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Notes and Comments: The Young and Frericks Cases: Re-Examining Traditional Theories of Manufacturer Liability for Product Defects

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NOTES AND COMMENTS

THE *YOUNG* AND *FRERICKS* CASES: RE-EXAMINING TRADITIONAL THEORIES OF MANUFACTURER LIABILITY FOR PRODUCT DEFECTS

The expanding scope of product liability raised questions concerning the status of prior legal concepts in the area of design defects. The author discusses the present position of the law and the continued viability of the familiar "latent-patent" test of liability in Maryland.

In two recent Maryland cases, *Volkswagen of America v. Young*[1] and *Frericks v. General Motors Corp.*[2] the Maryland Court of Appeals has imposed liability upon a manufacturer of automobiles for design defects enhancing injuries to the occupant following a collision. These decisions necessitate a re-examination of the principles that govern liability of manufacturers in this state.

EVOLUTION OF PRESENT LAW

Traditionally, liability has not been imposed on manufacturers for defects that were patent or obvious to the user. Thus, in *Campo v. Scofield*,[3] the New York court held that a manufacturer had done all that the law demanded if its product performed as was intended, was without a latent defect and created no greater danger than that which was known to the user.[4]

It should be noted that *Campo* involved a design defect.[5] Prior to this case manufacturers had been held liable for any construction defects resulting in direct injuries to users of their products.[6] Likewise, manufacturers have been held liable for latent design defects which

1. 272 Md. 201, 321 A.2d 737 (1974).
2. 274 Md. 288, 336 A.2d 118 (1975).
3. 301 N.Y. 468, 95 N.E.2d 802 (1950) (injury resulted when plaintiff caught his hand in an onion-topping machine produced without a guard).
4. *Id.* at 471, 95 N.E.2d at 804.
5. "They differ from other product liability cases involving defective [products] by the combination of two factors. First, the alleged defect is in the design of the [product] rather than a negligent deviation during the construction or assembly process from the manner in which the vehicle was supposed to be made. The latter is usually called a 'construction defect.' Second, the defect is not the cause of the initial impact." Volkswagen of America, Inc. v. Young, 272 Md. 201, 207, 321 A.2d 737, 740.
6. MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).

caused injury-producing[7] accidents as well as for design defects which directly inflicted injury.[8]

With the foundation thus laid, the stage was set for the courts to consider the issue of a manufacturer's liability for design defects *enhancing* injuries following the accident—the "second collision."[9] In the first case addressing itself directly to this issue, *Evans v. General Motors Corp.*[10] the court significantly refused to extend this theory of liability because:

> The intended purpose of an automobile does not include its participation in collisions with other objects, despite the manufacturer's ability to foresee the possibility that such collisions may occur.[11]

The court further stated that any duty regarding design should be imposed upon manufacturers by the legislature rather than the courts.[12]

The *Evans* rationale of intended use was rejected in *Larsen v. General Motors Corp.*[13] which held that a manufacturer is liable for enhanced injuries resulting from design defects. The United States Court of Appeals for the Eighth Circuit stated:

> [A]n automobile manufacturer . . . is under a duty to use reasonable care in the design of its vehicle to avoid subjecting the user to an unreasonable risk of injury in the event of a collision. Collisions with or without fault of the user are clearly foreseeable by the manufacturer and statistically inevitable.[14]

The *Larsen* court agreed with *Evans*, however, that the manufacturer has no duty to design a fool-proof or accident-proof vehicle.[15]

