

# The Limited Scope of Contributory Negligence in AEMLD-Crashworthiness Cases

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## In the July 2012 issue of *The Alabama Lawyer*,

an advocacy piece was written by several well-respected members of the Alabama State Bar who primarily defend automobile manufacturers in product liability lawsuits. Their article was entitled *Crashworthiness-Based Product Liability and Contributory Negligence in the Use of the Product*.<sup>1</sup> The sole premise of the article was to contend that contributory negligence, no matter the factual situation, is an absolute defense in any AEMLD case. Hence, they proclaimed that “there should never be a difference between available defenses in what some may deem a ‘traditional’ AEMLD case as opposed to a ‘crashworthiness’ case.”<sup>2</sup> In making this argument, though, the authors ignored Alabama precedent

holding that contributory negligence is different in a crashworthiness-based claim. Alabama law is clear. In a crashworthiness case, contributory negligence is not a defense unless the plaintiff negligently uses the product component (usually a safety device such as a seat belt) that plaintiff has alleged caused or enhanced his *injury*. Contributory negligence is not a defense when the plaintiff negligently causes the *accident*.<sup>3</sup> A crashworthiness case, which is also referred to as the “second collision doctrine” or “enhanced injury doctrine,” focuses on whether the alleged defect in a motorized vehicle caused or enhanced the injury, not whether a defect caused the accident.<sup>4</sup> Any other reading of the case law contravenes the very purpose of the AEMLD and crashworthiness doctrine—to protect consumers from unreasonable risk of harm caused by manufacturers placing defective products on the market.

The dispute revolves around the difference between negligence as to the product as a whole (e.g., driving the car) versus negligence as to the defective component or safety feature alleged to have caused or enhanced injury (e.g., miswearing a seat belt). Only the latter is appropriate in crashworthiness—the seat belt should not fail whether the driver, a third party or unavoidable circumstances caused the collision.

The Supreme Court of Alabama created the Alabama Extended Manufacturer's Liability Doctrine (AEMLD) in 1976 when it handed down the simultaneous decisions of *Casrell v. Altec Industries, Inc.*, and *Atkins v. American Motors Corp.*<sup>5</sup> The AEMLD was not a pure strict liability doctrine. Instead, the court adopted a fault-based liability doctrine.<sup>6</sup> “The fault of the manufacturer, or retailer, is that he has conducted himself unreasonably in placing a product on the market which will cause harm when used according to its intended purpose.”<sup>7</sup> The manufacturer's liability was subject to certain limited affirmative defenses, i.e., contributory negligence, assumption of the risk, misuse of the product and lack of causal relation.<sup>8</sup>

In 1985, the Supreme Court of Alabama adopted the “crashworthiness doctrine” with its landmark decision in *General Motors Corporation v. Edwards*.<sup>9</sup> In *Edwards*, the court found that, “while a manufacturer is under no duty to design an accident-proof vehicle, the manufacturer of a vehicle does have a duty to design its product so as to avoid subjecting its user to an unreasonable risk of injury in the event of a collision.”<sup>10</sup> A crashworthiness case is one in which the defect in the product “is not alleged to have caused the collision but only to have caused the injuries suffered therein.”<sup>11</sup> The court noted that:

[C]ollisions are a statistically foreseeable and inevitable risk within the intended use of an automobile, which is to travel on streets, highways, and other thoroughfares, and that, while the user must accept the normal risk of driving, he should not be subjected to an unreasonable risk of injury due to a defective design.<sup>12</sup>



## The plaintiff's negligence relating to accident causation should not bar recovery.



Therefore, a crashworthiness case focuses on the injury and not the accident. The Supreme Court of Alabama noted that the crashworthiness doctrine met “the purpose of the AEMLD, which is to protect consumers against injuries caused by defective products.”<sup>13</sup>

