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Tort Law - Supreme Court Permits Design Defect Claims in Both Strict Liability and Negligence: Brooks v. Beech Aircraft Corp.

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TORT LAW—Supreme Court Permits Design Defect Claims in Both Strict Liability and Negligence: *Brooks v. Beech Aircraft Corp.*

I. INTRODUCTION

In *Brooks v. Beech Aircraft Corp.*,[1] the New Mexico Supreme Court held that all product liability design defect claims, including crashworthiness claims,[2] may be brought in strict liability.[3] The court also held that a defendant's compliance with all applicable regulations, codes, or standards does not vitiate a crashworthiness design defect claim.[4] *Brooks* overruled[5] *Duran v. General Motors Corp.*,[6] which held that negligence was the proper standard of liability for crashworthiness claims in either manufacturing defect or design defect actions.[7] Thus, prior to *Brooks*, design defect crashworthiness claims in New Mexico were grounded only in negligence and express warranty law.[8] A further holding of the *Duran* court, also overruled by *Brooks*, was that the plaintiff must prove that the defendant violated "extrajudicial standards" in design defect crashworthiness claims.[9] Following *Brooks*, plaintiffs may pursue design defect claims such as crashworthiness claims under a strict liability theory even when the defendant complied with all the applicable regulations, codes, and standards for its design.[10] Consequently, compliance with objective, extrajudicial standards, including regulations, codes, or industry standards does not conclusively establish that the product was designed without a defect.[11] This Note discusses the history of the "crashworthiness" doctrine, analyzes the reasoning of the *Brooks* court, including the underlying policy considerations, and explores the implications of this case for New Mexico.

II. STATEMENT OF THE CASE

On August 2, 1988, Thomas Brooks died when his 1968 Beech Musketeer airplane crashed near Cimarron, New Mexico.[12] Subsequently, Virginia

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1. 120 N.M. 372, 902 P.2d 54 (1995).
2. The term "crashworthiness claims" refers to claims for injuries sustained that were aggravated or exacerbated due to a product defect. *See infra* notes 19-24 and accompanying text.
3. *Brooks*, 120 N.M. at 373, 902 P.2d at 55.
4. *Id.*
5. *Id.* at 377-79, 902 P.2d at 59-61.
6. 101 N.M. 742, 688 P.2d 779 (Ct. App. 1983), *cert. quashed*, 101 N.M. 555, 685 P.2d 963 (1984).
7. *Id.* at 743, 688 P.2d at 780.
8. *See id.*
9. *Brooks*, 120 N.M. at 381, 902 P.2d at 63.
10. *Id.* at 373, 902 P.2d at 55.
11. *Id.* at 381-82, 902 P.2d at 63-64.
12. Unless subsequently cited, the facts of this case appear at *Brooks*, 120 N.M. at 373, 902 P.2d at 55.

Brooks (Brooks), as personal representative of the estate of her late husband, brought a wrongful death action against Beech Aircraft Corporation (Beech), the manufacturer of the plane. Brooks claimed that a defect in the plane's engine caused the plane to crash and that the absence of shoulder harnesses caused her husband to suffer an enhanced injury resulting in his death. Brooks filed suit in negligence and strict liability for alleged design defects, breach of warranties, and misrepresentations.

Beech filed a motion for summary judgment on Brooks' claims of breach of warranty, misrepresentation, defective engine, and defective design of the aircraft for not having shoulder harnesses. The trial court granted Beech's motion on all claims. Brooks only appealed that portion of the trial court's order that granted Beech's summary judgment on the design defect claim. Specifically, Brooks challenged the trial court's holding that "enhanced-injury claims sound only in negligence and that negligence in design must be proved by showing the product violated the government regulations or industry standards applicable at the time of design." The Supreme Court of New Mexico granted Brook's petition for a writ of certiorari to review that issue.

III. BACKGROUND

A. *Recognition of the Enhanced Injury, Crashworthiness, or Second Collision Doctrine*

Traditionally, under the enhanced injury doctrine, courts refused to recognize any liability simply because a product was not designed to prevent or reduce injury.[13] As a result, a manufacturer was liable for injuries caused by its product only if it was defective for its intended purpose.[14] Judicial recognition of a change in this traditional view can be traced to Judge Kiley's dissent in *Evans v. General Motors Corp.*[15] In *Evans*, the Seventh Circuit Court of Appeals held that an automobile was not unfit for its intended use merely because it could not safely collide with other vehicles, despite the foreseeability of such collisions.[16] Judge Kiley rejected the majority position and found that General Motors had a duty "to use such care in designing its automobiles that reasonable protection is given purchasers against death and injury from accidents which are expected and foreseeable."[17]

Judge Kiley's dissent in *Evans* foreshadowed the landmark case of *Larsen v. General Motors Corp.*[18] in which the doctrine of "enhanced

13. *See, e.g.*, Evans v. General Motors Corp., 359 F.2d 822 (7th Cir.), *cert. denied*, 385 U.S. 836, (1966).

