SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
*RESIDENT JUDGE*

NEW CASTLE COURT COURTHOUSE
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**RE: Natalie Wolf, as the Administratrix of the Estates of Joy L. Ward, John B. Ward, and Sarah J. Ward and as Guardian and Next Friend of Hailey Ward, a minor, v. Toyota Motor Corporation, Toyota Motor Sales USA, Inc., and CF Schwartz Motor Co., Inc., C.A. No. N11C-08-149 RRC**

Submitted: March 6, 2013
Decided: May 29, 2013

On Defendants' Motion for Leave to File a Third-Party Complaint.
**DENIED**.

Dear Counsel:

Plaintiffs Hailey Ward and Estates of Joy L. Ward, John B. Ward, and Sarah J. Ward claim that defects in the Wards' 2007 Toyota Camry's design aggravated or "enhanced" their injuries in a crash. Defendants Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc., and C.F. Schwartz Motor Co., Inc. (collectively, "Toyota") contend that Darien Custis' and John F. Warfield's negligence caused the Wards' crash and contributed to their injuries and deaths. Therefore, Toyota asks the Court for leave to file a third-party complaint against Custis and Warfield. But because their alleged negligence did not legally cause the Wards' alleged additional injuries, the motion is **DENIED**.

## I. FACTS

On August 23, 2009, the Wards – mother Joy L. Ward, father John B. Ward, and daughters Sarah J. Ward and Hailey Ward – were heading north on State Route 30 in Sussex County.[1] While driving his father's Mercedes-Benz south, Darien Custis reached for a bottle of iced tea on the car's floor.[2] The Mercedes-Benz crossed the center line and struck the front of the Wards' 2007 Toyota Camry.[3] Joy, John, and Sarah died; Hailey and Custis lived.[4] Custis later pled guilty to the vehicular homicides of Joy, John, and Sarah.[5]

Natalie Wolf, the administratrix of Joy's, John's, and Sarah's estates and Hailey's guardian and next friend, has sued Toyota, claiming that the Camry was not "crashworthy."[6] Plaintiffs' only claim is that defects in the Camry's design

[1] Compl. ¶ 7.

[2] Def.'s Mot. Ex. 1 ¶ 7.

[3] Compl. ¶ 7; Def.'s Mot. Ex. 1 ¶ 7.

[4] Compl. ¶¶ 8-12.

[5] Def.'s Mot. Ex. 1 ¶ 9.

[6] Compl. ¶¶ 14-34.

"enhanced" the Wards' injuries.[7] Plaintiffs did not sue Custis or John F. Warfield, the owner of the Mercedes-Benz and Custis' father.[8]

On May 31, 2012, the Court ordered that Plaintiffs and Toyota join any other parties by November 21, 2012.[9] On this day, Toyota filed the instant motion, in which it asked the Court for leave to implead Custis and Warfield under Superior Court Civil Rule 14(a).[10]

In the Motion, Toyota argues that Custis' and Warfield's negligence was a legal cause of the Wards' "enhanced" injuries.[11] On this basis, Toyota asserts that it may implead Custis and Warfield because, if Toyota is found liable, then

1. Toyota, Custis, and Warfield are joint tortfeasors,

2. thus Toyota has a right to indemnity or contribution from Custis and Warfield.[12]

Further, Toyota claims that denying the Motion would prejudice Toyota because the jury will empathize with the Wards' surviving daughter, Hailey Ward, and assign a greater share of liability to Toyota, as it will appear that no other source of recovery is available to her.

In opposition, Plaintiffs respond that Toyota, Custis, and Warfield are not joint tortfeasors because Plaintiffs seek damages only for harm separate and distinct from the harm that Custis' and Warfield's negligence inflicted.[13] That is,

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[7] Compl. ¶¶ 14-34; Pl.'s Resp. ¶ 2.

[8] But Warfield's insurer has paid $300,000 – the maximum under his policy – to settle Plaintiffs' possible claims against Custis and Warfield. Pl.'s Supp. Resp. ¶ 4.

[9] Trial Scheduling Order, May 31, 2012.

[10] Def.'s Mot. 1, 3.

[11] Def.'s Mot. ¶¶ 17, 22.

[12] Def.'s Mot. ¶ 8.

[13] Pl.'s Resp. ¶ 2.