7. *See* Carpini v. Pittsburgh & Weirton Bus Co., 216 F.2d 404 (3d Cir. 1954) (braking system located dangerously close to the ground causing brake failure).
8. *See* Elliot v. General Motors Corp., 296 F.2d 125 (7th Cir. 1961) (mechanic seriously cut on sharp surface while repairing an automobile).
9. "Typically, the actions of the driver of the car in which the plaintiff is riding, or the actions of the driver of another vehicle, or the actions of some third person, cause an initial disruption or impact which in turn results in the plaintiff's colliding with the interior (or occasionally the exterior) of the car. The plaintiff's collision with the car is the so-called 'second collision.'" Volkswagen of America, Inc. v. Young, 272 Md. 201, 206-07, 321 A.2d 737, 740.
10. 359 F.2d 822 (7th Cir.), *cert. denied*, 385 U.S. 836 (1966).
11. *Id.* at 825.
12. *Id.* at 824.
13. 391 F.2d 495 (8th Cir. 1968). The plaintiff alleged that General Motors was negligent in designing the steering column, which protruded beyond the forward surface of the front tires. This allegedly increased the danger of injury to the plaintiff from the rearward displacement of the steering shaft in the event of a head-on collision.
14. *Id.* at 502.
15. *Id.*

Accordingly, the duty imposed was limited to one of reasonable care in the design of the product, consistent with the state of the art in order to minimize the risk of injury in the event of a collision.[16]

Volkswagen of America, Inc. v. Young[17] was the first case in which the Maryland Court of Appeals was called upon to decide the question of a manufacturer's liability for a "second collision." In a certified question of law, the court of appeals was asked:

> Whether or not, under Maryland law, the definition of the "intended use" of a motor vehicle includes the vehicle's involvement in a collision and thus in turn, whether a cause of action is stated against a manufacturer or importer of said vehicle in breach of warranty or negligence or absolute liability or misrepresentation by allegations that the design and manufacture of the vehicle unreasonably increased the risk of injury to occupants following a collision not caused by any defects of the vehicle.[18]

The *Young* court, in applying the traditional rules of negligence found that the intended purpose of an automobile is to provide not merely transportation, but *reasonably safe* transportation.[19] Recognizing that collisions are foreseeable[20] the court went on to hold that the

16. *Id.* at 503.
17. 272 Md. 201, 321 A.2d 737 (1974). Plaintiff's decedent, James Young, was stopped at a traffic light when the Volkswagen which he was operating was struck in the rear by another vehicle. Upon collision, the seat assembly was torn from the floor and the plaintiff's decedent was thrown into the rear passenger compartment where he collided with numerous structures and protrusions which were the proximate cause of the fatal injuries. It was alleged that the seat assembly was "unreasonably vulnerable to separation from the floor upon collision" and the rear compartment structures and protrusions were unreasonably dangerous in the event of a collision.
18. *Id.* at 203-04, 321 A.2d at 738. The court did not consider the question of whether misrepresentation could be used as a basis for recovery in product liability action for personal injuries or wrongful death. The possibility of liability of the manufacturer for breach of warranty was dismissed because the Volkswagen automobile was purchased in Alabama and the general rule is " 'the law of the place of sale determines the extent and effect of the warranties which attend the sale.' Schultz v. Tecumseh Prods., 310 F.2d 426, 428 (6th Cir. 1962)." *Id.* at 220, 321 A.2d at 747.

    The Maryland Court of Appeals has not yet either accepted or rejected the strict liability in tort theory of the RESTATEMENT (SECOND) OF TORTS § 402A (1965).

    The theory of § 402A was held, in *Young*, not to apply to liability for injuries caused by design defects. The court maintained that the phrase "seller has exercised all possible care in the preparation and sale of his product" has no application to "second-collision" cases, since the existence of a defective design depends upon the degree of care, and the reasonableness of such care, which the manufacturer has used. 272 Md. at 220-21, 321 A.2d at 747; *accord*, Frericks v. General Motors Corp., 274 Md. 288, 298-99, 336 A.2d 118, 124 (1975).
19. 272 Md. at 206, 321 A.2d at 740.
20. Between one quarter and two thirds of all vehicles manufactured are involved in a collision during their subsequent use. 391 F.2d 495, 505 n. 8 (1968).

manufacturer has a duty to use reasonable care to provide a reasonable degree of safety when these collisions occur.[21]

In its discussion of foreseeability, the *Young* court relied primarily on *Larsen* and *Bolm v. Triumph Motor Corp.*[22] *Bolm*, in rejecting *Evans*, stated that under the traditional rules of negligence there is no distinction between liability for a defective item that causes an accident and a defective item that enhances the injuries upon impact from an accident. The duty, in either case, is one of reasonable care.