14. *Id. See also* Barry Levenstam & Daryl J. Lapp, *Plaintiff's Burden of Proving Enhanced Injury in Crashworthiness Cases: A Clash Worthy of Analysis*, 38 DEPAUL L. REV. 55, 58 (1988) (citations omitted).

15. 359 F.2d at 827 (Kiley, J., dissenting).

16. *Id.* at 824-25.

17. *Id.* at 827 (Kiley, J., dissenting).

18. 391 F.2d 495 (8th Cir. 1968).

injury,"[19] "crashworthiness,"[20] or "second collision"[21] was first recognized. These terms, which are often used interchangeably,[22] refer to a doctrine created to address injuries that were aggravated or exacerbated by a product defect when the defect did not cause the original accident. The *Larsen* court rejected the majority opinion in *Evans*, recognized the enhanced injury doctrine, and held that a manufacturer has "a reasonable duty of care in the design of its vehicle consonant with the state of the art to minimize the effect of accidents" and "should be liable for the injury caused by its failure to exercise reasonable care in the design."[23]

B. Development of the Enhanced Injury or Crashworthiness Doctrine

Federal courts have taken the lead in adopting and defining the parameters of the enhanced injury doctrine[24] in spite of the fact that there is no federal common law in product liability cases.[25] This unique development resulted from the application of the *Erie* doctrine to diversity cases filed in federal court.[26] Under *Erie Railroad Co. v. Tompkins*, federal courts deciding diversity cases must apply the law of the state.[27] However, in the absence of established state law, the *Erie* doctrine allows a federal court to predict what a state court would do if presented with a problem such as an enhanced injury claim.[28] Even though federal courts have complained about the need to "resort to tea leaves or to judicial tarot cards,"[29] the task of making predictions based on "unauthoritative and diverse prognostications,"[30] and of making decisions while "straining for clairvoyance,"[31] state courts agree with the adoption of the enhanced injury doctrine.[32]

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19. *Id.* at 502. "Enhanced injury" is the degree that injuries are aggravated above and beyond what they would have been without the alleged design defect. 2A LOUIS R. FRUMER & MELVIN I. FRIEDMAN, PRODUCTS LIABILITY § 21.03, at 21-28 to 21-29 (1990).

20. "Crashworthiness" is the protection provided to passengers of vehicles in anticipation of collisions. For judicial definitions of the term, see Michael Hoenig, *Resolution of "Crashworthiness" Design Claims*, 55 ST. JOHN'S L. REV. 633, 633 n.1 (1981) (citing Dreisonstok v. Volkswagenwerk A.G., 489 F.2d 1066, 1069 n.3 (4th Cir. 1974)).

21. "Second collision" is the impact with the interior part of the vehicle or something exterior to the vehicle after the initial collision. *See* Hoenig, *supra* note 20, at 634 n.2.

22. *See, e.g.*, Seese v. Volkswagenwerk A.G., 648 F.2d 833, 838-39 n.7 (3rd Cir.), *cert. denied*, 454 U.S. 867 (1981) (The court found that the terms "crashworthiness" and "injury enhancement" are "interchangeable."); Huddell v. Levin, 537 F.2d 726, 738 (3rd Cir. 1976) (The court referred to "[t]he crashworthy or second collision theory of liability" and "the analysis of 'second collision' or 'enhanced injury' cases.").

23. 391 F.2d at 502-03.

24. *See* Thomas V. Harris, *Enhanced Injury Theory: An Analytic Framework*, 62 N.C. L. REV. 643, 644 (1984). *See also* FRUMER & FRIEDMAN, *supra* note 19, § 21.02, n.59 at 21-25 (providing an extensive list of enhanced injury federal court decisions).

25. *See* FRUMER & FRIEDMAN, *supra* note 19, § 21.02, at 21-24 (citations omitted).

26. *See* Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78 (1938).

27. 304 U.S. at 78.

28. *See* McClung v. Ford Motor Co., 472 F.2d 240 (4th Cir.), *cert. denied*, 412 U.S. 940 (1973).

29. Sours v. General Motors Corp., 717 F.2d 1511, 1520-21 (6th Cir. 1983).

30. Huddell v. Levin, 537 F.2d 726, 733 n.2 (3rd Cir. 1976).

31. Higginbotham v. Ford Motor Co., 540 F.2d 762, 771 (5th Cir. 1976).

32. *See* FRUMER & FRIEDMAN, *supra* note 19, § 21.02, at 21-26.

