TRADITIONAL AEMLD v. CRASHWORTHINESS v. BREACH OF WARRANTY

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I. HISTORICAL BACKGROUND OF PRODUCTS LIABILITY

The tort theory known as products liability has developed over numerous years in response to the development of an industrial society and the public policy need to protect consumers from defective and unreasonably dangerous products.

> The history of developing products liability law reflects society's attempt to balance its need for industrial expansion with the desire to protect the consuming public from unreasonably dangerous products.

Atkins v. American Motor Corp., 335 So. 2d 134, 137 (Ala. 1976). Specifically, products liability law has developed separately from general negligence law and contract law. Products liability developed as a separate area of law due to several proof problems associated with traditional notions of negligence and contract law when a plaintiff attempted to sue a product manufacturer.

Contract warranty law presented hurdles such as privity requirements, potential disclaimers of warranties, and notice requirements of breach of warranty. In many cases, a consumer was unable to bring a personal injury action under warranty against the product manufacturer because of the lack of privity or for failure to give appropriate notice. Where consumers attempted to sue product manufacturers for negligence, it was very difficult, if not impossible, to prove that the manufacturer breached the standard of care in relations to the complex manufacturing process of consumer goods.

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Early products law recognized the consumer's difficulty in bringing actions against products manufacturers. As a result American courts began to slowly change the heavy burden of proof placed on an injured consumer bringing suit against a products manufacturer. One of the earlier cases to recognize the draconian effect of privity rule was *MacPherson v. Buick Motor Co.*, 111 N.E. 1050 (1916). The *MacPherson* opinion, written by Justice Cordozo, effectively did away with the privity requirement in negligence based products liability cases.

> The majority of American Courts, including those of Alabama quickly adopted the reasoning of *MacPherson* and abandoned the technical requirement of privity in negligence actions against product manufacturers.

Martin, *Alabama's Extended Manufacturers Liability Doctrine*, Am.J. Trial Advoc., Volume 13:987, (Spring 1990). However, the *MacPherson* opinion did not address the difficulties plaintiffs had in proving that the manufacturer breached the standard of due care. Therefore, the only avenue left to injured consumers who could not meet the burden of proof in a negligence case was a contract based theory of implied warranty.

The primary impediment to a breach of warranty case against a product manufacturer was, again, the requirement of privity. However, the New Jersey Supreme Court removed the privity requirement in personal injury cases based on breach of implied warranties in *Henningsen v. Bloomfield Motors, Inc.*, 161 A. 2d 69 (1960). However, Alabama refused to eliminate the privity requirement in products liability actions based on breach of warranty. *Martin* at 987 (citing *Harnischfeger Corp. v. Harris*, 190 So. 2d 286, 290 (Ala. 1966)). Instead, the Alabama Supreme Court left it to the legislature, with the adoption of the Uniform Commercial Code, to abolish the privity requirement in personal injury actions based upon breach of warranty.

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Finally, in 1962 the California Supreme Court established the basis for modern products liability law, in *Greenman v. Yuba Power Products*, 377 P.2d 897 (Cal.1962). In *Greenman*, the California Supreme Court became the first American jurisdiction to impose strict tort liability upon a product manufacturer. Following the *Greenman* opinion, the American Law Institute adopted §402A of the Restatement (Second) of Torts. Specifically, this section provides, in its entirety, that:

> (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
>
> (a) the seller is engaged in the business of selling such a product and
>
> (b) It is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.
>
> (2) The rule stated in Subsection (1) applies although
>
> (a) the seller has exercised all possible care in the preparation and sale of his product, and
>
> (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

The Restatement adopted a strict liability version of products law which was similar to the approach taken by the *Greenman* Court. The Restatement's approach to strict liability in tort for product manufacturers effectively eliminated the requirement of proving fault required in a negligence action and eliminated the need of privity. Following the American Institute's adoption of §402A, most jurisdictions adopted and currently utilized the Restatement's approach to strict liability in tort focusing on the "condition of the product" and the manufacturer's conduct in placing an

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unreasonably dangerous product in the stream of commerce rather than focusing on the "due care" of the manufacturer in creating the product.