The issue of a manufacturer's liability for design defects enhancing an injury was once again brought to the attention of the Maryland courts in *Frericks v. General Motors Corp.*[23] The Maryland Court of Appeals extended the negligence principles espoused in *Young* to an action for breach of the implied warranty of merchantability of the Uniform Commercial Code[24] and held that since the intended purpose of a motor vehicle is to provide reasonably safe transportation,[25] the implied warranty logically means that a reasonable amount of safety must be provided for inevitable collisions. In light of the Maryland Uniform Commercial Code definition of "seller" which includes manufacturers,[26] a proper breach of warranty action was stated against both the manufacturer and the vendor.[27]

CONSISTENCY WITH PRIOR LAW

Prior to the resolution of the *Larsen-Evans* controversy in this state, Maryland courts[28] had staunchly adhered to the holding of *Campo v. Scofield*,[29] that an obvious defect would preclude liability as a matter of law. Thus, in the leading case of *Myers v. Montgomery Ward*,[30] where the allegedly defective design was the absence of a safety guard surrounding the blades of a power lawn mower, the Maryland court, applying the "latent-patent" test, held that no cause of action was

21. 272 Md. at 217, 321 A.2d at 745.
22. 33 N.Y.2d 151, 350 N.Y.S.2d 644, 305 N.E.2d 769 (1973).
23. 274 Md. 288, 336 A.2d 118 (1975). In *Frericks*, the plaintiff alleged defects in both the roof supports, which collapsed when the vehicle overturned, and the seat mechanism which failed at the same time. The result of this particular chain of events, was the "second-collision" which occurred between the head of the plaintiff, a passenger and the collapsing roof. It was further alleged that General Motors was negligent in failing to warn plaintiff of the design defects. The Court of Special Appeals in *Frericks* adopted the *Evans* rationale.
24. Md. Ann. Code, Comm. L. Art., § 2-314(c) (1975) Implied Warranty; Merchantability "Goods . . . are fit for the ordinary purposes for which such goods are used."
25. 272 Md. at 217, 321 A.2d at 745.
26. Md. Ann. Code, Comm. L. Art., § 2-314(a) (1975).
27. 274 Md. at 303, 336 A.2d at 127.
28. Patten v. Logemann Bros., 263 Md. 364, 368-70, 283 A.2d 567, 569-70 (1971); Blankenship v. Morrison Mach. Co., 255 Md. 241, 245-46, 257 A.2d 230, 231-33 (1969); Myers v. Montgomery Ward & Co., 253 Md. 282, 292-95, 252 A.2d 855, 862-63 (1969).
29. 301 N.Y. 468, 471, 95 N.E.2d 802, 804.
30. 253 Md. 282, 252 A.2d 855 (1969).

stated because the hazard was obvious to the user.[31] Under this test, proof of latency of the defect is essential to the survival of the complaint, for only then can there be the common law duty on the part of a manufacturer to warn of hidden dangers, utlimately giving rise to liability.[32]

The foreseeability test defined in *Young* and *Frericks* that collisions are a foreseeable use of an automobile and a manufacturer has a duty to provide a reasonable means of safety to guard against injury in the event of a collision makes it crucial to determine whether the "latent-patent" test is still alive and well in Maryland or has been put to rest without a decent burial. While those who contend that the latter is still the law in this state will draw attention to the holding in *Young* that the defect was latent,[33] there was no mention of this distinction in the *Frericks* decision. Consequently, a re-examination of foreseeability is necessary to determine the present state of the law.