*Edwards* did not create a new cause of action separate from the AEMLD but rather a new theory that could be brought under the AEMLD.<sup>14</sup> The Supreme Court of Alabama recognized that the elements of proof necessary to establish a crashworthiness claim are the same elements necessary to prove an AEMLD claim.<sup>15</sup> That is, regardless of which theory a plaintiff alleges, he must prove that a defect in the

product proximately caused his injury.<sup>16</sup> It is the application of the available defenses, though, which distinguishes a crashworthiness claim from the broader AEMLD claim. In crashworthiness cases, contributory negligence is limited to the plaintiff's failure to use reasonable care in using the product alleged to be defective, such as not properly wearing a defective seatbelt.<sup>17</sup> Defendant motor vehicle manufacturers hotly dispute this established doctrine by arguing that a plaintiff's allegedly negligent driving should always be considered in every crashworthiness case because, after all, “a product is still a product, and negligence is still negligence.”<sup>18</sup> To accept this argument, though, is to completely ignore the essence of a crashworthiness case as set forth in *Edwards*—since accidents are foreseeable, an individual should not be put at a greater risk of injury due to a product component that does not perform as intended in an accident.<sup>19</sup>

### Under *Dennis*, Accident Causation Is Not a Defense To a Crashworthiness Claim

The debate over the application of contributory negligence under the AEMLD began with *Dennis v. American Honda* when the Supreme Court of Alabama held that contributory negligence relating to accident causation would not bar recovery under the AEMLD.<sup>20</sup> In *Dennis*, a motorcyclist suffered permanent brain damage when his motorcycle collided with a log truck.<sup>21</sup> The plaintiff argued that the helmet was defective and did not provide adequate protection.<sup>22</sup> The defendant countered that the plaintiff was driving negligently and did not properly use the motorcycle.<sup>23</sup> The defendant argued that the plaintiff caused his own injuries by causing the accident with the truck,<sup>24</sup> and, thus, that any alleged defect in the helmet did not cause plaintiff's injuries.<sup>25</sup> In holding that the defense of contributory negligence as it applied to accident causation was not a defense to recovery in AEMLD actions, the supreme court stated:

A plaintiff's mere inadvertence or carelessness in causing an accident should not be available as an affirmative defense to an AEMLD action. To allow a plaintiff's negligence relating

to accident causation to bar recovery will go against the purpose of the AEMLD, which is to protect consumers from defective products. The defense of contributory negligence in an AEMLD action should be limited to assumption of the risk and misuse of the product. The plaintiff's negligence relating to accident causation should not bar recovery.<sup>26</sup>

Defense attorneys, however, continually downplay and ignore *Dennis*, and, instead, point to *Williams v. Delta Machinery*,<sup>27</sup> *Haisten v. Kubota Corp.*<sup>28</sup> and *Burleson v. RSR Group Florida, Inc.*<sup>29</sup> to argue that contributory negligence in causing an accident is allowed under the AEMLD. Their reliance is misplaced, primarily because none are crashworthiness cases. In *Williams v. Delta Machinery*, the plaintiff lost his little finger and most of his thumb while pushing a board across an expandable dado blade.<sup>30</sup> The plaintiff sued

under the AEMLD. The jury returned a general verdict in favor of the defendants, and the plaintiff appealed, asking the Supreme Court of Alabama to determine whether the rule in *Dennis* applied.<sup>31</sup> Although the plaintiff did not object to the trial court charging the jury on contributory negligence, the court addressed the "specific holding" of *Dennis* "because there appears to be some confusion."<sup>32</sup> The court attempted to clarify its decision in *Dennis* with the following:

If the contributory negligence instruction had been limited to the plaintiff's failure to exercise reasonable care in his wearing of the helmet (i.e., if it had related to an alleged product misuse), then such an instruction would have been proper under this Court's previous interpretations of the AEMLD . . . The trial error in *Dennis* was in not limiting the contributory negligence

charge to the plaintiff's use of the helmet as opposed to the plaintiff's allegedly negligent operation of his motorcycle.<sup>33</sup>

The *Williams* court held that *Dennis* did not prohibit the use of contributory negligence in that case where the plaintiff's "negligence was predicated solely upon his misuse of products—the table saw and the dado blade—neither of which was a safety device being used as intended by the manufacturer to protect people from negligent acts."<sup>34</sup> Therefore, *Williams* affirmed the holding in *Dennis*: contributory negligence in AEMLD cases is limited to circumstances where the plaintiff has failed to use reasonable care in using the defective product and limited, when the alleged defect is in a safety device, to contributory negligence in the use of the safety device itself. The *Williams* court did nothing to change the *Dennis* rule as it applies to crashworthiness cases.