Unlike most jurisdictions, the Alabama Supreme Court did not and has not embraced §402A of the Restatement (Second) of Torts. Instead, Alabama adopted a hybrid theory of tort liability for defective products. See *e.g., Casrell v. Altec Industries*; 335 So. 2d 128 (Ala. 1976); and *Atkins v. American Motor Corp.*, 335 So. 2d 134 (Ala. 1976). Alabama's version of strict liability retains a "fault" based approach to products liability rather than pure strict liability, "condition of the product", as with §402A.

II. ALABAMAS EXTENDED MANUFACTURER'S DOCTRINE

A. Theory of Liability

Alabama's early products liability law was a fault based theory called the "Manufacturer's Liability Doctrine". See *e.g., Defore v. Bourjois, Inc.*, 105 So.2d 846 (Ala. 1958). As mentioned above, the Alabama Supreme Court eliminated the privity requirement for negligence actions under this doctrine, but the Court refused to eliminate the privity requirement in warranty actions. In personal injury warranty based actions privity remained a requirement until the Alabama Legislature adopted the Uniform Commercial Code. However, Alabama's "Manufacturer's Liability Doctrine" made it easier for an injured plaintiff to bring suit against a manufacturer for a defective product. One of the leading cases setting forth the requirements to establish a claim under the "Manufacturer's Liability Doctrine" was *Norton Company v. Harrelson*, 176 So.2d 18 (Ala.1965).

Under the "Manufacturer's Liability Doctrine", a plaintiff must establish:

The defendant must be either the manufacturer or seller of the injury -

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> producing article. There is no privity of contract between the defendant and the injured plaintiff. At the time complained of the article must have been applied to the use for which it was manufactured and sold and that use must be in the usual and customary manner. Where these circumstances exist the manufacturer or seller will be liable for an injury proximately resulting from the use of the article, but only where the article is inherently or imminently dangerous to human life or health, or become so when put to its intended use in the proper manner. This liability arises from either the negligent manufacture of the article or negligence in selling it.

Harrelson, 176 So.2d at 20-21. Unlike the current "Extended Manufacturer's Liability Doctrine", the "Manufacturer's Liability Doctrine" required the plaintiff to establish that a manufacturer failed to exercise due care in the manufacture or design of its product.

Alabama's current products liability law was officially adopted in 1976 in the companion cases of *Casrell v. Altec Industries* and *Atkins v. American Motors Corp.*. While Alabama's Supreme Court refused to adopt §402A of the Restatement (Second) of Torts as its product law, its version is very similar. To establish liability under the AEMLD a plaintiff must prove:

> (1) he suffered injury or damages to himself or property by one who sells a product in a defective condition unreasonably dangerous to the plaintiff as the ultimate user or consumer, if
>
> (a) the seller is engaged in the business of selling such a product and;
>
> (b) is expected to and does reach the user or consumer without substantial change in the

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condition in which it is sold.

(2) Showing these elements, plaintiff has proved a prima facie case although

(a) the seller has exercised all possible care in the preparation and sale of his product and

(b) the user or consumer has not bought the product from or entered into any contractual relations with, the seller.

Casrell at 133. While a plaintiff must show a product is defective there is not need to also establish that it is unreasonably dangerous. The Alabama Supreme Court has determined that the words "defect" and "unreasonably dangerous" are essentially synonymous. A product is "defective" if it is not "fit for its intended purpose". Id. A "defect" in a product renders it "unreasonably dangerous". Id. As in a negligence case, whether a product is "unreasonably dangerous" is usually a question for the trier of fact. Id. If it is determined that a product is defective, the fault or negligence of the manufacturer is predicated upon its conduct in placing the product into the stream of commerce.

> In other words, the fault or negligence of the defendant is that he has conducted himself in a negligent manner by placing a product on the market causing personal injury or property damage, when used to its

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> intended purpose. As long as there is a causal relationship between the defendant's conduct and the defective product, he is held liable for he has created an unreasonable risk of harm.

Casrell at 132.

As stated above, liability of a products manufacturer in Alabama is predicated upon their "conduct" in placing a defective, unreasonably dangerous product into the stream of commerce. The focus is not on whether the manufacturer conducted himself in a reasonable manner in producing the particular product. Instead, the focus is on whether the manufacturer placed a defective product in the marketplace. Thus, the focus is on "conduct", not the "condition of the product." As such, Alabama's product law, while not strict liability as under §402A, is a hybrid "fault" (conduct) based concept which is predicated more on the manufacturer's conduct in selling a defective product than purely looking at the "condition of the product" as a basis for liability. Because Alabama's product law remains fault based, it is subject to certain legal defenses that are available in a negligence case, unlike claims under §402A where such defenses would not necessary be available or consistent, since liability is based solely on the "condition of the product" and not related to "fault" or "conduct" of the defendant.