Larsen and its progeny promulgated the concept that a manufacturer must produce a safe product, an automobile that provides "safe transportation,"[34] and elevated a manufacturer's duty to "eliminate any unreasonable risk of foreseeable injury."[35] This approach necessitates a determination by the court of whether the danger was foreseeable to the manufacturer, not the user. Furthermore, in determining the essential "unreasonableness" the courts have applied a balancing test, considering the nature of the accident, price and utility of the vehicle, style and attractiveness of the vehicle, and other relevant factors.[36] Formerly, these factors would logically be applicable only to the obviousness of the design and danger. This application was further exemplified in *Dreisonstok v. Volkswagenwerk*, A.G.[37] where the court, after considering all the aforementioned factors said that the design and the danger generated by it did not create an unreasonable risk of injury. The design was obvious and was the "unique feature of the vehicle," [38] but patency alone did not preclude liability. The *Dreisonstok* case was extensively quoted and relied upon by the *Young* court.[39]

In light of the foregoing, it would seem that the courts have edged away from the strict *Campo-Myers* rule that latency is a question of law

31. *Id.* at 293, 252 A.2d at 862.
32. *Id.*
33. 272 Md. at 216, 321 A.2d at 745.
34. 391 F.2d at 502.
35. *Id.* at 503. *See* Volkswagen of America, Inc. v. Young, 272 Md. 201, 219, 321 A.2d 737, 746 (1974).
36. Larsen v. General Motors Corp., 391 F.2d 495, 502 (8th Cir. 1968); Volkswagen of America, Inc. v. Young, 272 Md. 201, 219, 321 A.2d 737, 746 (1974); *see* Dreisonstok v. Volkswagenwerk, A.G., 489 F.2d 1066 (4th Cir. 1974); Dyson v. General Motors Corp., 298 F. Supp. 1064 (E.D. Pa. 1969).
37. 489 F.2d 1066 (plaintiff's leg was caught between the dashboard and the seat of the van, designed without hood space protection).
38. *Id.* at 1074.
39. 272 Md. 213, 219, 321 A.2d 743, 746-47.

and instead employed it as one factor in determining unreasonableness of the risk. The rationale is that since a manufacturer's liability emanates from his duty to warn of hidden danger, thereby enabling the user to employ caution, his duty and subsequent liability are lessened to the extent that the user has been alerted by its obviousness. Since the user was afforded the opportunity to protect himself, the danger is not "unreasonable." The risk, then, becomes a question of fact to be determined by a jury considering all the circumstances bearing on the issue.[40] The more apparent the danger, the more notice the consumer has and, consequently, the risk to him is lessened.

Essentially, the *Larsen* and *Young* "foreseeable use" line of cases have pre-empted "latent-patent" and relegated it to a secondary role as a factor to be "balanced" by the trier of fact in determining risk. Nevertheless, manufacturers will hasten to point out that the maker of a knife has not been held liable to the user if the knife causes injury. The reason according to *Myers*, is that the danger is obvious.[41] However, under the *Larsen* and *Young* rule, a manufacturer is obligated only to comply with safety standards available under the "present state of the art."[42] To go beyond that is to demand an impossibility. The knife in *Myers* actually assumes the characteristics of the automobile in *Young* that is involved in a high-speed, head-on collision with a truck;[43] the danger of injury is unavoidable due to the design required for the knife's intended use no matter what may be attempted under our contemporary technology. In both cases the degree of obviousness is so great that it effectively eliminates the unreasonableness of the risk in any balancing test made. In short, patency is merely another factor in determining a manufacturer's liability for foreseeable defects.