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“contributory negligence can be a defense to an AEMLD action under certain situations,” and that the only situation appropriate for contributory negligence was one in which the plaintiff fails to use reasonable care with regard to the product alleged to be defective.

In *Haisten v. Kubota Corp.*, a plaintiff sued the tractor manufacturer and distributor when his Kubota tractor rolled over, causing the rotary blade to seriously injure his legs.<sup>35</sup> Haisten argued that the Kubota tractor was defective in design because it did not contain a rollover protection system (ROPS).<sup>36</sup> At trial, the defendants introduced evidence that the plaintiff was negligent in operating the tractor because he was operating the tractor on a sloping bank; when the rear tires started to spin, the plaintiff put the tractor in reverse, causing the tractor to slide further down the slope; and, finally, when the tractor started to overturn, the plaintiff jumped off, causing the rotary blade to injure the plaintiff’s legs.<sup>37</sup> Clearly, this was not a second collision, or an enhanced-injury crashworthiness case. The *Haisten* court affirmed the giving of a contributory-negligence charge in a single paragraph, citing *General Motors v. Saint* for the propositions that “contributory negligence can be a defense to an AEMLD action under certain situations,” and that the only situation appropriate for contributory negligence was one in which the plaintiff fails to use reasonable care with regard to the product alleged to be defective.<sup>38</sup> The *Haisten* court did not address the *Edwards* distinction between a defect “alleged to have caused the collision” and a defect that “subjects its user to an unreasonable risk of injury in the event of a collision.”<sup>39</sup> The *Haisten* court thus did nothing to change the *Dennis* rule as it applies to crashworthiness cases.

Furthermore, both *Williams* and *Haisten* involved separate claims of negligence, in addition to AEMLD claims.<sup>40</sup> The trial courts let both claims go to the jury in both trials, making a contributory negligence charge appropriate in those cases.<sup>41</sup>

In *Burleson v. RSR Group Florida, Inc.*,<sup>42</sup> plaintiff’s decedent Burleson was injured while hanging his revolver in its holster on a gun rack at his home. The revolver fell and fired a bullet into Burleson’s abdomen, killing him. Although Burleson was described by his family at trial as “safety conscious,” on the day of the accident, Burleson had left the gun loaded, with a bullet in the chamber and *with the safety turned off*. Burleson’s estate sued the gun manufacturer alleging that the gun was defective because it lacked an additional

safety device, i.e., an internal passive safety. The gun manufacturer asserted the defenses of assumption of risk and contributory negligence. The trial court granted summary judgment in favor of the gun manufacturer. On appeal, the Supreme Court of Alabama held that Burleson was contributorily negligent as a matter of law in storing the loaded gun and in failing to engage the manual safety when he should have known the gun was loaded. The *Burleson* court explained:

We conclude that Stanley placed himself in danger’s way by *handling the revolver with the manual safety disengaged* and with the cartridge chambered in line with the hammer and the firing pin. Further, as evidenced by [Burleson’s] awareness of the importance of never storing a loaded firearm, much less one with a cartridge chambered in line with the hammer and the firing pin, we conclude that he should have had a conscious awareness of the danger in which he placed himself.<sup>43</sup>

The court of civil appeals analyzed *Burleson* in *Garrie v. Summit Treestands, LLC*.<sup>44</sup> The court noted that the negligence in *Burleson* was *leaving the manual safety disengaged*.<sup>45</sup> It was Burleson’s negligence in regard to a safety device on the gun (leaving the safety disengaged), not in causing the accident (causing the gun to fall), that determined whether Burleson was contributorily negligent. The *Burleson* court never addressed the *Dennis* rule; therefore, the *Dennis* rule again remained unchanged as it applies to crashworthiness cases.

