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## First Circuit Holds Brazilian Manufacturer and Sales Representative Liable for Defective Pressure Cookers Sold in Puerto Rico

Carole Crawford

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## FEDERAL ODOMETER ACT (from page 73)

bia also argued that the trial court improperly instructed the jury regarding the reasonableness of Mr. Van Praag's reliance on the false odometer statement.

The Eighth Circuit held that the evidence was sufficient for the jury to find that Columbia acted with an intent to defraud by "knowingly, recklessly, or with gross negligence [giving] a false odometer statement." 849 F.2d. at 1110. In her deposition, Monica Petricek stated that when she sold the car to Columbia, the company's president gave her a blank odometer statement to sign. They never discussed the car's mileage. In contrast, Columbia claimed that the parties filled out the mileage statement together. The court noted that when there is conflicting testimony regarding a material issue, such as the

intent to defraud, then the court may not grant a motion for a directed verdict. Such a factual conflict must be resolved by the jury.

The court also held that the trial court properly instructed the jury that Mr. Van Praag exercised a reasonable degree of care in relying on Columbia's odometer statement. Columbia had maintained that Mr. Van Praag's reliance on the odometer statement was not reasonable because Mr. Van Praag is an expert on classical cars. The court disagreed, explaining that the jury was the appropriate body to decide this issue and that it possessed sufficient facts from which to make this determination. The court affirmed the judgment of the district court.

**Catherine M. Crisham**

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### FIRST CIRCUIT HOLDS BRAZILIAN MANUFACTURER AND SALES REPRESENTATIVE LIABLE FOR DEFECTIVE PRESSURE COOKERS SOLD IN PUERTO RICO

In *Benitez-Allende v. Alcan Aluminio do Brasil, S.A.*, 857 F.2d 26 (1st Cir. 1988), cert. denied, 109 S.Ct. 1135 (1989), the United States Court of Appeals for the First Circuit upheld the district court's assertion of jurisdiction over a Brazilian manufacturer of defective pressure cookers. The court also held that the jury's findings of strict liability against the manufacturer and the manufacturer's sales representative in Puerto Rico were supported by the weight of the evidence.

#### **Background**

Alcan Aluminio do Brasil, S.A. ("Alcan/Brasil") manufactures the Rochedo pressure cooker in Brazil and distributes it in large quantities in the United States. The cooker operates by sealing food and water inside a pot with a tight-fitting lid. When the water inside the pot is heated, it turns to steam, creating the pressure which cooks the food. There are two safety devices on the Rochedo cooker. The first is an escape valve in the lid that, during normal use, releases steam

as pressure builds to prevent the cooker from exploding. The second is a "fusible seal" in the cooker's handle which is designed to melt if the pressure within the cooker becomes too high. When the fusible seal melts, a hole is created which lets the excess steam escape. Alcan/Brasil designed the "fusible seal" to melt when the pressure inside the cooker is approximately four times the maximum operating pressure. Alcan/Brasil also designed the cooker to be opened by a user applying 25 pounds of force to the handle on the lid, even when the pressure inside the cooker is dangerously high. Underwriters' Laboratories specifications state that a pressure cooker's lid should require 100 pounds of force to be opened when the pressure inside the cooker reaches a dangerous level. Moreover, the specifications state that the "fusible seal" should melt at twice the maximum operating pressure rather than four times the maximum operating pressure.

Three plaintiffs were injured by Alcan/Brasil pressure cookers. Lercy Benitez Allende was burned when the contents of the cooker flew out as she removed the lid. Ramonita Garcia Andino and Carmen Cruz Diaz were injured when their Rochedo cookers exploded spontaneously, causing the lids and heated contents to fly from the pots and strike them. All three

plaintiffs brought suit against Alcan/Brasil alleging either negligence or strict liability. Plaintiff Andino also filed suit against Manuel Diaz, Alcan/Brasil's sales representative in Puerto Rico.

The jury found that the cookers were defective and that Alcan/Brasil was liable for the plaintiffs' injuries. In the case of Benitez Allende, the jury found that the cooker opened too easily. In the cases of Andino and Cruz Diaz, the jury found that the fusible seal did not work properly. Plaintiff Andino also obtained a verdict against Alcan/Brasil's sales representative. Both the defendants and the plaintiffs appealed.

### **Appeal**

On appeal, Alcan/Brasil and its sales representative contended that the district court lacked jurisdiction, that the verdict was not supported by the evidence, and that plaintiffs' expert's testimony had been admitted improperly. The sales representative also argued that the jury instructions regarding his individual liability were incorrect.

The plaintiffs argued that the district court improperly dismissed their claim asserting that Alcan/Brasil had violated the Consumer Product Safety Act, 15 U.S.C. §§ 2051-2080 (1982 & Supp. V 1987), by failing to report the defective nature of its product to the Consumer Products Safety Commission ("the Commission"). Benitez Allende and Cruz Diaz also maintained that the district court should have granted their motions to amend their complaints to include claims against the sales representative as it had done for Andino.