Despite some initial opposition,[33] by 1991 every state had adopted some form of the enhanced injury doctrine first enunciated by the *Larsen* court and developed by other federal courts.[34] In fact, the Seventh Circuit eventually even overruled *Evans*,[35] noting that the *Evans* opinion was "a distinct minority" and "[t]he majority of the courts have now adopted . . . *Larsen*."[36] In dicta, the Seventh Circuit stated that "[t]he discernible trend in products liability law has been to increase the duty owed by manufacturers for injuries caused by their products."[37] In 1991, West Virginia became the last state to accept the enhanced injury doctrine.[38]

Following the lead of the Eighth Circuit in *Larsen*, which held that the duty of care to protect against enhanced injury was applicable to manufacturers of all products,[39] courts have expanded the application of the doctrine from automobiles to a wide range of products, including airplanes,[40] fire extinguishers,[41] motorcycle helmets,[42] and smoke detectors.[43] This is a significant expansion considering that any and all products could be subject to litigation.[44] One commentator has opined that, today, enhanced injury is "truly an area limited only by the imagination of counsel."[45]

C. *The Enhanced Injury or Crashworthiness Doctrine in New Mexico Prior to Brooks*

Prior to the decision in *Brooks*, the Tenth Circuit, applying the *Erie* doctrine, allowed the user of a private aircraft to recover for his injuries

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33. *See id.* § 21.02, n.25 at 21-14 & nn.48 & 49 at 21-18.

34. RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 11, Reporters' Note to cmt. a, at 279 (Tentative Draft No. 2, 1995) [hereinafter RESTATEMENT]. [The RESTATEMENT has not yet been formally promulgated by the American Law Institute. The most recent version, Tentative Draft No. 2 (March 13, 1995), was submitted to the Council of the Members of The American Law Institute for discussion at the 72nd Annual meeting in May of 1995.) For an exhaustive listing of jurisdictions, by state and federal decisions, that have accepted the crashworthiness doctrine, see FRUMER & FRIEDMAN, *supra* note 19, § 21.02, n.50 at 21-19 to 21-23.

35. Huff v. White Motor Corp., 565 F.2d 104 (7th Cir. 1977) (applying Indiana law).

36. *Id.* at 107.

37. *Id.* at 109.

38. Blankenship v. General Motors Corp., 406 S.E.2d 781 (W. Va. 1991).

39. 391 F.2d at 504.

40. Cleveland v. Piper Aircraft Corp., 890 F.2d 1540, (10th Cir. 1989) (applying New Mexico law). Plaintiff claimed that the lack of shoulder straps in the rear seat enhanced the pilot's injuries. *Id.* at 1542.

41. Meil v. Piper Aircraft Corp., 658 F.2d 787 (10th Cir. 1981) (applying New Mexico law). Plaintiff, whose plane crashed while spraying crops, alleged that his injuries were increased because post-collision, inter alia, a fire extinguisher failed to function. *Id.* at 789.

42. Coy v. Simpson Marine Safety Equip. Inc., 787 F.2d 19 (1st Cir. 1986) (applying New Hampshire law). Plaintiff claimed a motorcycle accident would have been survivable but for a defective motorcycle helmet. *Id.* at 21

43. Butler v. Pittway Corp., 770 F.2d 7 (2d Cir. 1985) (applying New York law). Smoke detectors in plaintiff's house allegedly aggravated the damages by not sounding a timely alarm. *Id.* at 8. For an extensive list of products against which plaintiffs have asserted the enhanced injury doctrine, see FRUMER & FRIEDMAN, *supra* note 19, § 21.02, n.1 at 21-6 to 21-10.

44. Hoenig, *supra* note 20, at 647.

45. W. James Foland, *Enhanced Injury: Problems of Proof in "Second Collision" and "Crashworthy" Cases*, 16 WASHBURN L.J. 600, 621 (1977).

under an enhanced injury theory.[46] In that case, *Meil v. Piper Aircraft Corp.*, the plaintiff alleged that his injuries were enhanced as the result of a defective seat belt, fuel system, fire extinguisher, and hopper containing insecticide in the plane.[47]

Three years later, the New Mexico Court of Appeals in *Duran v. General Motors Corp.*, held that the plaintiff could state a cause of action based on a claim under the enhanced injury, crashworthiness, or second collision doctrine.[48] The court in *Duran*, however, limited recovery to claims based exclusively on negligence in design or manufacturing defects.[49] The court specifically rejected recovery based on strict liability standards reasoning that "[t]he most serious shortcoming of a strict product liability approach as applied to crashworthiness results from a case-by-case method of establishing automobile safety requirements."[50] The *Duran* court thus joined the Third Circuit which held that the adjudication of crashworthiness claims under a strict liability standard would impose conflicting requirements on manufacturers in that automobile safety standards would vary from jurisdiction to jurisdiction.[51] To illustrate, the *Duran* court cited two cases with opposite safety standard design claims.[52] Thus, in addition to holding that crashworthiness claims sounded only in negligence, the *Duran* court found that "extrajudicially established guidelines" and not the adjudicatory process should be used to establish consistent "design choice criteria."[53]