Taking the approach of tempering the foreseeability duty with patency as expounded by *Larsen*, *Dreisonstok* and *Young* naturally leads to an extensive curtailment or modification of the original "latent-patent" test of *Campo* and *Myers*, if not outright abandonment. Strangely, though, *Young* cites *Myers* and its progeny authoritatively as *precluding* liability where the design is apparent.[44] Some courts, however, have recognized the anomaly, and have commented on the shift in weight that obviousness bears. In *Byrnes v. Economic Machinery Co.*[45] the proper guideline was stated with regard to the "latent-patent" rule:

40. Bolm v. Triumph Corp., 33 N.Y.2d 151, 305 N.E.2d 769 (1973).
41. 253 Md. at 293, 252 A.2d at 862.
42. 391 F.2d at 502 as quoted in 272 Md. at 217, 321 A.2d at 745-46.
43. 272 Md. at 219, 321 A.2d at 747.
44. *Id.* at 219-20, 321 A.2d at 747. "In addition, there can be no recovery if the danger inherent in the particular design was obvious or patent to the user . . . 391 F.2d at 505."
45. 41 Mich. App. 192, 200 N.W.2d 104 (1972).

> In reality, these requirements bear on the unreasonableness of the risk to which one is exposed. . . . If a risk is unreasonable and foreseeable, a duty on the manufacturer's part may arise.[46]

In the very recent case of *Casey v. Gifford Wood Co.*[47] the Michigan Court of Appeals expressly overruled the "latent-patent" test and established its future role:

> The test of liability is no longer the latent-patent rule but whether the danger from which the plaintiff suffered injury was unreasonable and foreseeable. This is usually a jury question.[48]

This consumer-oriented shift in the law is but one manifestation of the modern trend toward growing consumer protection by expansion of manufacturer's liability. Often a user will be well aware of the design but will be hard put to correlate the relationship between design and danger. Although the design is obvious, the risk of harm emanating from particular design characteristics is not.[49] Furthermore, the superior knowledge of the manufacturer and his capabilities, places him in a better position to remedy the shortcomings of his product before any injuries are sustained. Addressing itself to this argument, the Washington Court of Appeals in *Palmer v. Massey-Ferguson, Inc.*[50] held:

> It seems to us that a rule which excludes the manufacturer from liability if the object in his product is patent but applies the duty if such a defect is latent is somewhat anomalous. The manufacturer of the obviously defective product ought not escape because the product was obviously a bad one. The law, we think, ought to discourage misdesign rather than encouraging it in its obvious form.[51]

As "latent-patent" fades into obsolescence, so too, does the duty which gave rise to such a rule. The duty, as aforementioned, obligated a manufacturer to produce a product free from hidden dangers, or in the alternative, to disclose or warn of any such concealed hazards. Failure to do so, imposed liability upon the one who breached this duty for creating an unreasonable risk to the user.[52] The present duty is the one

46. *Id.* at 201, 200 N.W.2d at 108.
47. Casey v. Gifford Wood Co.,____Mich.____, 232 N.W.2d 360 (1975).
48. *Id.* at____, 232 N.W.2d at 365.
49. 1 L. Frummer & M. Friedman, Products Liability § 7.02 (1968); 80 Harv. L. Rev. 688 (1966).
50. 3 Wash. App. 508, 476 P.2d 713 (1970).
51. *Id.* at 514, 476 P.2d at 718-19.
52. *Id.* at 514, 476 P.2d at 719.

espoused by all followers of the *Larsen* rationale: the duty to manufacture a *safe* product without further qualification of this duty as a matter of law.[53] As applied to automobiles, *Young* expressly recognized this view, calling it a "duty to use reasonable care in the design of its vehicle to avoid subjecting the user to an unreasonable risk of injury."[54]

It is thus apparent that the Maryland Court of Appeals in accepting the "second collision" theory has in effect completely adopted the expanded duty and rule of "unreasonable risk of a foreseeable danger" although there may be an inconsistent attempt to retain the "latent-patent" rule with respect to defects. The rejection of the "latent-patent" distinction in "second collision" defect cases should also lead to rejection of the "latent-patent" distinction in all design defect cases. The question of whether a design defect is latent or patent should simply be one of the factors considered in determining whether the manufacturer has breached his duty to design a product which is reasonably safe for the consumer.

