

A plaintiff sued the manufacturer of a slicing machine for negligent design, after the machine cut off the plaintiff's finger. The plaintiff claims that while he was cleaning the machine, two wires came into contact with each other and caused the machine to turn on.

At trial, the manufacturer has offered evidence that it was unreasonably expensive to design the machine so that the wires could not come into contact. In rebuttal, the plaintiff offers evidence that after this action was filed, the manufacturer redesigned the machine to prevent the wires from coming into contact.

Is evidence of this change in design admissible?

- A. No, because the change in design may have been unrelated to this type of accident.
- B. No, under the rule regarding remedial measures that encourages manufacturers to make their products safer.
- C. Yes, as evidence tending to show that the machine could be designed to keep the wires from coming into contact.
- D. Yes, as evidence tending to show that the manufacturer was negligent because its initial design failed to prevent the wires from coming into contact.

Explanation:

Evidence of subsequent remedial measures

(FRE 407)

Inadmissible

Such measures *cannot* be used to:

- prove negligence or other culpable conduct
- prove defect in product or product design
- prove need for product warning or instruction

Admissible

Such measures *can* be used to:

- prove feasibility of precautionary measures
- impeach witness
- prove ownership or control

FRE = Federal Rule of Evidence.

A **subsequent remedial measure** is a precaution taken after an injury has occurred that—if taken earlier—might have prevented the injury. Because social policy encourages taking remedial measures to protect the public, evidence of such measures is **inadmissible to prove negligence** (eg, negligent design) or **other culpable conduct**. But a **court may allow** evidence of subsequent remedial measures for **other limited purposes** such as:

- resolving a dispute about the feasibility of precautionary measures
- impeaching a witness *or*
- proving ownership or control.

Here, the manufacturer changed the slicer's design to prevent the wires from coming into contact after the plaintiff's injury. Although this evidence is inadmissible to prove the manufacturer's negligence, the manufacturer placed the feasibility of redesigning the slicer in dispute by claiming it was unreasonably expensive (**Choices B & D**). Therefore, evidence of this change in design is admissible to prove the feasibility of designing the machine to keep the wires from coming into contact.

(Choice A) Whether the change in design is related or unrelated to this type of accident goes to the weight of this evidence—not its admissibility.

Educational objective:

Evidence of subsequent remedial measures is inadmissible to prove negligence or other culpable conduct. But such evidence is admissible for other purposes—eg, proving the feasibility of precautionary measures.

References

Fed. R. Evid. 407 (subsequent remedial measures).

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