Although the Tenth Circuit had recognized an enhanced injury or crashworthiness cause of action prior to *Brooks*, the only New Mexico state court opinion recognizing such a cause of action was the *Duran* decision, which restricted recovery to negligence claims.[54] The trial court in *Brooks* relied upon the *Duran* opinion for its holding that "enhanced-injury claims sound only in negligence and that negligence in design must be proved by showing the product violated the government regulations or industry standards applicable at the time of design."[55] It was this holding that the plaintiff in *Brooks* challenged on appeal.

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46. Meil v. Piper Aircraft Corp., 658 F.2d 787 (10th Cir. 1981) (applying New Mexico law).
47. *Id.*
48. 101 N.M. 742, 745, 688 P.2d 779, 782 (Ct. App. 1983), *cert. quashed*, 101 N.M. 555, 685 P.2d 963 (1984).
49. *Id.* at 749, 688 P.2d at 786.
50. *Id.* at 745, 688 P.2d at 782.
51. *Id.*
52. *Id.*

> In *Gray v. General Motors Corp.*, 434 F.2d 110 (8th Cir. 1970), the claim was that the windshield should have been designed to 'pop out' in an accident, whereas in *Seese v. Volkswagenwerk A.G.*, 648 F.2d 833 (3rd Cir. 1981) [*cert. denied*, 454 U.S. 867 (1981)], it was claimed that the windshield should have been designed to remain in place in high-speed upset. Obviously, automobile manufacturers cannot redesign their cars from accident to accident.

Id.

53. *Duran*, 101 N.M. at 747, 688 P.2d at 784 (quoting Owens v. Allis-Chalmers Corp., 268 N.W.2d 291, 294 (Mich. Ct. App. 1978)).
54. *Id.* at 743, 688 P.2d at 780.
55. Brooks v. Beech Aircraft Corp., 120 N.M. 372, 373, 902 P.2d 54, 55 (1995).

IV. RATIONALE OF THE *BROOKS* COURT

In *Brooks*, the New Mexico Supreme Court concluded that a manufacturer could be held strictly liable in design defect claims because the benefits of imposing strict liability outweighed any other considerations.[56] The court reached this conclusion after weighing the policy considerations that supported imposing a strict liability standard in design defect cases against those that favored limiting liability to a negligence standard.[57] In fact, the court robustly affirmed each of the policy considerations that it discussed underlying strict products liability.[58] Moreover, the court determined that a plaintiff did not have to show that a manufacturer had violated any applicable regulations, codes, or standards to prove a defective design claim.[59]

A. Policies in Support of Applying Only Negligence Principles to Design Defect Claims

Beech asserted that since there are no objective standards for defectiveness in the design context, negligence was the suitable standard to determine liability for defective design.[60] In support of this contention, Beech argued that the design of a product is the result of the manufacturer's conduct. Whether a product is "safe enough" depends upon the reasonableness of the manufacturer's decisions on issues such as safety factors, the usefulness of the product, and associated costs in light of an anticipated sales price. The reasonableness of these choices is therefore best tested under a negligence standard.

Beech also argued that there was a distinction between a product with a manufacturing defect and one with a design defect.[61] A product with a manufacturing defect leaves the manufacturer's hands in an unintended condition, whereas a product with a design defect leaves the manufacturer's hands in exactly the condition intended.[62] The product with a manufacturing defect can be compared with other items in the same product line to determine if it is defective.[63] A product with a design defect, however, cannot be compared with any objective standard.[64]

The *Brooks* court rejected this argument on the grounds that New Mexico uses an "unreasonable-risk-of-injury" test rather than a comparison to a "prototype."[65] The court quoted Uniform Jury Instructions (UJI) in support of its findings.[66]

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56. *Id.* at 373, 379, 383, 902 P.2d at 55, 61, 65.
57. *Id.* at 374-79, 902 P.2d at 56-61.
58. *Id.*
59. *Id.* at 373, 381-83, 902 P.2d at 55, 63-65.
60. *Id.* at 375, 902 P.2d at 57.
61. *Brooks*, 120 N.M. at 374, 902 P.2d at 56.
62. *Id.*
63. *Id.* (citing Barker v. Lull Eng'g Co., 573 P.2d 443, 454 (Cal. 1978)).
64. *Id.*
65. *Id.* at 381, 902 P.2d at 61.
66. *Id.* ("Under the current product liability jury instructions, SCRA 1986, 13-1401 to 13-1433