With the acceptance of the *Larsen* view, Maryland has also refuted an oft-raised contention, noted above[55] that requirements concerning design is a legislative, and not a judicial function.[56] There are, however, obvious advantages to having design standards set by the legislature. Research can give a better understanding of design complexities and standards would be more uniform and certain than courts could provide with a case-by-case approach.[57]

Section 108(c) of the National Traffic and Motor Vehicle Safety Act of 1966[58] states, "compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law."[59] This indicates that Congress did not intend to supersede the judicial function of determining standards

53. In the seminal case on the present status of the "latent-patent" test, Pike v. Frank G. Haugh Co., 2 Cal. 3d 465, 467 P.2d 229, 85 Cal. Rptr. 629 (1970) the court held that "the modern approach does not preclude liability solely because a danger is obvious." *Id.* at 474, 467 P.2d at 235, 85 Cal. Rptr. at 635. When discussing the duty giving rise to liability the court said:

> The duty of a manufacturer with respect to the design of products, placed on the market is defined in Restatement Second of Torts, section 398: "A manufacturer of a chattel made under a plan or design which makes it dangerous for the uses for which it is manufactured is subject to liability to others whom he should expect to use the chattel or to be endangered by its probable use for physical harm caused by its failure to exercise reasonable care in the adoption of a safe plan or design." *Id.* at 470, 467 P.2d at 232, 85 Cal. Rptr. at 632.

54. Volkswagen of America, Inc. v. Young, 272 Md. 201, 217, 321 A.2d 737, 742 *citing* Larsen v. General Motors Corp., 391 F.2d 495, 502.
55. *See* note 12 and accompanying text *supra*.
56. *See, e.g.*, Volkswagen of America, Inc. v. Young, 272 Md. at 218, 321 A.2d at 746.
57. *See* 118 U. Pa. L. Rev. 299, 305 (1969); 80 Harv. L. Rev. 688, 689 (1967); 24 Vand. L. Rev. 862, 868-69 (1971).
58. 15 U.S.C. §§ 1381-1426 (1970).
59. 15 U.S.C. § 1397(c) (1970).

of care. Courts must respond to protect the public until such time as the legislature adequately assumes its responsibility to the public, rather than a few very powerful, highly motivated interest groups.

Furthermore, the argument that design requirements should be a legislative, not a judicial function ignores the fact that the courts are frequently called upon to decide technical issues that involve expert testimony.[60] The strength of the judicial system is that it resolves disputes of tremendous complexity. Neither the possibility of a deluge of litigation nor the possibility that unsophisticated juries would not be able to evaluate complex data presented at trial nor the fact that the manufacturers might be subjected to different levels of duty in different states should preclude, merely on the basis of public policy, users of a product from recovering from a manufacturer for injuries enhanced by a defect in design not causing the accident.[61]

In compliance with this duty, the environment in which a product is used should be considered by the manufacturer.[62] A "manufacturer is under no duty to design an accident-proof vehicle . . . but such manufacturer is under a duty to use reasonable care in the design of its vehicle to avoid subjecting the user to an unreasonable risk of injury in the event of a collision."[63]

The leading text writers[64] are of the opinion that there is a duty on the part of the manufacturer to use reasonable care in the construction and design of its products. Dean Prosser states:

> The greater number of decisions have denied any duty to protect against the consequences of collisions, on the rather specious ground that collision is not the intended use of the car, but is an abnormal use which relieves the maker of responsibility. It is, however, clearly a foreseeable danger arising out of the intended use; and it cannot be expected that this reasoning will continue to hold.[65]

In 1974 this reasoning did not "continue to hold." The number of jurisdictions following *Larsen* is growing rapidly.[66] Courts are finding