B. Defenses to Liability

Under the AEMLD a manufacturer can defend on several affirmative defenses. First, a supplier or seller of a product may avoid liability by establishing the defense of "lack of causal connection". *Atkins v. American Motor Corp.*, 335 So.2d 134 (Ala. 1976). While the AEMLD applies equally to a supplier or seller as to a manufacturer, if the supplier can prove that the product came to him in a closed container he may avoid liability. If the supplier can show that he had no

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duty or no opportunity to inspect or observe the product to become aware of the defect claimed by the plaintiff he can claim lack of causal connection between his conduct and the plaintiff's injury. Essentially, the supplier must show that he received the product in a defective condition and played no part in creating this condition. Second, as with other negligence cases, the affirmative defenses of assumption of the risk, and contributory negligence are also available. Id. However contributory negligence is not a defense as it relates to accident causation. APJI 32.19; *General Motors v. Saint*, 646 So.2d 564 (Ala.1994) and *Dennis v. American Honda Motor Co.*, 585 So.2d 1336 (Ala.1991). These conduct based defenses are essentially established in this same manner as would be in a negligence case. This is also a unique aspect of the AEMLD. Because the AEMLD is fault based, the Court has determined it consistent to allow defenses based upon conduct of the Plaintiff. Other jurisdictions that have adopted pure §402A have experienced difficulty in reconciling its "condition of the product" premise of liability with "fault" based defenses.

Lastly, a manufacturer can raise the affirmative defense of product "misuse". This defense is generally distinguishable from contributory negligence and assumption of the risk, if it applies when a Plaintiff uses a product in a manner not foreseeable to the manufacturer. However, the Court has equated contributory negligence with misuse. See *Dennis*, supra.

C. **Damages**

Damages available under the AEMLD for personal injury are the same as in any other neglegence case or wrongful death action. Both compensatory and punitive damages can be sought under the AEMLD. Property damage is also recoverable with certain exceptions. Generally, damage to the product itself is not recoverable under the AEMLD. Additionally, purely economic damages related to the use of a *commercial* produce are not recoverable. *Lloyd Wood Coal Co. v.*

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Clark Equip. Co., 543 So. 2d 671 (Ala. 1989). These type damages relate more to contract and warranty theories than the AEMLD.

III. CRASHWORTHINESS DOCTRINE

A. Theory of Liability

The Alabama Crashworthiness Doctrine is a subcategory of the AEMLD. "The Crashworthiness Doctrine" or the "Enhanced Injury Doctrine" relates to those products liability cases involving a defective automobile or vehicle. An example of this type products case would be a claim against a car manufacturer for a defective seat belt. If a plaintiff is injured in a two car collision while wearing his seat belt, the plaintiff may claim that his injuries were secondary or enhanced due to a design defect in the seat belt although the seat belt design did not cause the accident. In other words, the design defect that enhanced the plaintiff's injury was not the direct or proximate cause of the accident, but the proximate cause of the plaintiff's injuries. The gravamen of a crashworthiness claim is not accident causation but rather injury causation. See, *e.g., Dennis v. American Honda Motor Co., Inc.*, 585 So. 2d 1336 (Ala. 1991). While most American jurisdictions have adopted a crashworthiness doctrine establishing that a manufacturer can be liable for a plaintiff's enhanced injuries in a collision, the Alabama Supreme Court did not adopt this doctrine until 1985 in *General Motors Corp. v. Edwards*, 482 So. 2d 1176 (Ala. 1985).

In a crashworthiness case, a plaintiff not only has to prove the elements necessary to establish a claim under the AEMLD, but must also prove "that a safer, practical, alternative design was available to the manufacturer at the time it manufactured the automobile. The existence of a safer, practical alternative design must be proven by plaintiff by showing that:

(a) The plaintiff's injuries would have been eliminated or in some

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way reduced by the use of the alternative design, and that;

(b) The utility of the alternative design outweighed the utility of the design actually used. . . ."

