

## PRODUCT LIABILITY

SEPTEMBER 2017

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*In Mazda Motor Corp v. Hurtz, the Alabama Supreme Court ruled that the trial court properly admitted expert testimony in a products liability trial. The issue on appeal was whether the plaintiffs' expert's testimony was "scientific" as envisioned by the Alabama Rules of Evidence.*

## Alabama Supreme Court Evaluates Ala. R Evid. 702(b)/Daubert in the Context of Crashworthiness Cases

### ABOUT THE AUTHORS



**David L. Brown, Jr.** is a member with Watkins & Eager PLLC in Birmingham, Alabama. His practice is focused in the areas of automotive liability, product liability, professional liability, medical malpractice, employment litigation and general insurance litigation defense. David has successfully handled and tried cases on behalf of several major automobile manufacturers, recreational vehicle manufacturers, agricultural vehicle manufacturers and hospitals in Alabama, Georgia, Mississippi, South Carolina and Arkansas. David is a member of the Product Liability, Diversity, and Medical Defense & Health Law Committees of the International Association of Defense Counsel. He can be reached at [dbrown@watkinseager.com](mailto:dbrown@watkinseager.com).



**J. Patrick Strubel** is a member with Watkins & Eager PLLC in Birmingham, Alabama. His practice focuses on product liability cases involving automobile manufacturers, recreational vehicle manufacturers, agricultural equipment manufacturers and medical malpractice claims involving physicians, nursing facilities, hospitals and pharmacies in state and federal courts in Alabama, Mississippi and throughout the Southeastern United States. Patrick is a member of the Product Liability and Medical Defense & Health Law Committees of the International Association of Defense Counsel. He can be reached at [pstrubel@watkinseager.com](mailto:pstrubel@watkinseager.com).

### ABOUT THE COMMITTEE

The Product Liability Committee serves all members who defend manufacturers, product sellers and product designers. Committee members publish newsletters and *Journal* articles and present educational seminars for the IADC membership at large and mini-seminars for the committee membership. Opportunities for networking and business referral are plentiful. With one listserv message post, members can obtain information on experts from the entire Committee membership. Learn more about the Committee at [www.iadclaw.org](http://www.iadclaw.org). To contribute a newsletter article, contact:



**Janelle L. Davis**  
Vice Chair of Newsletter  
Thompson & Knight LLP  
[janelle.davis@tklaw.com](mailto:janelle.davis@tklaw.com)

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## Introduction

Alabama applies a strict liability version of product liability law through the Alabama Extended Manufacturer Liability Doctrine (AEMLD). Under that doctrine, a plaintiff must satisfy a jury that the subject product was in a defective and unreasonably dangerous condition when it reached the consumer. In almost all situations, expert testimony is required to prove that the product was defective. For an expert's testimony to be admissible, the offering party must satisfy the requirements of Alabama Rule of Evidence 702.<sup>1</sup> In a recent opinion, *Mazda Motor Corporation v. Hurst*, 2017 Ala. LEXIS 66 (July 7, 2017), the Alabama Supreme Court analyzed the admissibility of an expert's testimony in the context of *Alabama Rule of Evidence* 702(b) in a vehicle crashworthiness case.

## Factual Background

In *Mazda Motor Corporation v. Hurst*, two teenagers were involved in an accident on the morning of November 22, 2010.<sup>2</sup> The vehicle was being driven by Sydney McLemore ("Sydney") and Natalie Hurst ("Natalie") was the right front passenger. They were traveling approximately 55-60 mph in a 35 mph speed zone when Sydney lost control of the vehicle

and impacted a light pole on the driver side. Subsequently, a post-collision, fuel-fed fire ensued.<sup>3</sup> Sydney received third degree burns to approximately 15% of her body and Natalie died inside the vehicle from burn related injuries.<sup>4</sup>

A wrongful death claim was filed by Natalie's parents and Sydney also brought a personal injury claim for the injuries that she sustained. They both alleged that the subject vehicle was not crashworthy because its fuel system was not effectively designed in that the vehicle had a plastic fuel tank which was positioned one-half inch from the steel muffler that had a sharp protruding edge. The protruding edge allegedly punctured the fuel tank during impact with the pole allowing gasoline vapors to escape and ignite resulting in the post-collision fuel-fed fire.<sup>5</sup>

After trial, the jury awarded Natalie's estate \$3.9 million and Sydney \$3 million in compensatory damages and \$3 million in punitive damages.<sup>6</sup> Mazda appealed the verdict and challenged the admissibility of the plaintiffs' design defect/causation expert's testimony.<sup>7</sup>

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<sup>1</sup> The Alabama Legislature in 2011 amended Ala. Code §12-21-160 to apply the *Daubert* "science" standard for expert testimony in certain cases, including "all civil state court actions commenced on or after January 1, 2012." §12-21-160(d). In November 2012, the Alabama Supreme Court amended Rule 702 of the *Alabama Rules of Evidence* in an effort to make Rule 702 "consistent" with §12-21-160.