### **Puerto Rico's Jurisdiction Extends to Brazilian Defendant**

Alcan/Brasil claimed that it did not have the requisite minimum contacts with Puerto Rico to establish jurisdiction under Puerto Rico's "long arm" statute. In dismissing this argument, the court of appeals held that Alcan/Brasil's contacts with Puerto Rico satisfied the requirements set forth in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and in *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102 (1987). In *International Shoe*, the United States Supreme Court held that a long arm statute is constitutional if contacts

with the forum state are such that traditional notions of fair play and substantial justice are not offended. In *Asahi*, the Court stated that although merely placing a product into the stream of commerce is insufficient to establish the requisite minimum contacts with the forum state, additional conduct on the defendant's part may indicate an intent or purpose to serve the market in the forum state.

In holding that Alcan/Brasil did have sufficient contact with Puerto Rico to establish jurisdiction, the court of appeals reasoned that Alcan/Brasil knew that its products would be used by citizens of Puerto Rico. Alcan/Brasil hired its sales representative specifically for the purpose of promoting its product in the United States, and in fact had sold 300,000 cookers in America over a four year period, with 240,000 of that number going to consumers in Puerto Rico. This conduct satisfied the standards set forth in both *Asahi* and *International Shoe*.

The court also rejected Alcan/Brasil's argument that the "foreign commerce clause" of the Constitution, set forth in article I, section 8, prevented Puerto Rico from asserting jurisdiction. The court indicated that every state permits its citizens to bring tort actions against foreign manufacturers who send defective products into that state.

### **Evidence Sufficient to Support the Verdict**

The court next examined defendants' contention that the jury's verdict was not supported by the evidence. All three plaintiffs claimed that they had securely fastened the lid before cooking. Plaintiffs' expert witness testified that if the lids had been securely fastened, the explosions would have caused the pots and lids to become severely deformed. Because two of the three pots did not sustain notable damage, Alcan/Brasil claimed that the jury could not reasonably have reached a verdict for the plaintiffs.

The court disagreed, holding that questions of credibility and causation are matters for the jury to decide and that the evidence permitted a finding of causation. The court emphasized the jury's role in determining questions of fact. The jury would have been within its discretion in concluding that the plaintiffs had not closed the

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## DEFECTIVE PRESSURE COOKERS (from page 75)

lids as tightly as they claimed, and may have reached this conclusion because the jury found the plaintiffs contributorily negligent.

### **Motion for Summary Judgment Properly Denied**

The court held that the district court had properly denied defendants' motion for summary judgment. Although the deposition testimony of plaintiffs' expert witness was vague and conclusory and the expert had been unprepared to render his opinion one month before trial, the district court was not required to grant summary judgment to defendants. Similarly, the court was not required to impose sanctions upon plaintiffs for failing to adhere to the court's discovery schedule. The district court had discretion to give the plaintiffs leeway in developing their case, and the court of appeals held that the district court had not exceeded its powers. Moreover, the court of appeals noted that both plaintiffs and defendants had been less than diligent in complying with discovery rules.

### **Sales Representative Also Liable**

The court of appeals reversed the district court's order denying the motions of plaintiffs Benitez Allende and Cruz Diaz which sought to amend their complaints. Both Benitez Allende and Cruz Diaz sought leave to include a claim against Alcan/Brasil's sales representative. Rule 15(a) of the Federal Rules of Civil Procedure states that permission to amend a complaint shall be freely given when justice so requires. The court concluded that because all three plaintiffs had made motions to amend simultaneously and their motions were indistinguishable, the trial court had abused its discretion by allowing one motion and denying the other two motions. Next, the court rejected the sales representative's argument that the district judge erred by instructing the jury to find the sales representative liable automatically if they find the manufacturer liable. Noting that Puerto Rico has adopted the common law principle of strict liability laid out in Restatement (Second) of Torts § 402A (1965), the court held that the district judge had instructed the jury properly.

The court also dismissed Alcan/Brasil's contention that an independent testing laboratory's report on the pressure cookers was inadmissible. The report made no reference to product recall or to specific accidents and it preceded any repairs made by Alcan/Brasil. Because the report itself would not have helped to prevent the accidents here, it was not evidence of remedial measures and was admissible into evidence under Rule 407 of the Federal Rules of Evidence.

### **Plaintiff's Claim Based on Consumer Product Safety Act Dismissed**

In addition to their claims based on strict liability and negligence, plaintiffs also claimed that Alcan/Brasil had violated the Consumer Product Safety Act ("the Act"), 15 U.S.C. §§ 2051-2080 (1982 & Supp. V 1987), by failing to report defects in its pressure cookers to the Consumer Product Safety Commission. The court of appeals observed that at least one district court had permitted an action based on a "failure to report." 857 F.2d at 35, citing *Wilson v. Robertshaw Controls Co.*, 600 F. Supp. 671 (N.D. Ind. 1985). However, the court also observed that more recently, in *Drake v. Honeywell, Inc.*, 797 F.2d 603(8th Cir. 1986), the Eighth Circuit held that Congress had not intended to create a private cause of action based upon a violation of a procedural rule. In affirming the district court's dismissal of plaintiffs' claim based on the Act, the court expressed agreement with the analysis set forth in *Drake*. The court stated that the Act is a procedural reporting rule and was not intended to lead to private causes of action.

The court affirmed the district court's judgments against Alcan/Brasil and its sales representative, vacated the judgements denying Benitez Allende's and Cruz Diaz's motions for leave to file claims against Alcan/Brasil's sales representative, and remanded the case for further proceedings.

**Carole Crawford**