Beech also asserted that negligence as a standard for defective design is conducive to product development.[67] Imposing a strict liability standard may deprive the public of "useful and beneficial products."[68] When a product is deemed defectively designed, then the entire product line is defective.[69] This would create a significant financial burden on the manufacturer and the public would be deprived of a product.[70]

Finally, Beech argued that because of continuing technical advances and societal changes it would be unfair to subject manufacturers to a strict liability standard in enhanced injury cases.[71] Specifically, safety attitudes and manufacturing abilities are very different today from ten, twenty, or thirty years ago. It would, therefore, not be equitable to hold a manufacturer liable under today's safety standards for something manufactured in the 1960s.[72]

The *Brooks* court rejected this argument concluding that a manufacturer is usually aware of the risks presented by a given design and the availability of alternative designs.[73] Based on this presumption, the *Brooks* court determined that the focus of the investigation should be on the product, not the manufacturer's conduct.[74] Thus, a strict liability standard is more appropriate because it "imposes what amounts to constructive knowledge of the condition of the product" on the manufacturer.[75]

B. *Policies in Support of Applying Strict Liability Standards to Design Defect Claims*

The *Brooks* court drew upon its earlier decision in *Stang v. Hertz Corp.*,[76] which first adopted strict tort liability in New Mexico, for most of the four policy considerations that it concluded supported adopting a strict liability standard for defective design claims.[77] These four policies are (1) distributing cost rationale, (2) relieving plaintiff of the burden of proving negligence, (3) providing full chain of supply protection, and

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(Repl. Pamp. 1991), the jury is instructed that a supplier's liability is measured by 'an unreasonable risk of injury resulting from a condition of the product or from a manner of its use.' UJI 13-1406 . . . . '[A]n unreasonable risk of injury is a risk which a reasonably prudent person having full knowledge of the risk would find unacceptable.' UJI 13-1407 . . . . '[y]ou should consider the ability to eliminate the risk without seriously impairing the usefulness of the product or making it unduly expensive.' *Id.*").

67. *Brooks*, 120 N.M. at 374, 902 P.2d at 56.

68. *Id.* at 375, 902 P.2d at 57.

69. *Id.* (quoting Prentis v. Yale Mfg. Co., 421 Mich. 670 (1984)).

70. *Id.*

71. *Id.*

72. *Id.* (quoting Beech's argument that "manufacturers would be 'whipsawed . . . between the standards of different generations.'").

73. *Brooks*, 120 N.M. at 381, 902 P.2d at 63.

74. *Id.* (quoting Dart v. Wiebe Mfg., Inc., 709 P.2d 876, 881 (1985) (en banc)).

75. *Id.* at 381, 902 P.2d at 63 (quoting Phillips v. Kimwood Machine Co., 525 P.2d 1033, 1036 (Or. 1974) (en banc)).

76. 83 N.M. 730, 497 P.2d 732 (1972).

77. *Brooks*, 120 N.M. at 376-77, 902 P.2d at 58-59 (citing *Stang*, 83 N.M. at 735, 497 P.2d at 737).

(4) serving the interest of fairness by imposing the cost of loss on the party who earned the profit.[78]

The primary policy consideration discussed by the court in support of imposing strict products liability was the cost distribution rationale.[79] Under the cost distribution rationale, the manufacturer or supplier is considered to be in a better position to absorb the loss by distributing the cost than is the consumer.[80] The *Brooks* court went so far as to quote an early opinion that essentially stated the manufacturer could insure consumers against injuries from their products.[81]

A second rationale discussed by the court in support of imposing strict liability was that strict liability relieves a plaintiff of the burden of proving negligence, which is often difficult.[82] As the court observed: "[I]t is often difficult, or even impossible, to prove negligence on the part of the manufacturer or supplier . . . strict liability eliminates the need of the proof."[83] The court further cited several other New Mexico cases relying on the rationale that the imposition of strict liability relieves the plaintiff of the onerous burden of proving negligence.[84]

A third rationale discussed by the court was that strict liability provides a powerful incentive for suppliers to distribute products only from responsible manufacturers who design safe products and bear the pecuniary consequences for their defective products.[85] Without strict liability, the suppliers may not be liable as mere idle suppliers.[86] Confronted with possible liability, however, suppliers may be more inclined only to select products from reputable manufacturers.[87] In addition, suppliers are in a much stronger bargaining position than consumers to influence manufacturers.[88] Furthermore, the supplier provides another pocket for the plaintiff.[89] The policy of providing a full chain of supply protection from the manufacturer up to the supplier was supported by the same two

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78. *Id.* at 377, 902 P.2d at 59.

79. *Id.* at 375, 902 P.2d at 57.

80. *Id.* (quoting Azzarello v. Black Bros. Co., 391 A.2d 1020, 1023 (1978)).