In summary, the Supreme Court of Alabama has never altered the *Dennis* rule as it applies to crashworthiness or other safety device cases. Contributory negligence is allowed as a defense to an AEMLD claim when the plaintiff has negligently used the product, and that negligence is the cause of the plaintiff’s injury, e.g., failure to properly use a seatbelt.<sup>46</sup> In *Williams*, *Haisten* and *Burleson*, contributory negligence was a defense because none of the cases were classic crashworthiness cases. To the extent that *Haisten* could have been analyzed as a crashworthiness case, the court did not do so. In *Dennis*, contributory negligence was not a defense

because the plaintiff was correctly using his helmet even though the plaintiff allegedly was negligently driving his motorcycle and caused the actual accident. Defendants, in essence, argue that a court should ignore the crashworthiness doctrine adopted in *Edwards*. To accept this argument is to disregard two cases vital to crashworthiness analysis: *Culpepper v. Weihrauch*<sup>47</sup> and *General Motors Corp. v. Saint*.<sup>48</sup>

### **Under the Crashworthiness Doctrine, Contributory Negligence Is Not a Defense Unless the Plaintiff Negligently Used the Defective Component That Caused the Plaintiff's Injury.**

A crashworthiness case is one in which the defect in the product does not cause the accident but nevertheless causes the injury. Unlike other AEMLD cases, contributory negligence is available in crashworthiness-based cases *only* when the plaintiff is negligent in regard to a defective safety device or other aspect of the product that causes or increases the plaintiff's injury, and not when the plaintiff's negligence causes the accident.

In *General Motors Corp. v. Saint*, the plaintiff suffered a severe brain injury when, while driving in her automobile, she lost control and hit a tree.<sup>49</sup> She filed suit against GM under AEMLD "claiming that her car was not crashworthy because . . . the seatbelt assembly failed to protect [her] adequately from the enhanced injuries she sustained in the accident."<sup>50</sup> The jury returned a verdict in her favor, awarding \$13 million.<sup>51</sup> GM appealed, arguing that the verdict should be reversed because the trial court failed to charge the jury on contributory negligence in the use of the seatbelt.<sup>52</sup> The supreme court agreed, holding that GM was entitled to a charge on contributory negligence in the use of the seatbelt because GM had presented evidence that the plaintiff was either not wearing her seatbelt or had introduced the slack in her seatbelt herself.<sup>53</sup> The court determined that because there was evidence that the plaintiff failed to use reasonable care *in wearing her seatbelt*, i.e., introduced slack in her seatbelt herself, GM was entitled to a charge of contributory negligence.<sup>54</sup>

*Notably, the plaintiff in Saint crashed her car into a tree, but any negligence in causing the accident was deemed irrelevant. Again, the court did not alter the Dennis rule as it applies in crashworthiness cases.*

In *Culpepper v. Weihrauch*, the plaintiff was injured while taking her handgun out of her car's glove box. The gun fell and fired a bullet into the plaintiff even though the hammerblock safety was on. The hammerblock safety is a device on the gun that is supposed to prevent "drop-fire" accidents like the one in *Culpepper*.<sup>55</sup> The plaintiff sued the manufacturer of the gun, alleging that the hammerblock safety was improperly designed and manufactured.<sup>56</sup> The plaintiff sought summary judgment on the defendant's affirmative defenses of contributory negligence, assumption of the risk and misuse of the product.<sup>57</sup> The defendant conceded that summary judgment should be granted on the assumption of the risk and misuse of product defenses.<sup>58</sup> *The only issue before the court was whether the plaintiff was entitled to summary judgment on the defendant's contributory negligence defense in the use of the product.*<sup>59</sup> The District Court for the Middle District of Alabama, applying this Alabama law, explained that contributory negligence in an AEMLD case could be divided into two categories: "First, the plaintiff's negligence, or failure to use reasonable care, in actually using the product; second, the plaintiff's negligence in causing the accident in which the product is used."<sup>60</sup> After analyzing the case, the court held that the plaintiff was entitled to summary judgment on the contributory negligence defense because that defense was available only as to the plaintiff's "*misuse of the hammerblock safety, rather than the handgun.*"<sup>61</sup> In short, where the alleged defect is in a safety device, or safety fea-