Plaintiffs argue that Custis' and Warfield's negligence was not a legal cause of the Wards' "enhanced" injuries and hence Toyota may not implead Custis and Warfield.[14]

## II. DISCUSSION

Superior Court Civil Rule 14(a) permits a defendant to implead a third party if it "is or may be liable to" the defendant for at least part of the plaintiff's claim.[15] This Court has long recognized the Rule's importance in enforcing the right of contribution:

> The effect of this rule, in an action based on negligence, is to permit a defendant to implead joint tort-feasors from whom he may be entitled to contribution of all or part of the claim asserted against him by the plaintiff.[16]

A defendant may implead a third party under Rule 14(a) if the defendant and the third party are joint tortfeasors with regard to the plaintiff because

1. a right of contribution exists among them,[17] and

2. the defendant's right to contribution from the third party is contingent on the success of the plaintiff's claim.[18]

Toyota may implead Custis and Warfield under Rule 14(a) if Toyota, Custis, and Warfield are jointly and severally liable to Plaintiffs for the Wards' "enhanced" injuries – those which occurred because the Camry was not "crashworthy."[19]

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[14] Pl.'s Supp. Resp. ¶ 3.

[15] Super. Ct. Civ. R. 14(a).

[16] *Ingerman v. Bonder*, 77 A.2d 591, 592 (Del. Super. 1950).

[17] 10 *Del. C.* § 6302(a).

[18] *Daystar Constr. Mgmt., Inc. v. Mitchell*, 2006 WL 2053649, at *11 (Del. Super. July 12, 2006) (citing *McMichael v. Del. Coach Co.*, 107 A.2d 895, 896 (Del. 1954)).

[19] 10 *Del. C.* § 6301.

In the Complaint, Plaintiffs allege that the Wards' Camry was not "crashworthy" because defects in the car's design aggravated the Wards' injuries.[20] Plaintiffs thus seek damages for the harm that the Wards suffered over and above what the collision would have caused but for the defects.[21] Plaintiffs must prove that the alleged defects in the Camry's design inflicted additional harm to the Wards:

> To establish proximate cause in a crashworthiness case, the plaintiff must offer evidence that, but for the design defect, the injuries would not have been enhanced. In other words, there must be evidence that the design defect caused injuries over and above those that would have resulted had the product been properly designed.[22]

Plaintiffs can prevail only if they present evidence that would allow the jury to divide the Wards' injuries among the two possible causes.[23] If Plaintiffs prevail, then Toyota is liable for a distinct subset of the Wards' injuries – the additional harm – but Toyota is not liable for any other harm because the alleged defects did not cause the crash:

> Any design defect not causing the accident would not subject the manufacturer to liability for the entire damage, but the manufacturer should be liable for that portion of the damage or injury caused by the defective design over and above the damage or injury that probably would have occurred as a result of the impact or collision absent the defective design.[24]

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[20] Compl. ¶¶ 14-34.

[21] Compl. ¶¶ 14-34; Pl.'s Resp. ¶ 2.

[22] *Lindahl*, 706 A.2d at 532 (citing *Gen. Motors Corp. v. Wolhar*, 686 A.2d 170, 176 (Del. 1996)) (footnote omitted).

[23] *Id.*

[24] *Larsen v. Gen. Motors Corp.*, 391 F.2d 495, 503 (8th Cir. 1968).

Further, Custis and Warfield are not liable for the additional harm because their negligence did not proximately or legally cause it.[25]

Under Delaware law, an act legally causes an injury only if, but for the act, the injury would not have happened; that is, the act must be a necessary condition for the injury's occurrence:

> Delaware recognizes the traditional "but for" definition of proximate causation. Under the "but for" test, "[t]he defendant's conduct is a cause of the event if the event would not have occurred but for that conduct; conversely, the defendant's conduct is not a cause of the event, if the event would have occurred without it." Put another way, "a proximate cause is one which in natural and continuous

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[25] In *Meekins v. Ford Motor Co.*, the Court held that Delaware's comparative negligence statute, 10 *Del. C.* § 8132, applied to "crashworthiness" claims and that a plaintiff's negligence in causing the crash was a defense. 699 A.2d 339, 346 (Del. 1997). The *Meekins* court concluded that the plaintiff's negligence was a proximate cause of any "enhanced" injuries:

> [The plaintiff's] approach ignores the well established rule of proximate cause. It is obvious that the negligence of a plaintiff who causes the initial collision is one of the proximate causes of all of the injuries he sustained, whether limited to those the original collision would have produced or including those enhanced by a defective product in the second collision.