60. *See, e.g.*, Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375 (D.C. Cir.), *cert. denied*, 417 U.S. 921 (1974), later appeal 513 F.2d 506 (D.C. Cir. 1975); Amoco Oil Co. v. E.P.A., 501 F.2d 722 (D.C. Cir. 1974); International Harvester Co. v. Ruckelshaus, 478 F.2d 615 (D.C. Cir. 1973); Bayshore Dev. Co. v. Bonfoey, 75 Fla. 455, 78 So. 507 (1918).
61. Arbet v. Gussarson, 66 Wisc. 2d 551, 225 N.W.2d 431 (1975). *Cf.* J. Henderson, *Judicial Review of Manufacturers' Conscious Design Choices: The Limits of Adjudication*, 73 Col. L. Rev. 1531 (1973).
62. Spruill v. Boyle-Midway Inc., 308 F.2d 79 (4th Cir. 1962).
63. 391 F.2d 495, 502.
64. W. Prosser, Law of Torts § 96 at 646 (4th ed. 1971).
65. *Id.*
66. The jurisdictions now following *Larsen* are:
California: Cronin v. Olson Corp., 8 Cal. 3d 121, 501 P.2d 1153, 104 Cal. Rptr. 433 (1972); Horn v. General Motors Corp., 43 Cal. App. 3d 773, 110 Cal. Rptr. 410 (1973);

that there is "no rational basis for splitting the event of the collision and allowing recovery where the condition of the automobile caused the accident; the accident and injury are all part of the same happening in which the defendant's failure to use reasonable care caused harm.[67] The *Campo* decision has been cited by manufacturers in automobile design cases to support the elimination of a duty to design an automobile so that it will be reasonably safe with respect to second-collision injuries. New York, however, has rejected *Campo* as being controlling in second-collision auto design defects cases and has

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Culpepper v. Volkswagen of America, Inc., 33 Cal. App. 3d 510, 109 Cal. Rptr. 410 (1973); Badorek v. General Motors, Inc., 11 Cal. App. 3d 902, 90 Cal. Rptr. 305 (1970).
District of Columbia: Bremier v. Volkswagen of America, Inc., 340 F. Supp. 949 (D.D.C. 1972).
Florida: Evancho v. Thiel, 297 So. 2d 40 (Fla. App. 1974).
Georgia: Friend v. General Motors Corp., 118 Ga. App. 763, 165 S.E.2d 734, *cert. dismissed*, 224 Ga. 290, 167 S.E.2d 926 (1969).
Illinois: Nanda v. Ford Motor Co., 509 F.2d 213 (7th Cir. 1974); Fink v. Chrysler Motor Co., 16 Ill. App. 3d 886, 308 N.E.2d 838 (1974); Mieher v. Brown, 3 Ill. App. 3d 802, 278 N.E.2d 869, *rev'd on other grounds*, 54 Ill. 2d 539, 301 N.E.2d 307 (1973).
Iowa: Passwaters v. General Motors Corp., 454 F.2d 1270 (8th Cir. 1972).
Louisiana: Perez v. Ford Motor Co., 497 F.2d 82 (5th Cir. 1974).
Maryland: Volkswagen of America, Inc., v. Young, 272 Md. 201, 321 A.2d 737 (1974).
Michigan: Green v. Volkswagen of America, Inc., 485 F.2d 430 (6th Cir. 1973); Larsen v. General Motors Corp., 391 F.2d 495 (8th Cir. 1968); Rutherford v. Chrysler Motors Corp., 60 Mich. App. 392, 231 N.W.2d 413 (1975).
Montana: Brandenburger v. Toyota Motor Sales USA, Inc., 513 P.2d 268 (Mont. Sup. Ct. 1973); Ford v. Rupple, 504 P.2d 686 (Mont. 1972).
New Jersey: Huddell v. Levin, 395 F. Supp. 64 (D.N.J. 1975).
New York: Bolm v. Triumph Corp., 33 N.Y.2d 151, 350 N.Y.S.2d 644, 305 N.E.2d 769 (1973).
North Dakota: Johnson v. American Motors Corp., 225 N.W.2d 57 (N.D. 1974).
Oregon: May v. Portland Jeep Inc., 265 Ore. 307, 509 P.2d 24 (1973).
Pennsylvania: Hardy v. Volkswagen of America, Inc., 65 F.R.D. 359 (W.D. Pa. 1975); Dyson v. General Motors Corp., 298 F. Supp. 1064 (E.D. Pa. 1969).
Rhode Island: Turcotte v. Ford Motor Co., 494 F.2d 173 (1st Cir. 1974).
South Carolina: Mickle v. Blackmon, 252 S.C. 202, 166 S.E.2d 173 (1969).
South Dakota: Engberg v. Ford Motor Co., 205 N.W.2d 104 (S.D. 1973).
Tennessee: Ellithorpe v. Ford Motor Co., 503 S.W.2d 516 (Tenn. 1973).
Texas: Turner v. General Motors Corp., 514 S.W.2d 497 (Tex. App. 1974).
Virginia: Dreisonstok v. Volkswagenwerk, A.G., 489 F.2d 1066 (4th Cir. 1974).
Washington: Seattle-First Nat'l Bank v. Volkswagen of America, Inc., 11 Wash. App. 800, 525 P.2d 286 (1974); Baumgardner v. American Motors Corp., 83 Wash. 2d 751, 522 P.2d 829 (1974).
Wisconsin: Arbet v. Gussarson, 66 Wis. 2d 551, 225 N.W.2d 431 (1975); Grundmanis v. British Motor Corp., 308 F. Supp. 303 (E.D. Wis. 1970).
The jurisdictions which still follow *Evans* are:
Indiana: Evans v. General Motors Corp., 359 F.2d 822 (7th Cir.), *cert. denied*, 285 U.S. 836 (1966).
Mississippi: General Motors Corp. v. Howard, 244 So. 2d 726 (Miss. 1971); Ford Motor Co. v. Simpson, 233 So. 2d 797 (Miss. 1970); Walton v. Chrysler Corp., 229 So. 2d 568 (Miss. 1969).
Ohio: Burkhard v. Short, 28 Ohio App. 2d 141, 275 N.E.2d 632 (1971); Shumard v. General Motors Corp., 270 F. Supp. 311 (S.D. Ohio 1967).
West Virginia: McClung v. Ford Motor Co., 333 F. Supp. 17 (S.D. W. Va.), *aff'd*, 472 F.2d 240 (4th Cir. 1973).