ture, only contributory negligence in the use of the safety device is a defense, not contributory negligence in use of the product as a whole (i.e., handling the gun).<sup>62</sup> The court noted that "to hold otherwise, would permit [the defendant] to introduce evidence going to Culpepper's contributory negligence related to accident causation, and would directly contravene the Supreme Court of Alabama's decision in *Dennis*."<sup>63</sup> *Culpepper* is thus consistent with the later *Burleson* because the failure to engage the manual safety in *Burleson* was contributory negligence in regard to that safety device.

In *Dennis*, *Saint* and *Culpepper*, the product alleged to be defective was a safety device intended to protect the plaintiff from harm. In *Dennis*, the defective product was a helmet. In *Saint*, the defective component was a seatbelt. In *Culpepper*, the defective component was a hammerblock safety. The courts allowed the plaintiff's negligence to constitute contributory negligence only when the plaintiff failed to use reasonable care in handling the defective component. For example, in *Saint*, there was evidence that the plaintiff had created the slack in her seatbelt.

In *Dennis* and *Culpepper*, the alleged defect was not the cause of the accident but the cause of the injury. In *Dennis*, the plaintiff was properly wearing his defective helmet when his negligent operation of his motorcycle caused the accident. The plaintiff's negligence in causing the accident was inadmissible. In *Culpepper*, the plaintiff had properly engaged her safety but allegedly negligently dropped her gun, causing the accident. The court held that the plaintiff's alleged negligence in causing the accident was not a defense under Alabama AEMLD law. Therefore,



...where the alleged defect is in a safety device, or safety feature, only contributory negligence in the use of the safety device is a defense, not contributory negligence in use of the product as a whole...



[C]ollisions are a statistically foreseeable and inevitable risk within the intended use of an automobile, which is to travel on streets, highways, and other thoroughfares, and that, while the user must accept the normal risk of driving, he should not be subjected to an unreasonable risk of injury due to a defective design.

in a crashworthiness-type case, alleged contributory negligence as to accident causation is not an allowable defense. Evidence of the plaintiff's negligence in causing the accident is never appropriate.

The advocacy piece<sup>64</sup> relies heavily on Judge Albritton's order in *Ray v. Ford Motor Co.*, No. 3:07cv175, 2011 WL 6182531, 2011 U.S. Dist. LEXIS 143249 (M.D. Ala. Dec. 13, 2011), for the proposition that contributory negligence in causing the accident is an absolute defense to crashworthiness claims. To the contrary, Judge Albritton recognized that if the claim in *Ray* had been "a proper 'crashworthiness' claim, the Plaintiffs' negligence [would not be] at issue because 'crashworthiness' claims attempt to compensate plaintiffs for the elevated harm caused by the defendant's defective product and not the harm caused by the accident itself."<sup>65</sup> *Ray* is completely irrelevant to the issue of contributory negligence in a crashworthiness case because the court ruled that the case did *not* present a crashworthiness cause of action.<sup>66</sup>

### Conclusion

The application of contributory negligence in AEMLD and crashworthiness cases is distinctly different. If it is a traditional AEMLD case where the injury and the accident are caused by the same defective product, then the plaintiff's negligence in using the defective product is contributory negligence. If it is a crashworthiness case where a defective component causes the injury but not the accident, then plaintiff's negligence in causing the accident is not admissible. If the plaintiff fails to use reasonable care in using the defective component that causes the plaintiff's injury, however, then contributory negligence is available as a defense. Any other reading of Alabama case law allows manufacturers to escape liability for unreasonably dangerous products even when a plaintiff's negligence is completely unrelated to the plaintiff's use of the defective product.