APJI 32.22.

While a crashworthiness claim requires proof of additional elements, the claim may be altogether preempted by Federal law. The National Highway Traffic Safety Administration regulates a number of automobile design aspects via the Federal Motor Vehicle Safety Standards. A number of courts, both state and federal, have held that certain claims are preempted by the Federal Motor Vehicle Safety Act and common law products liability claims may not be raised against car manufacturers based on certain defects. See *e.g. Schwartz v. Volvo North American Corp.*, 554 So. 2d 927 (Ala. 1989) (holding that claims related to failure of a manufacturer to install an airbag are preempted by Federal law); and *Irving v. Mazda Motor Corp.*, 136 F3d 764 (11th Cir. 1998) (holding that certain claims alleging seatbelt design defects are preempted by Federal law).

B. Defenses to Liability

Defenses to a crashworthiness claim are generally the same as those for an AEMLD claim.

C. Damages

Again, damages under a crashworthiness claim are the same as in an AEMLD action.

IV. BREACH OF IMPLIED WARRANTY

A. Theory of Liability

Traditionally, a plaintiff's ability to recover under breach of warranty theories was restricted due to privity and notice requirements. Fortunately, Alabama's adoption of the Uniform

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Commercial Code has made breach of implied warranty a viable products liability theory because it has eliminated the privity and notice requirements that previously existed. Ala. Code (1975) § 7-2-314 and §7-2-315 set forth the implied warranties of merchantability and fitness for a particular purpose. These warranties can attach to any consumer product unless excluded or limited by disclaimers meeting the requirements of Ala. Code (1975) §7-2-316. However, implied warranties cannot be limited or excluded with regard to personal injury. See §7-2-316 (5).

As mentioned above the UCC has eliminated the privity requirement through §7-2-318 which extends the benefit of implied warranties "to any natural person if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section." Additionally, the UCC eliminated the requirement of an injured person to notify the manufacturer or seller that a breach of implied or express warranties occurred. *Simmons v. Clemco Indus.*, 368 So. 2d 509 (Ala. 1979). The UCC also extended the statute of limitations for a person injured by a breach of warranty. The statute of limitations for a warranty claim begins to run from the date of injury and not from the date of delivery of the product if same is a consumer good. *Simmons v. Clemco Indus.*, 368 So. 2d 509 (Ala. 1979). To establish liability for breach of implied warranty for personal injury requires different proof than a claim under the AEMLD. See *Shell v. Union Oil,* 489 So. 2d 569, 571 (Ala. 1986); and *Tucker v. GM,* 1998 Westlaw 178780 (Al.Civ.App. April 17, 1998). APJI lists the items of proof to establish a breach of warranty of merchantability a plaintiff must prove:

1. That the defendant was a merchant or seller with respect to goods of the same kind as the product or article in question, in this case _____;

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2. The defendant sold the product or article in question;

3. That product or article in question was used for the ordinary purposes for which such products are used.

4. That the product or article in question was defective, or unmerchantable, *i.e.* not fit for the ordinary purposes for which such products are used;

5. That a defect or defects in the product or article proximately caused injury to the plaintiff.

APJI 32.02

In other words, a product is not merchantable if it is not "fit for the ordinary purposes for which such goods are used; . . ." Ala. Code (1975), § 7-2-314. In fact, in products liability cases, the Alabama Supreme Court has defined "defective" as follows:

> 'Defectiveness' under the AEMLD has been defined by [The Supreme Court] to mean that the product does not meet the reasonable expectations of an ordinary consumer as to its safety, *i.e.*, that the product is not reasonably safe for its intended purpose and use.

Ammons v. Massey-Ferguson, Inc., 663 So. 2d 961,965 (Ala. 1995)(citing *Townsend v. General Motors Corp.*, 642 So. 2d 411 (Ala. 1994); and *Casrell v. Altec Industries, Inc.*, 335 So. 2d 128 (Ala. 1976)). With the exception of the word "safe" the AEMLD definition of "defective" is identical to the requirements of merchantability set out in § 7-2-314. Therefore, in a breach of warranty claim, if a product does not meet the reasonable expectations of an ordinary consumer as to its intended purpose and use, the warranty of merchantability has been breached. Unlike a claim for AEMLD, to establish that a product is **not merchantable**, a plaintiff does not need to provide expert testimony. *Tucker* at 3.