81. *Id.* at 375, 902 P.2d at 57 (a manufacturer could be held "strictly liable for the resulting injuries because 'the risk of injury can be insured by the manufacturer and distributed among the public as a cost of doing business'" (quoting Escola v. Coca Cola Bottling Co., 150 P.2d 436, 440-41 (Cal. 1944) (Traynor, J., concurring))).

82. *Id.*

83. *Brooks*. 120 N.M. at 375-76, 902 P.2d at 57-58 (quoting John W. Wade, *On the Nature of Strict Tort Liability for Products*, 44 MISS. L.J. 825, 826 (1973)).

84. *Id.* at 377, 902 P.2d at 59 (citing Aalco Mfg. Co. v. City of Espanola, 95 N.M. 66, 67, 618 P.2d 1230, 1231 (1980) ("The purpose behind strict products liability . . . is to allow an injured consumer to recover against a seller or manufacturer without the requirement of proving ordinary negligence."); Trujillo v. Berry, 106 N.M. 86, 88; 738 P.2d 1331, 1333 (Ct. App), *cert. denied*, 106 N.M. 24, 738 P.2d 518 (1987); Livingston v. Begay, 98 N.M. 712, 716, 652 P.2d 734, 738 (1982) ("the rationales behind the application of strict liability do not apply when . . . proof of negligence is not difficult.").

85. *Id.* at 376, 902 P.2d at 58.

86. *Id.*

87. *Id.*

88. *Brooks*, 120 N.M. at 376, 902 P.2d at 58.

89. *Id.*

cases that the *Brooks* court used to support the cost distribution rationale to impose strict liability standards.[90]

Finally, the court considered whether the imposition of strict liability "serves the interests of fairness."[91] The *Brooks* court reasoned that in the interest of fairness, the manufacturer who profited from the sale of the product should accept the risk of loss.[92] The opinion notes that the underlying assumption for this policy is that fairness dictates "that the cost of an unreasonable risk of harm [should] lie with the product and its possibly innocent manufacturer [rather] than . . . upon the often unsuspecting consumer . . . ."[93]

C. *Balancing the Policy Considerations Supporting Negligence or Strict Liability*

According to the *Brooks* court, the determining factor in deciding what the standard of liability for design defect claims should be rests upon a balancing of the conflicting policy considerations.[94] Imposing a strict liability standard for design defect claims must be consistent with the policies of imposing strict liability in general.[95] Additionally, equity considerations addressing the difference, if any, of design defect claims must not veto the imposition of a strict liability standard.[96] The liability standard that grants the greatest benefits via its policies should control.[97] The court concluded that the benefits provided by the imposition of strict products liability far outweighed the rivaling considerations.[98]

D. *Compliance with Applicable Regulations Does Not Invalidate a Design Defect Claim*

The *Brooks* court held that evidence that the manufacturer had not violated any applicable regulations, codes, or industry standards was relevant to a design defect claim, but it was not conclusive on the issue.[99] It reasoned that "general and traditional rules of relevance and materiality" should be applied in such cases.[100] The court cited Uniform Jury Instructions, which state that industry customs are not conclusive of ordinary care, as support for its holding that compliance with regulations does not vitiate a negligence cause of action.[101]

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90. *Id.* at 377, 902 P.2d at 59 (citing *Aalco Mfg. Co.*, 95 N.M. at 67, 618 P.2d at 1231, "the extension of strict liability to non-negligent retailers provides two pockets from which the injured consumer can obtain relief, one being the usually local and more accessible retailer."; see also *Trujillo*, 106 N.M. at 88, 738 P.2d at 1333).

91. *Id.* at 376, 902 P.2d at 58.

92. *Id.* (quoting Beshada v. Johns-Manville Products Corp., 447 A.2d 539, 549 (1982)).

93. *Id.*

94. *Id.* at 377, 902 P.2d at 59.

95. *Brooks*, 120 N.M. at 377, 902 P.2d at 59.

96. *See id.*

97. *Id.* at 379, 902 P.2d at 61.

98. *Id.*

99. *Id.* at 381-82, 902 P.2d at 63-64.

100. *Id.* at 382, 902 P.2d at 64.

101. *Brooks*, 120 N.M. at 382, 902 P.2d at 64 (citing N.M. UNIF. JURY INSTRUCTION CIV. 13-1405 and 13-1408).

V. ANALYSIS AND IMPLICATIONS

A. *Analysis of the Brooks' Decision*

The *Brooks* court overruled *Duran* and imposed strict liability standards for injuries caused and enhanced by design defects because it concluded that doing so would further the policies supporting the adoption of the doctrine of strict products liability.[102] The policies discussed in *Brooks* could however, support the imposition of strict liability on a manufacturer for any cause of action, not simply defective design.[103] If strict liability is imposed on the manufacturer, the manufacturer will have to distribute the cost or suffer the economic burden. Furthermore, strict liability always relieves the plaintiff of the burden of proving negligence. Imposition of a strict liability standard would also, by definition, always provide a full chain of supply protection providing an additional source of recovery for the plaintiff. Finally, if fairness dictates that the party who profits from the distribution of a product should pay, the paying party would again always be the manufacturer instead of the plaintiff. Consequently, these policies support the imposition of a strict liability standard on any profit-making entity, which is certainly not the result the court intended.