<sup>2</sup> *Id.* at \*1.

<sup>3</sup> *Id.* at \*1-\*2.

<sup>4</sup> *Id.* at \*2.

<sup>5</sup> *Id.* at \*2-\*3.

<sup>6</sup> *Id.* at \*17.

<sup>7</sup> *Id.* There were several other appellate issues raised by Mazda on appeal in addition to this issue.

## Admissibility of Expert Testimony Under Ala. R. Evid. 702(b)

The plaintiffs offered the testimony of expert Jerry Wallingford as a design defect/causation expert.<sup>8</sup> Mazda contended that Wallingford's testimony should have been excluded because it was expert testimony based upon a scientific theory, principle, methodology or procedure as articulated by *Alabama Rule of Evidence* 702(b) and that he represented his own opinions to be "scientific."<sup>9,10</sup> Plaintiffs' counsel's position was that Wallingford's opinions were not "scientific" and were based upon his knowledge and expertise in automotive design issues.

Wallingford testified that the exhaust and fuel system of the subject vehicle were defective in that the plastic fuel tank should not have been located within the vicinity of the steel muffler which had the sharp protruding edge which punctured the fuel tank. He also testified that the vehicle should have had a steel shield to protect the plastic fuel tank.<sup>11</sup>

In reaching his opinions, Wallingford testified that he used the scientific method which

required him to examine information to determine what happened in the accident and to solve the failure analysis.<sup>12</sup> As part of the work that he did for the specific case, Wallingford stated that he used the same methodology he has used for decades in evaluating the alleged design defect and the cause of the fire in this case.<sup>13</sup> He twice inspected and photographed the subject vehicle.<sup>14</sup> He reviewed accident-scene photographs taken by the police, and he factored in witness and expert deposition testimony.<sup>15</sup> He used measuring equipment to map the crush of the subject vehicle, and he compared it to an exemplar vehicle so that he could measure how far various component parts were displaced from their original locations during the accident.<sup>16</sup> He relied upon his specialized knowledge of failure analysis as well as his experience with fuel tanks in studying automotive fuel-fed fires.<sup>17</sup> Accordingly, plaintiffs' counsel argued that Wallingford's testimony represented the application of his knowledge and experience to the testimony from other witnesses and to comparisons of the subject vehicle to other vehicles.<sup>18</sup>

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<sup>8</sup> *Id.* at \*21.

<sup>9</sup> *Id.* at \*22.

<sup>10</sup> *Alabama Rule of Evidence* 702 provides as follows:

"(a) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

"(b) In addition to the requirements in section (a), expert testimony based on a scientific theory, principle, methodology, or procedure is admissible only if: (1) The testimony is based on sufficient facts or

data; (2) The testimony is the product of reliable principles and methods; and (3) The witness has applied the principles and methods reliably to the facts of the case."

<sup>11</sup> *Id.* at \*14.

<sup>12</sup> *Id.* at \*29.

<sup>13</sup> *Id.* at \*31.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

The Alabama Supreme Court ultimately upheld the trial court's decision to allow Wallingford to testify. The Court ruled that the testimony was properly admitted because it was based upon Wallingford's specialized knowledge and experience in the automotive industry and not based upon "scientific theory, principle, methodology or procedure" as envisioned by Rule 702(b).<sup>19</sup>

into other areas where expert "scientific" opinions have historically been subject to review under *Alabama Rule of Evidence* 702(b).

### Conclusion/Takeaway

From a practical standpoint, offering expert opinions regarding the design of a vehicle and the cause of a post-collision fuel-fed fire would seem to be scientific in nature. While the Alabama Supreme Court did not define "scientific" in the context of this decision. However, a broad interpretation of the opinion could mean that an expert only has to show that he or she has specialized knowledge or experience working in a particular field before they can offer expert opinions on what appear to be very technical issues. This holding could also be expanded beyond the context of automotive litigation

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<sup>19</sup> *Id.* at \*28-29.

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