

CAUSE OF INITIAL INCIDENT INADMISSIBLE

by Ted Babbitt -- February 2002

In D'Amario v Ford Motor Company, 26 F.L.W. S772 (Fla. Nov. 21, 2001), the Supreme Court does more than hold that in crashworthiness cases the cause of the initial accident is not relevant to a suit against a vehicle manufacturer based upon a product defect which causes an enhanced injury. That opinion also reaffirms the law of Florida that in other instances, such as medical malpractice cases, the cause of the original incident is not relevant or admissible in a suit for the subsequent enhanced injury.

Ford Motor Company v D'Amario, 732 So.2d 1143 (Fla. 2nd DCA 1999) and Nash v General Motors, 734 So.2d 437 (Fla. 3rd DCA 1999) were both product liability cases in which the manufacturer of a car was sued for an alleged defective design which increased the injury to the plaintiff after an initial automobile accident. In both cases, the original accident was caused by a drunken driver and in both cases the evidence relating to the inebriation of that driver and his actions were admitted into evidence. The Second District affirmed and the Third District reversed thus creating the conflict which led to the Supreme Court's jurisdiction.

The Court reviewed numerous out of State opinions which went both ways on the question of whether the cause of the original accident in the crashworthiness case was admissible in a subsequent suit against the designer

of plaintiff's vehicle. In concluding that the Florida law favors the view that the initial cause of the accident was irrelevant in considering the negligent design of the vehicle, the Court relied on prior medical malpractice cases. At Page 776 the Court stated:

In the context of a medical neglect case, for example, courts in this state have concluded that (1) the cause of an initial injury which may require medical assistance is not ordinarily considered as a legal cause of injuries resulting from the subsequent negligence of the medical-care provider; and (2) an initial wrongdoer who causes an injury is not to be considered a joint tortfeasor with a subsequent medical provider whose negligence enhances or aggravates injuries caused by the initial wrongdoer. In other words, in cases involving medical malpractice, the cause of the underlying condition that brought the patient to the professional, whether a disease or an accident, is not to be compared to the cause of the independent enhanced injury allegedly resulting from medical neglect. See *Frank M. Stuart, M.D., P.A. v Hertz Corp.*, 351 So.2d 703 (Fla. 1997).

The Court cites with approval *Whitehead v Linkous*, 404 So.2d 377 (Fla. 1st DCA 1981). In that case, the plaintiff's decedent attempted suicide by taking a quantity of Valium and alcohol. That decision stands for the proposition that that kind of evidence is not only irrelevant, it is inadmissible in a subsequent medical malpractice case. It is presupposed that some disease or condition

exists in a malpractice case which causes the plaintiff to seek medical care. The cause of that initial problem is totally irrelevant to the question of whether the plaintiff is treated appropriately once the plaintiff comes under a doctor's care. In Whitehead the Court stated:

A remote condition or conduct which furnishes only the occasion for someone else's supervening negligence is not a proximate cause of the result of the subsequent negligence. . . . Since Whitehead's death would not have occurred 'but for' the negligent acts or omissions of the hospital and the doctor, those acts and omissions must be deemed the cause of the injury. See *Fellows v Citizens Savings & Loan Association Of St. Lucie County*, 383 So.2d 1140 (Fla. 4th DCA 1980); *Bryant v Jax Liquors*, 352 So.2d 542 (Fla. 1st DCA 1977). Stated differently, any conduct on Whitehead's part before he entered the hospital which contributed to his cardiac and pulmonary arrest and subsequent death was not a proximate, legal cause *of the damages sought in this case*.

The Court reasoned that product liability cases are no different than malpractice cases in the sense that cars are built with the anticipation that they will get involved in an accident. The cause of the accident is irrelevant to the question of whether the car is defective because it is unable to withstand the anticipated force of a collision or so unstable as to roll over when presented with the necessary evasive maneuver. At Page 776 the Court puts it as follows:

Thus, crashworthiness cases involve separate and distinct injuries – those caused by the initial collision, and those subsequently caused by a second collision arising from a defective

product. We agree that when viewed in this light, crashworthiness cases may be analogized to medical malpractice cases involving a successive negligent medical provider who is alleged to have either aggravated an existing injury or caused a separate and additional injury. Thus, just as the injury-causing fault of the patient in *Whitehead* was held not relevant in assessing the doctor's subsequent and separate negligence, the accident-causing fault of the driver would not be relevant in crashworthiness cases in assessing a manufacturer's neglect in designing an automobile or its parts. The initial accident merely furnished the occasion for the manufacturer's fault to be tested.

The Third District opinion in Nash, supra, relied upon the proposition that a driver who drives intoxicated is committing an intentional act and thus, would be excluded as a Fabre defendant. The Court disagrees with this reasoning and finds to the contrary that mere intoxication does not qualify a driver as an intentional tortfeasor within the meaning of third party liability law. Instead the Court concludes that in a product liability case the initial tortfeasor who causes the accident is not a joint tortfeasor and, thus, can't be considered a third party defendant. The Court expressly overrules Kidron, Inc. v Carmona, 665 So.2d 289 (Fla. 3rd DCA 1995) which held that an automobile manufacturer could apportion fault with a plaintiff based upon the plaintiff's contributory negligence in causing the initial accident.

The reasoning of the Supreme Court in this case is important in a number of contexts. This case is applicable to any situation in which an injury is enhanced because of independent negligence of a third party. Whether an

automobile accident places the plaintiff in danger so that a subsequent accident occurs, a tortfeasor creates circumstances which result in the need for the use of a product or an injury causes the need for medical care, the individual who caused the first accident or injury can't be joined as a third party Fabre defendant because that party's negligence is irrelevant to the issue of the subsequent actions of the defendant. This opinion deeply erodes Fabre v Marin, 623 So.2d 1182 (Fla. 1993) and will have significant impact on a number of cases.