The two traditional policy justifications supporting the imposition of strict liability are (1) "compensation of injured victims (spreading losses)," and (2) "deterrence of unsafe products (internalizing costs)."[104] A negligence liability standard for defective designs would not violate these traditional strict liability policies and could support many more, such as responsibility for foreseeable harms.

B. *Implications of the Brooks Case*

Two disturbing overall consequences of the New Mexico Supreme Court's decision in *Brooks* are probable. Design defect claims will proliferate and the *Restatement (Third) of Torts* will not be adopted in New Mexico.

1. Proliferation of Design Defect Product Liability Claims in New Mexico

Defective design claims can be predicted to proliferate simply because the plaintiff is now relieved of the burden of proving the defendant's negligence. Relieving plaintiffs of the burden of proving negligence is one of the primary policies supporting the imposition of strict liability. Arguably, this policy will encourage more potential plaintiffs to file claims and will facilitate their success. Furthermore, defendants cannot escape liability even if they have complied with all applicable regulations. It is,

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102. *Id.* at 383, 902 P.2d at 65.

103. *See generally id.* at 377, 902 P.2d at 59.

104. *See, e.g.*, Philip H. Corboy, *The Not-So-Quiet Revolution: Rebuilding Barriers to Jury Trial in the Proposed Restatement (Third) of Torts: Products Liability*, 61 TENN. L. REV. 1043, 1057-58 (1994) (citations omitted).

therefore, equally predictable that restricting or eliminating this fundamental defense for potential defendants will also encourage more plaintiffs to file suits and facilitate their success.

The proliferation of design defect claims will cause defense and insurance costs to increase along with liability losses. More product liability claims may also have a direct result on the cost and/or profitability of product lines. Such a proliferation of claims ultimately could cause a dramatic decline in the production of a product line, as evidenced by the aviation industry.[105]

Permitting design defect claims under a strict liability standard enlarges the enhanced injury doctrine to a detrimental extent. The slope the court is moving down is made more slippery by diminishing reliance on extrajudicial guidelines to determine whether or not a product is defective. To permit filing of design defect claims sounding in strict liability upon the mere opinion of an expert that the product is defective, even though the product complies with all applicable regulations, codes and safety standards, encourages unjustified litigation. It is inherently illogical that the testimony of one or two hired experts be given the same weight as safety standards carefully researched, investigated and promulgated by an expert agency. As one commentator recently noted:

> [U]nchecked, careless, or confusing expansion of the [enhanced injury] doctrine poses a genuine threat to the ability of American manufacturers to compete in worldwide markets, as well as to the ability of average Americans to afford products and equipment as rising litigation and settlement costs continue to be passed on to consumers and businesses.[106]

2. *The Restatement (Third) of Torts* Will Not be Adopted in New Mexico

The American Law Institute (ALI) undertook the task of creating the restatements, striving to make clear statements of the law currently in force in the majority of the states from the plethora of case law and legal literature.[107] The primary purpose of the *Restatement (Third) of Torts* is to bring greater certainty, consistency, and predictability into

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105. According to the defendant-appellee's answer brief, a Senate subcommittee found:
> [t]he 3 largest manufacturers of piston-engine aircraft have essentially left the light aircraft segment of the industry. In 1986, Cessna, which had been the largest manufacturer of piston-engine models, dropped completely out of that business. Last year, Beech manufactured only 18 percent of the production of piston aircraft it made in 1978. Piper's production of piston aircraft has dropped to 2 percent of the 1978 level. Piper has been in bankruptcy since 1991.

Brief for Appellee at 25, Brooks v. Beech Aircraft Corp., 120 N.M. 372, 902 P.2d 54 (1995) (quoting S. REP. No. 202, 103d Cong., 1st Sess. 3 (1993)).

106. Heather Fox Vickles & Michael E. Oldham, *Enhanced Injury Should Not Equal Enhanced Liability*, 36 S. TEX. L. REV. 417, 418 (1995).

107. Marshall S. Shapo, *In Search of the Law of Products Liability: The ALI Restatement Project*, 48 VAND. L. REV. 631, 632-33 (1995).

the law of products liability. This objective, however, is not attainable if the *Restatement* is not widely adopted.