*Id.* The *Meekins* court did not discuss whether a defect in a car's design is a supervening cause. And, in *dicta*, the court noted that a jury should consider the fault of every party that proximately caused "enhanced" injuries:

> But what if a plaintiff collides with another vehicle and the driver of that vehicle is negligent? Assume also that the enhanced injuries caused to the plaintiff by a design defect in his car are clearly identifiable. Under ordinary rules of proximate cause the other driver would have potential liability for all of the plaintiff's injuries, but logically, following the enhanced injury theory of the plaintiff, only the manufacturer should have the liability because the other driver's conduct in causing the initial collision would not have caused the injury absent the design defect. Thus, carrying the theory to its logical conclusion, plaintiff should have no recovery against the other driver for his negligence in causing the collision. This result would run counter to well settled principles of tort law.
>
> Our tort law has historically recognized the fact that there may be more than one proximate cause of an injury.

*Id.* at 345. In the above quote, the *Meekins* court addressed the issued before this Court hypothetically. This *dicta* is not persuasive, and no court in Delaware has apparently ever cited *Meekins*. This Court respects the holding in *Meekins* but declines to follow its *dicta* to the extent that it is contrary to the holding of this opinion.

> sequence, *unbroken by any efficient intervening cause*, produces the injury and without which the result would not have occurred."[26]

Custis' and Warfield's negligence did not legally cause the Wards' "enhanced" injuries because any defect in the Camry's design is an "efficient intervening cause," or a "superseding cause." In general, Toyota has a "duty to use reasonable care in the design of its vehicle[s] to avoid subjecting the[ir] user[s] to an unreasonably risk of injury in the event of a collision.[27] And once the Mercedes-Benz hit the Camry, Toyota's duty displaced part of Custis' and Warfield's duty to prevent harm resulting from their negligence. In other words, part of Custis' and Warfield's duty shifted to Toyota, which was in the best position to prevent any "enhanced" injuries. Any defect is thus a "superseding cause":

> [W]hen . . . the court finds that full responsibility for control of the situation and prevention of the threatened harm has passed to [a] third person, his failure to act is then a superseding cause, which will relieve the original actor of liability.[28]

Further, this conclusion does not eviscerate the doctrine of comparative fault because the claim itself embraces a scheme of comparative fault.

In 1968, when the U.S. Court of Appeals for the Eighth Circuit decided *Larsen v. General Motors Corp.*,[29] the seminal case on the "crashworthiness" doctrine, the rule of contributory negligence still prevailed in 43 States.[30] The rule was, simply put, too harsh; it barred recovery even if the plaintiff's negligence was slight:

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[26] *Soterion Corp. v. Soteria Mezzanine Corp.*, 2012 WL 5378251, at *17 (Del. Ch. Oct. 31, 2013) (alterations in original) (emphasis added) (footnotes omitted); *accord Duphily v. Delaware Elec. Co-op., Inc.*, 662 A.2d 821, 828-29 (Del. 1995).

[27] *Larsen*, 391 F.2d at 502.

[28] *Spicer v. Osunkoya*, 32 A.3d 347, 351 (Del. 2011) (quoting Restatement (Second) of Torts § 452 com. f (1965)).

[29] 391 F.2d 495 (8th Cir. 1968).

[30] Gary T. Schwartz, *Contributory and Comparative Negligence: A Reappraisal*, 87 Yale L.J. 697, 697 (1978).

> Except where the defendant has the last clear chance, the plaintiff's contributory negligence bars recovery against a defendant whose negligent conduct would otherwise make him liable to the plaintiff for the harm sustained by him.[31]

Courts subsequently recognized exceptions to the rule, including the last clear chance rule.[32] In some sense, the *Larsen* court followed this trend because the "crashworthiness" claim effectively imposed a scheme of comparative fault:

> [T]he concept of "enhanced injury" effectively apportions fault and damages on a comparative basis; defendant is liable only for the increased injury caused by its own conduct, not for the injury resulting from the crash itself.[33]

Notions of comparative fault and apportionment are essential to the "crashworthiness" claim.

In evaluating a "crashworthiness" claim, the jury must apportion liability between

1. the party that caused the collision, and

2. the party that designed the car.

The "crashworthiness" claim's parameters strictly regulate this process. The second party is liable only for "enhanced" injuries. And the first party is not liable for those injuries because the collision is not a proximate cause of them; the collision merely provides a chance for any defect in the car's design to inflict harm.[34] This allocates liability to the party in the best position to prevent

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[31] Restatement (Second) of Torts § 467 (1965).

