C. 1998) and *Lydia v. Horton*, 583 S.E.2d 750 (S.C. 2003). *Tobias* is a dram shop case where the plaintiff

⁶As with the question of comparative negligence, GM's position depends upon it proving that Brazell was impaired by Spice and that there was a joint enterprise between Brazell and Donze.

was injured in an automobile accident and sought recovery from the bar that had served him alcohol prior to the crash. In *Tobias*, the South Carolina Supreme Court recognized an absolute bar to a “‘first party’ cause [s] of action against [a] tavern owner by an intoxicated adult predicated on an alleged violation of [alcohol control statutes,]” and elaborating that “public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct.” *Tobias*, 504 S.E.2d at 319-20. In *Lydia*, the plaintiff, who had driven a vehicle after becoming voluntarily intoxicated, sustained injuries in a car accident and sued the person who loaned him the car under a theory of negligent entrustment. *Lydia*, 583 S.E.2d at 754. Relying on *Tobias*, the South Carolina Supreme Court held that South Carolina public policy precluded recovery for the plaintiff. Both cases expressly stated that the outright public policy bar and comparative fault are separate and independent defenses. There is not a South Carolina case which addresses whether this bar applies in a products liability crashworthiness case involving impaired drivers.

The court has determined that this action presents two issues which are uncertain and there is no South Carolina law precedent. Therefore, the court concludes that these factors weigh in favor of certification in the present case. Moreover, there is a split of authority in other states. Additionally, the issues concern a matter of vital public concern and will arise in future crashworthiness cases where the negligence or impairment of the plaintiff or a third party in causing the underlying accident is at issue.

IV. Certified Questions

The court certifies the following questions to the South Carolina Supreme Court:

- 1) Does comparative negligence in causing an accident apply in a crashworthiness case when the plaintiff alleges claims of strict liability and breach of warranty and is seeking damages relating only to the plaintiff's enhanced injuries?

2) Does South Carolina's public policy bar against impaired drivers recovering damages apply in a crashworthiness case when the plaintiff alleges claims of strict liability and breach of warranty?

V. Conclusion

Based on the foregoing, the court **CERTIFIES** the questions set forth above to the South Carolina Supreme Court. The clerk shall forward a copy of this order under this court's official seal to the South Carolina Supreme Court.

IT IS SO ORDERED.

s/Timothy M. Cain

United States District Judge

July 6, 2016

Anderson, South Carolina



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