Ironically, while the ALI was adopting a negligence standard of liability in design defect cases in the new Restatement, the New Mexico Supreme Court was rejecting that standard in favor of a strict liability standard.[108] The only conclusion to be drawn from the juxtaposition of these two events is that the New Mexico Supreme Court's decision in *Brooks* is out of step with the majority of courts in this country.

The Restatement specifically states that it

> adopts a reasonableness ('risk-utility' balancing) test as the standard for judging the defectiveness of product designs. More specifically, the test is whether a reasonable alternative design would, at reasonable cost, have reduced the foreseeable risks of harm posed by the product and, if so, whether the omission of the alternative design rendered the product not reasonably safe . . . . *That standard is also used in administering the traditional reasonableness standard in negligence* . . . . The policy reasons that support use of a reasonable person perspective in connection with the general negligence standard also support its use in the products liability context.[109]

The essential conflict between the *Restatement* and the *Brooks*' decision is the separate treatment of manufacturing and design defects. The New Mexico Supreme Court in *Brooks* held that a strict liability approach would be applied equally to design defects and manufacturing flaws.[110] The *Restatement* has adopted a strict liability standard for manufacturing defects and a negligence standard for design defect claims.[111] The Restatement makes a distinction between these standards on the grounds that a product with a design defect meets the manufacturer's own design specifications or quality standards while a product with a manufacturing defect does not.[112] Therefore, a manufacturing defect is easily identifiable since the defective product can be compared to the manufacturer's plans, specifications, standards, or with other units in the product line.[113]

With an alleged design defect, however, the question becomes, "How much safety is enough?" To answer that question the manufacturer must go outside the product line to determine whether the product specifications themselves are defective in that they create unreasonable risks.[114] The core of the design defect inquiry under the *Restatement* thus focuses on balancing the manufacturer's design decisions. In contrast, the *Brooks* court found "nothing in the difference between manufacturing flaws and design defects."[115]

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108. *See* RESTATEMENT, *supra* note 34, at § 2, § 2 cmt. a; *see also* Brooks v. Beech Aircraft Corp., 120 N.M. 372, 902 P.2d 54 (1995).
109. RESTATEMENT, *supra* note 34, § 2 cmt. c, at 19 (emphasis added).
110. *Brooks*, 120 N.M. at 378-79, 383, 902 P.2d at 60-61, 65.
111. RESTATEMENT, *supra* note 34, § 2, § 2 cmt. a, at 12-16, 19-22.
112. RESTATEMENT, *supra* note 34, § 2 cmt. a, at 14.
113. *See* RESTATEMENT, *supra* note 34, § 2 cmt. b, at 17.
114. RESTATEMENT, *supra* note 34, § 2 cmt. c, at 19.
115. *Brooks*, 120 N.M. at 377, 902 P.2d at 61.

The *Restatement* reflects the view adopted by most courts that the rule imposing a strict liability standard as developed for manufacturing defects is inappropriate for the resolution of design defect cases.[116] The *Restatement* employs a negligence test of risk-utility balancing to determine whether a design is defective.[117] Logically, a more flexible rule is required for design versus manufacturing defects because a design defect cannot be mechanically determined. Imposition of a strict liability standard for design defects will likely result in a proliferation of such claims. The difference between the *Restatement* standard and the standard adopted in *Brooks* also ensures that the *Restatement* will not be adopted in New Mexico and the benefits flowing from the *Restatement* will be lost.

VI. CONCLUSION

Brooks v. Beech Aircraft Corp. held that a plaintiff can bring all design defect claims, including crashworthiness or enhanced injury claims, in strict liability.[118] *Brooks* further held that a defendant's compliance with all applicable regulations, codes, or standards is not necessarily a valid defense to a design defect claim.[119]

The application of a negligence standard of liability in design defect cases, abandoned by *Brooks*, would have permitted the jury to consider all relevant factors in determining the reasonableness of a product's design, including the effect of product misuse or comparative fault by the product user. A negligence standard of liability would have preserved the plaintiff's right to recover for injuries caused by a defectively designed product without breaching the policy rationales of loss spreading and deterrence.

Instead, the sweeping scope of *Brooks* opens the door for vast and potentially unlimited liability that makes the manufacturer a virtual insurer of all consumers, including the careless, irresponsible risk-takers. *Brooks* also reflects the growing pro-plaintiff bias in New Mexico courts and contributes to the gradual conversion from fault principles to a social insurance principle. It furthers the disadvantages of strict tort liability by nurturing a "victimization" of the individual and lack of personal responsibility. Finally, a system of ad hoc decision making is created, and the judicial system takes on an aura of a high-jackpot lottery.

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116. RESTATEMENT, *supra* note 34, § 2, Reporter's Note to cmt. a, at 47-8.
117. *See id.* § 2 cmt. c, at 19.
118. *Brooks*, 120 N.M. at 373, 383, 902 P.2d at 55, 65.
119. *Id.*