Strict Products Liability Design Defect Claims – How Much Protection Do Industry Standards Provide?

A manufacturer’s compliance with industry standards may provide some protection against strict products liability design defect claims. Manufacturers facing a strict products liability design defect claim can feel some measure of comfort from a decision earlier this year in Howard v. Omni Hotels Management Corporation (2012) 203 Cal.App.4th 403, 136 Cal.Rptr.3d 739, where the Court of Appeal ruled that a manufacturer’s compliance with industry standards and regulations can be relevant to the issue of defective design, in light of all other relevant circumstances, even if such compliance is not a complete defense.

Analysis of Howard

The Howard case involved Ronald Howard, a guest at an Omni Hotel, who slipped and fell in a bathtub that was manufactured by Kohler. Howard brought claims for negligence and strict products liability based on design defect against Kohler.

In its motion for summary judgment, Kohler presented expert testimony that the bathtub design complied with the industry standards concerning the level of friction coefficient – the coating of the anti-slip surface – used for the bathtub floor. Additionally, Kohler presented evidence that it used proper methods of testing and quality control, and that it lacked prior notice of similar problems with the bathtub surface to suggest that the product was unreasonably dangerous.

In his opposition to the motion, Howard presented the opinions of his expert who conceded that Kohler met the industry standard for the anti-slip surface of the tub, but nonetheless opined that the industry standard was a “very, very lenient” one, and that the standard was “so low that it is very slippery.” Instead, Howard’s expert opined that in order to satisfy the basic principles of forensic safety, a higher coefficient of friction should have been applied to the bathtub’s surface.

The trial court granted summary judgment, finding that Howard’s expert failed to create a triable issue of material fact because this expert failed to provide sufficient factual support to show that a higher standard should be applied under the circumstances. The trial court also found that Kohler’s compliance with industry standards, in part, was sufficient to defeat Howard’s negligence claim against it.

On appeal, the Howard Court noted that both parties offered expert testimony about the effect of Kohler’s compliance with industry standards. This was significant to the Court’s initial determination to apply the
risk benefit analysis, as opposed to the consumer expectations test, to evaluate the products liability claim. The Court noted that in addition to the safety and adequacy of the product, Howard’s own expert also addressed the industry standards, which would not be appropriate evidence to show what an ordinary consumer would or should expect.

Applying the risk benefit analysis, the Court then acknowledged the rule that a manufacturer cannot defend a product liability action with evidence it met the industry’s customs or standards on safety [citing Buell-Wilson v. Ford Motor Co. (2006) 141 Cal.App.4th 525, 545, 46 Cal.Rptr. 3d 147]. This is because in strict liability actions, the issue is not whether defendant exercised reasonable care. However, the Court also noted that while a manufacturer’s compliance with industry standards is not a “complete defense” to a strict products liability design defect claim, it was not irrelevant and should be taken into account as part of the design defect balancing process that is used to determine whether the product’s design was an acceptable compromise of competing considerations.

In Howard, the Court noted that although industry safety standards alone would not be dispositive, Kohler had presented other evidence through Kohler’s testing processes and its quality control and monitoring methods to show that the product design was not defective. The Court found that there were no prior similar accidents to place the manufacturer on notice that its product was unreasonably dangerous. Kohler also presented argument to show that using a higher coefficient of friction was not a feasible alternative design, as consumers do not want to bathe on a concrete surface.

In light of the evidence submitted by Kohler, the Court noted that to overcome the summary judgment, Howard and his expert were obligated to give a greater factual basis to justify applying a higher safety standard for this product design. The Court found that no such basis was presented and no triable issue was raised by Howard, and then affirmed the trial court’s summary judgment as to the strict products liability claim. Similarly as to the negligence claim, the Court noted that Howard’s expert failed to show why the quality control procedures used by Kohler or the industry standards that it followed were inadequate, and found that Howard’s expert offered only conclusionary opinions that were insufficient to raise a triable issue of material fact concerning the negligence claim.

As shown by the Howard decision, a manufacturer’s compliance with industry safety standards in designing the product, in light of all other applicable circumstances, can be relevant to the risk-benefit analysis used to demonstrate that the product’s design was not defective.

**Limitations to Howard**

The holding in Howard should be balanced with another recent decision out of the 9th Circuit last year in Oswalt v. Resolute Industries, Inc., 642 F.3d 856 (2011), in which the Court did not give much weight to a manufacturer’s compliance with industry safety standards.
Oswalt involved a products liability design defect claim that was brought against Webasto, the manufacturer of a heater unit on a boat, after the heater unit caught on fire when the repairman failed to securely cut off the power to the unit.

One of the issues presented on appeal of a summary judgment motion was whether Webasto’s failure to include an automatic current shutoff device made the heater unit’s design defective, even though this failure did not violate industry safety standards. The Oswalt Court (applying the federal common law of maritime torts and the principles in the Restatement (Third) of Torts: Products Liability) noted that a manufacturer’s compliance with applicable safety standards did not insulate a manufacturer from defective product claims. The Oswalt Court found that although Webasto’s failure to use a proposed alternative design did not violate any industry rules or standards, a genuine issue of material fact existed as to whether Webasto’s failure to do so made the heater’s design unreasonably dangerous and whether the alternative design was feasible. Under these circumstances, the Oswalt Court did not give much weight to industry standards or the manufacturer’s compliance with them.

With the limitations of Oswalt in mind, the Howard decision may provide manufacturers with some protection in defending against claims for strict products liability design defect under the appropriate circumstances. Under Howard, a manufacturer’s compliance with industry standards can be relevant to a risk-benefit analysis to evaluate whether a product design is defective. However, as illustrated by these cases, the impact of the manufacturer’s compliance with industry standards should nonetheless be viewed on a case-by-case basis.