[32] Malcolm M. MacIntyre, *The Rationale of Last Clear Chance*, 53 Harv. L. Rev. 1225, 1225 (1940).

[33] *D'Amario v. Ford Motor Co.*, 806 So.2d 424, 433 (Fla. 2001) (quoting *Jimenez v. Chrysler Corp.*, 74 F. Supp. 2d 548, 566 (D.S.C. 1999)) (emphasis omitted), *superseded by statute*, Fla. Laws c. 2011-215, § 2.

[34] *D'Amario*, 806 So.2d at 437.

"enhanced harm" because the first party cannot right the core problem by simply driving safer.

Accidents are probable, if not inevitable, as the *Larsen* court recognized:

> [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 are statistically inevitable.
>
> The intended use and purpose of an automobile is to travel on the streets and highways, which travel more often than not is in close proximity to other vehicles and at speeds that carry the possibility, probability, and potential of injury-producing impacts. . . .[35]

The parties that design cars are in the best position to prevent future "enhanced" harm. And drivers are still incentivized to drive safely because they are liable for any harm that people would suffer even if no defects aggravated their injuries.

Because the collision's cause – Custis' and Warfield's negligence – is not a proximate cause of the Wards' injuries for which Plaintiffs seek relief,

1. Toyota, Custis, and Warfield are not joint tortfeasors because their actions did not concur to produce the Wards' alleged "enhanced injuries,"[36] and

2. thus Toyota has no right to contribution that is contingent on the success of Plaintiffs' claims.[37]

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[35] *Larsen*, 391 F.2d at 502 (footnote omitted).

[36] *Campbell v. Robinson*, 2007 WL 1765558, at *2 (Del. Super. June 19, 2007) (quoting *Leishman v. Brady*, 2 A.2d 118, 120 (Del. Super. 1938)); *see also Sears, Roebuck & Co. v. Huang*, 652 A.2d 568, 573 (Del. 1995) ("Multiple defendants may be liable as joint tortfeasors if each defendant's negligence is found to be a proximate cause of a plaintiff's injury.").

## III. CONCLUSION

Toyota argues that Custis' and Warfield's negligence caused all of the Wards' injuries. But this is a defense – not a basis for a third-party claim.[38] Plaintiffs' claim presupposes that the collision hurt the Wards; their claims turn on the *difference* between

1. the harm that the Wards suffered due to the collision, and

2. the harm that the Wards would have suffered during the collision if their car was reasonably safe, merchantable, and fit for its particular purpose.

Because the collision's cause is not a proximate cause of the Wards' additional injuries, the motion is **DENIED**.[39]

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[37] The Court notes that although Defendants have known that Custis and Warfield were possible third-party defendants since at least the start of this litigation, Defendants waited until the last day to try to implead the two. Trial in this case is currently scheduled for 20 days in April, 2014.

[38] Rule 14(a) does not allow a defendant to substitute another party as the primary defendant to the plaintiff's claim. *Ingerman*, 77 A.2d at 592.

[39] Toyota argues that *Campanella v. General Motors Corp.*, C.A. No. 92C-10-126 (Del. Super. Aug. 8, 1993) (Del Pesco, J.) (ORDER) controls the disposition of the Motion. Toyota is mistaken. In *Campanella*, the plaintiffs claimed that defects in a 1989 Chevrolet Blazer's design caused the collision that injured them:

> At the time of the accident, the Chevy Blazer was in a defective condition unreasonably dangerous to plaintiffs in that . . . the braking system and its component parts malfunctioned in causing the wheels to lock thereby causing the vehicle to hydro-plane out of control.

Compl. at ¶ 9(d), *Campanella v. General Motors Corp.*, C.A. No. 92C-10-126 (Del. Super. Oct. 13, 1992). The plaintiffs then concluded:

> While the brake defects may have been a cause of the accident itself, the other defects described above caused enhanced or additional injuries.

*Id.* at ¶ 10. Because both the defendants and the car's driver allegedly caused the collision, Superior Court Civil Rule 14(a) allowed the defendants to implead the driver and contend that they had a right to contribution from her because her negligence also caused the collision that

**IT IS SO ORDERED.**

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Richard R. Cooch, R.J.

**cc:** Prothonotary

hurt the plaintiffs. But unlike in *Campanella*, Plaintiffs do not allege that the defects in the Camry's design caused the collision that hurt them. For this reason, the *Campanella* order does not control the Motion's disposition.