67. 80 HARV. L. REV. 688 at 689 (1967).

adopted *Larsen*'s common law negligence principles as the law of the state.[68]

The known danger of operating an automobile should not be held to make the danger "patent" as a matter of law. The consumer does not voluntarily assume the danger and should certainly not be compelled to do so. An automobile today is not a luxury, but an extremely hazardous necessity which affects every person—driver, passenger, or bystander.[69]

The care that a manufacturer should exercise should be that which is reasonable under all circumstances. The question of whether a manufacturer has failed to use such reasonable care and has thus made the product unreasonably dangerous should be posed in terms of whether, given the risks and benefits of and possible alternatives to the product, we as a society will live with it in its present form or will require an altered, less dangerous form. The question of whether the product is a reasonable one, given the reality of its use in contemporary society, becomes the familiar one of balancing the probability and gravity of the harm to the consumer against the inconvenience of precautions to the manufacturer.[70] The manufacturer, unlike the consumer, possesses the superior knowledge, expertise, and means to improve the safety of his product. Unsafe designs may be eliminated; accidents, many times, are unavoidable. In *Young* and *Frericks*, Maryland has taken a major step forward in protecting the public and the individual consumer.

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68. The court of appeals in *Bolm* stated that Edgar v. Nachman, 37 App. Div. 2d 86, 323 N.Y.S.2d 53, (1971) relied on *Campo* to reach the broad proposition that injuries resulting from a design defect not causing the accident were not actionable. The *Edgar* decision was based either on (1) the danger of all second collision injuries is patent no matter what the cause or (2) involvement in a collision is outside the "intended use" of a vehicle.
69. All of this boils down to the balancing test discussed in *Young, Dreisonstok* and *Dyson*.
70. Dreisonstok v. Volkswagenwerk, A.G., 489 F.2d 1066 (4th Cir. 1974).