



## Texas Pattern Jury Charge Expanded in Product Liability Cases

The Texas Supreme Court has examined two of the definitions contained in the Texas Pattern Jury Charge (“PJC”) – “manufacturing defect” and “producing cause” – and found them to be insufficient. On December 21, 2007, the court issued its opinion in *Ford v. Ledesma*.<sup>i</sup> The case involves a strict products liability cause of action where the only allegation asserted is that the vehicle in question had a manufacturing defect. The jury found for the plaintiff and Ford appealed.

The instruction that was submitted to the jury in this case, and of which Ford complains, is verbatim that contained in the Texas Pattern Jury Charges.<sup>ii</sup> It reads as follows:

Was there a manufacturing defect in the automobile at the time it left the possession of *ABC Company* that was a producing cause of the [occurrence] [injury] [occurrence or injury] in question?

A “defect” means a condition of the product that renders it unreasonably dangerous.

An “unreasonably dangerous” product is one that is dangerous to an extent beyond that which would be contemplated by the ordinary user of the product, with the ordinary knowledge common to the community as to the product’s characteristics.

“Producing cause” means an efficient, exciting, or contributing cause that, in a natural sequence, produces the [occurrence] [injury] [occurrence or injury]. There may be more than one producing cause.

First, Ford maintains this instruction is improper because it does not include the requirement that a manufacturing defect “must deviate from its specifications or planned output in a manner that renders the product unreasonably dangerous.” The court agrees recognizing that the “deviation from specifications” or “planned output requirement” is a standard it adopted for manufacturing defect cases a decade ago.<sup>iii</sup> Such a requirement “serves the essential purpose of distinguishing a manufacturing defect from a design defect.” Further, without this portion of the definition, a jury can – improperly – premise liability on a belief that a product failure, standing alone, is enough to find a product defect. The court reiterates that while a plaintiff in a product liability case does not need to prove manufacturer negligence, a plaintiff must still identify the deviation from the design that caused the injury.

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In its second point relating to the charge, Ford complains that the PJC definition of producing cause is also improper. While recognizing that it has in the past employed that very definition, the court admits that it is incomplete and of little concrete guidance to a jury. Accordingly, the court finds that a more appropriate and easily understood definition is that proposed by Ford: producing cause is a substantial factor in bringing about an injury, and without which the injury would not have occurred; there may be more than one producing cause. In the court's opinion, this definition conveys the two essential components of producing cause: the cause must be a *substantial cause* and a *but-for cause*.

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### END NOTES:

<sup>i</sup>*Ford v. Ledesma*, No. 05-0895, 2007 WL 4465732, (Tex. Dec. 21, 2007)

<sup>ii</sup>Comm. on Pattern Jury Charges, State Bar of Texas, Texas Pattern Jury Charges – Malpractice, Premises & Products §§70.1. 71,3.

<sup>iii</sup>*American Tobacco v. Grinnell*, 951 S.W.2d 420, 434 (Tex. 1997)

*This article is not intended as legal advice to a specific problem or issue. If you have a question about this opinion, please contact the Powers & Frost attorney with whom you work or Lori Wiese, Partner, Head of Product Liability Litigation.*

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