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To prove a claim for breach of implied warranty of fitness for a particular purpose a plaintiff must establish essentially the same elements as with the warranty of merchantibility but must also establish:

(1) The seller has reason to know the buyer's particular purpose;

(2) The seller has reason to know that the buyer is relying on the seller's skill or judgment to furnish the appropriate goods; and

(3) The buyer, in fact, relied upon the seller's skill or judgment.

Tucker at 6. Again, the elements can be established without the need or requirement of expert testimony. Id.

B. Defenses to Liability

While the breach of warranty theories have advantages, there are several draw backs to their use. In most cases involving economic or property damage, breach of warranty theories do not apply to the manufacturer of the product and the requirement of privity and notice have not been eliminated. See *e.g.*, *Rhodes v. General Motors Corp.*, 621 So. 2d 945 (Ala. 1993); *Wellcraft Marine v. Zarzour*, 577 So. 2d 414 (Ala. 1990); *Tucker v. General Motors Corp.*,*supra.* Only in cases involving personal injury has the privity requirement and notice requirement been eliminated by the adoption of the UCC. Therefore, absent personal injury a manufacturer can raise the privity defense to a UCC implied warranty claim. While an implied warranty theory has restrictions for property damage cases, the theories can be very useful to a personal injury plaintiff. As stated above the burden of proof can be easier than an AEMLD claim and the applicable defenses can be beneficial. A claim for breach of warranty is essentially a contract claim and eliminates the defendant's ability to raise assumption of the risk or contributory negligence as a bar to the

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plaintiff's recovery. Essentially, the defendant is restricted to the customary contract defenses and the plaintiff's conduct is not an issue.

C. Damages

Since a breach of warranty claim is essentially one of contract, punitive damages are not available in either a property damage or personal injury case. In most cases, the only damages available are those which place the plaintiff in a position they would have been in had the warranty not been breached. However, the plaintiffs would be entitled to incidental and consequential damages arising out of the breach of warranty. In a personal injury case this can be significant in that it allows for recovery of pain and suffering, medical expenses, permanent injury and other typical personal injury damages. Additionally, breach of warranty claims are limited to some degree by the UCC where only economic damages are claimed. In such an instance, privity of contract is required. *AGIO Indus. Inc. v. Delta Oil Co.*, 485 So. 2d 340 (Ala.Civ.App. 1986). Additionally, where only economic damages are sought, there can be no claim for breach of an implied warranty against a manufacturer without privity. *Wellcraft Marine Div. of Genmar Indus., Inc. v. Zarzour,* 577 So. 2d 414 (Ala. 1990).

D. Other Warranty Limitations

Alabama law is not clear on the exact application of implied warranty claims in conjunction with personal injury damages related to a defective product. The only case in Alabama to truly address the dichotomy between breach of warranty claims for personal injury and personal injury claims under the AEMLD is *Shell v. Union Oil*, 489 So. 2d 569 (Ala. 1976). In explaining the difference between the two claims the *Shell* Court stated:

> [The] law, whose statutory language makes no reference to tort law

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> in connection with products liability concerns itself with the quality of the product by establishing standards of merchantability for a particular purpose . . .[While the tort law] concerns itself with safety standards by imposing strict liability upon the one who sells an unreasonably dangerous product which causes physical harm. The consideration supporting either of the principles are not affected by the considerations underlying the other and the standards of quality of a product, with the intended risk of the bargain are entirely distinct from its standards of safety, with a possible unreasonable risk of harm. It follows that a violation of the standard of safety which results in physical harm to the unreasonably dangerous product itself subjects the seller to tort rule of strict liability.

Shell at 571 (quoting *Mid-Continent Aircraft Corp. v. Curry County Spraying Service, Inc.*, 553 S.W. 2d 935, 940 (Tex.Civ.App. 1977)). The Court further stated that the issue of whether a product is reasonably dangerous is not one properly brought under the warranty theories of the UCC but are more properly raised under the AEMLD.

> The implied warranty mandated by this section of the UCC is one of *commercial* fitness and suitability, and a private right of action is afforded only where the user or consumer is injured by the breach of that *warranty*. That is to say, the UCC does not impose upon the seller the broader allegation to warn against health hazards inherent in the use of the product when the warranty of commercial fitness has been complied with.