For example, consider the following fact scenarios. John is driving on Highway 231 to visit his girlfriend Mary in Troy. He is driving at 65 mph, the speed limit. He is wearing his seatbelt. John is distracted momentarily. His vehicle leaves the road and hits a tree. His airbag fails to deploy, and John's head hits

the steering wheel with such impact that he is instantly killed. This is a classic crashworthiness case envisioned by *Edwards*. There are two questions to ask in the analysis. First, what is the unreasonably dangerous product that caused John's death? It is the airbag. Second, was John negligent? Yes, but only in being momentarily distracted, not in using the defective product—the airbag. Thus, only his use of the airbag is relevant as to contributory negligence. The airbag did not cause the accident, but it did cause John to have an injury that he would not have had if the airbag had performed as intended. If the manufacturer's design intent is for an airbag to deploy upon impact to protect an occupant, but the airbag fails to do so and causes an injury that would have not have existed but for that failure, then it is completely irrelevant that John was momentarily distracted before the accident.

Now, consider that John is on Atlanta Highway when he sees a flashy billboard and looks away to check it out. He runs through a red light, T-boning another car. John has no injuries from the impact of the collision but is trapped in his car. Within seconds of the impact, his fuel tank bursts into flames, burning John to death. The fuel tank did not cause the accident, but the fuel tank caused John to die in an accident that produced no injury in and of itself. What is the defectively designed product that caused John's death? It is the fuel tank. Was John negligent? Yes, he was, in looking away from the road and running a red light but not in his use of the fuel tank. If the manufacturer's design intent for the fuel tank is to safely hold fuel without bursting into flames after a collision and the fuel tank fails to do so and causes an injury that would not have existed but for that failure, then it is completely irrelevant that John was momentarily distracted before the accident.

The manufacturer in these scenarios designed both the airbag and the fuel tank for the specific purpose of providing protection to John in these very types of accidents. To accept the defendants' argument that John's momentary distraction before the accident bars any recovery is to allow manufacturers to escape liability for placing defective products on the highway that were supposed to prevent the types of

injuries John received and that the manufacturer designed to specifically prevent.<sup>67</sup>

[C]ollisions are a statistically foreseeable and inevitable risk within the intended use of an automobile, which is to travel on streets, highways, and other thoroughfares, and that, while the user must accept the normal risk of driving, he should not be subjected to an unreasonable risk of injury due to a defective design.<sup>68</sup>

This article's interpretation of Alabama's case law is the only interpretation that reconciles all of the cases concerning the application of contributory negligence in AEMLD and crashworthiness cases. Any other interpretation ignores *Edwards*, *Dennis*, *Saint* and *Culpepper*. | AL