Shell at 572.

In *Shell*, the plaintiffs, employees of Goodyear, who had contracted cancer after being in contact with a product used by Goodyear in its industrial process and manufactured by the defendant. The plaintiffs alleged that the product was not fit for its intended purpose because it allegedly caused their cancer. The product in question had been developed to Goodyear's specifications for use in its manufacturing process. The Court reasoned that under the particular circumstances the plaintiffs' remedy was outside the scope of the UCC and should be brought under the AEMLD.

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In *Shell*, because the product at issue was manufactured to Goodyear's specifications and suited for its purpose in Goodyear's manufacturing process, the issue of its defectiveness was related to its safety and not whether the product was of good commercial quality. Therefore, the question for a plaintiff, particularly a personal injury plaintiff, is whether claims for breach of warranty relate to the safety of a product or to its commercial quality. For example, if a plaintiff is injured in automobile collision while wearing a defective seat belt, does a breach of warranty claim exist or is the only remedy under the AEMLD and the crashworthiness doctrine? There are no Alabama cases that address this issue. Obviously, if a seat belt fails to properly restrain an occupant as it is required to do under Federal Motor Vehicle Safety Standards, there can be an argument that the seat belt fails to meet commercial quality standards as well as safety standards. However, if one can present a legitimate argument with regard to quality issues, the plaintiff's burden is substantially lessened in establishing liability. If a seat belt does not meet commercial quality standards, it appears that a plaintiff could recover by establishing that the seat belt does not meet the reasonable expectations of a consumer, thereby establishing liability without the need of proving a better alternative to design under the crashworthiness doctrine. Again, there are no Alabama cases addressing this issue but taking the theories to their logical conclusion it would appear that a personal injury plaintiff can pursue warranty claims with regard to commercial quality rather than focusing on the unreasonably dangerous nature of a product to establish a product "defect".

In the case of used automobiles, the Alabama Supreme Court has also held that there are no implied warranties. *Kilbourne v. Henderson*, 65 So. 2d 533 (Ala.Civ.App. 1953); *Trax, Inc. v. Tidmore*, 331 So. 2d 275 (Ala. 1976); and *Osbourne v. Custom Truck Sales and Service, Inc.*, 562 So.2d 243 (Ala. 1990). However, the Court's pronouncement in this area all involved economic and

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not personal injury damages. In fact, there appear to be no Alabama cases on the issue of whether an implied warranty attaches to a used automobile for personal injuries. Recent Alabama Supreme Court opinions on this issue all rely on the opinion in *Kilbourne v. Henderson*, supra, which was a case decided prior to the adoption of the UCC in Alabama. It was decided based upon the old Uniform Sales Act. In fact, in *Trax, Inc. v. Tidmore*, supra, the Supreme court states that there have been no cases in Alabama on this issue since the adoption of the UCC. Again, the *Tidmore* case involves purely economic damages and the Court states that its holding in *Tidmore* is specific to that particular case and the facts before it and that it does not make any general holding as to whether an implied warrant attaches to a used vehicle in all circumstances. Therefore, it seems inevitable that the rule in Alabama, under the UCC, is that no implied warranties exist in a case involving purely economic damages. However, it can be argued in the case of personal injury, that implied warranties do attach to used vehicles. Ala. Code (1975), § 7-2-316 (5) states as follows:

> Nothing in subsection (2) or subsection (3) (a) or in § 7-2-317 shall be construed so as to limit or exclude the seller(s) liability for damages for injury to the person in the case of consumer goods.

Therefore, it is arguable that the UCC states that in the case of personal injury, an implied warranty cannot be limited or modified and attaches to used vehicles with regard to personal injuries. Again, there are no Alabama cases which address this issue.

V. CONCLUSION

Alabama's products liability law has developed under the premise of protecting consumers. Although the development of our products liability law has eased the burden of proof required of a plaintiff, there still remains several technical issues related to establishing liability that have yet to be resolved. As mentioned above, there are several issues related to warranty theories that have not

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been addressed. Additionally, there are numerous issues related to how the plaintiff's conduct can or should be used as a defense to products liability claims that have not been fully developed. Therefore, while the casual observer may think our products liability law is fully developed, we still have room for improvement.

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