## Endnotes

1. D. Alan Thomas, Paul F. Malek and John Isaac Southerland, *Crashworthiness-Based Product Liability and Contributory Negligence in the Use of the Product*, 73 *Alabama Lawyer* 269 (2012).
2. *Id.* at 269-70.
3. See *Dennis v. American Honda Motor Co.*, 585 So. 2d 1336, 1339 (Ala. 1991).
4. *General Motors Corporation v. Edwards*, 482 So. 2d 1176 (Ala. 1976).
5. 335 So. 2d 128 (Ala. 1976); 335 So. 2d 134 (Ala. 1976).
6. See Edward C. Martin, *Alabama's Extended Manufacturer's Liability Doctrine (AEMLD)*, 133 AM. J. TRIAL ADVOC. 984, 990-94 (1990).
7. *Atkins*, 335 So. 2d 134, 140 (Ala. 1976).
8. *Casrell*, 225 So. 2d at 134; *Atkins*, 335 So. 2d at 143.
9. 482 So. 2d 1176 (Ala. 1985).
10. *Id.* at 1181 (citing *Larsen v. General Motors Corp.*, 391 F.2d 495 (8th Cir. 1968)).
11. *Id.* at 1182 (emphasis added).
12. *Id.* at 1181 (citing *Larsen*, 391 F.2d at 502-05).
13. *Id.* at 1181-82.
14. *Id.* at 1191.
15. See *Volkswagen of Am. v. Marinelli*, 628 So. 2d 378, 385 (Ala. 1993); APJ 32.07-Design Defect-Elements-Notes on Use (2011 Cumulative Supplement).
16. *Id.*
17. *General Motors v. Saint*, 646 So. 2d 564 (Ala. 1994) (negligence in using allegedly defective seatbelt).
18. Thomas, Malek and Southerland, *supra* note 1, at 269.
19. *Edwards*, 482 So. 2d at 1181 (citing *Larsen*, 391 F.2d at 502-05).
20. 585 So. 2d 1336.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Dennis*, 585 So. 2d at 1339 (emphasis added).
27. 619 So. 2d 1330 (Ala. 1993).
28. 648 So. 2d 561 (Ala. 1994).
29. 981 So. 2d 1109 (Ala. 2007).
30. *Williams*, 619 So. 2d at 1331.
31. *Id.* at 1332-33.
32. *Id.*
33. *Id.* at 1332 (emphasis added).
34. *Id.*
35. *Haisten*, 648 So. 2d at 562.
36. *Id.*
37. *Id.* at 562-63.
38. *Haisten*, 648 So. 2d at 565 (citing *Saint*, 646 So. 2d 564 (Ala. 1994) (emphasis added)).
39. *Edwards*, 482 So. 2d at 1181-82.
40. *Williams*, 619 So. 2d at 1331; *Haisten*, 648 So. 2d at 562.
41. *Id.*
42. 981 So. 2d 1109 (Ala. 2007).
43. *Id.* at 1114 (internal citations omitted) (emphasis added).
44. 50 So. 3d 458, 467-68 (Ala. Civ. App. 2010).
45. *Id.* at 468.
46. See *Saint*, 646 So. 2d at 568.
47. 991 F. Supp. 1397 (M.D. Ala. 1997).
48. 646 So. 2d 564 (Ala. 1994).
49. *Id.* at 565.
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.* at 568.
54. *Saint*, 646 So. 2d 564 at 568.
55. 991 F. Supp. at 1398-99.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Culpepper*, 991 F.Supp. at 1399 (citing *Campbell v. Robert Bosch Power Tool Corp.*, 795 F.Supp. 1093, 1097 (M.D. Ala. 1992)).
61. *Id.* at 1401 (emphasis added).
62. *Id.*
63. *Id.*
64. 73 *Ala. Law.* at 271.
65. 2011 WL 6182531, \*1; 2011 U.S. Dist. LEXIS 143249, \*2.
66. Judge Albritton held that "the Plaintiffs' claims in this case do not meet the definition of a 'crashworthiness' claim because the Plaintiffs allege that the Defendant's part caused the accident which resulted in the Plaintiffs' injuries. Therefore, the law governing 'crashworthiness' claims is irrelevant. . . ." 2011 WL 6182531, \*1, 2011 U.S. Dist. LEXIS 143249, \*2. Whether Judge Albritton correctly categorized the *Ray* action as falling outside the law of crashworthiness is a debatable issue that lies beyond the scope of this article. The advocacy piece, 73 *Ala. Law.* at 272-73, also insinuates that *Ray* supports its thesis that an automobile is always to be considered a single product and can never legally be split into component parts. The orders in *Ray* do not declare such a holding; Judge Albritton decided only that the law of crashworthiness did not apply because the component part alleged to be defective was the same part alleged to have caused the accident.
67. Interestingly, Alabama's sister states, with the exception of Georgia, allow for the consideration of a plaintiff's negligence in causing an accident in product liability cases. (Fl. Stat. sec. 768.81; O.C.G.A. § 51-11-7; *Miss. Code Ann.* § 11-7-15; *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992); *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973)). However, Mississippi, Tennessee and Florida apply comparative negligence where the plaintiff's actions are not a complete bar to recovery as under Alabama's contributory negligence doctrine. Georgia has adopted comparative fault as well but still excludes any evidence related to accident causation in a strict product liability cases.
68. *Edwards*, 482 So. 2d at 1181 (citing *Larsen*, 391 F.2d at 502-05).