UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5590
Summary Calendar

PHYLLIS N. LOFTON,

Plaintiff-Appellant,

versus

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Louisiana
(92-1040)

(August 19, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.*

GARWOOD, Circuit Judge:

Plaintiff-appellant Phyllis Lofton (Lofton) brought this suit against defendant-appellee General Motors Corporation (General Motors) complaining that she was injured when the seat belt and air bag in her General Motors vehicle failed to function properly in an accident. The district court granted summary judgment in favor of

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

General Motors, and Lofton brings this appeal. We affirm.

Facts and Proceedings Below

On May 6, 1991, Lofton was involved in a low-speed automobile accident when a vehicle driven by Nell Bennett, not a party to this suit, failed to yield on a left turn and collided with Lofton's 1990 Cadillac Seville, manufactured by General Motors. Both vehicles sustained only minor damage. Lofton alleged that as a result of the impact she was thrown forward into the steering column and sustained numerous injuries including brain damage, carpel tunnel syndrome, broken and damaged teeth, and spinal trauma. Lofton further alleged that, contrary to her expectations, she was not restrained or protected by her seat belt or driver-side air bag. Following the accident, Lofton was admitted to the emergency room but was not found to be suffering from any serious injuries or broken bones and was released the same day. She has since undergone no surgical treatment resulting from the accident.

On May 6, 1992, Lofton filed this suit in Louisiana state court claiming that General Motors was liable for her injuries because the air bag and seat belts used in the Cadillac Seville were inadequate to protect a driver in a low-speed collision and because General Motors failed to warn her of this unreasonably dangerous condition. On June 3, 1992, General Motors removed the case to federal district court based on diversity of citizenship. Lofton's case depended heavily on the opinions of her prospective expert witness, Sylvanus Walker (Walker), a mechanical engineer who considered all seat belts used in production model automobiles to be inherently defective. The district court, however, determined

that Walker failed to meet the requisite level of expertise and, thus, refused to qualify him as an expert on air bags or seat belts. The court further ruled that, in the absence of expert testimony, Lofton failed to offer specific evidence ascribing her injuries to any design defect in the Cadillac's restraint systems. On November 17, 1993, the court entered summary judgment in favor of General Motors.

Discussion

Our review of the district court's grant of summary judgement entails two separate levels of inquiry. We first review the trial court's evidentiary ruling concerning Walker's credentials, mindful that "[a] trial court's ruling regarding admissibility of expert testimony is protected by an ambit of discretion and must be sustained unless manifestly erroneous." *Christophersen v. Allied-Signal Corp.*, 939 F.2d 1106, 1109 (5th Cir. 1991) (en banc) (per curiam), *abrogated on other grounds*, *Daubert v. Merrill Dow Pharmaceuticals*, 113 S.Ct. 2786 (1993). Then, in light of this determination, we review the grant of summary judgment *de novo*, applying the same standards as the district court. *Id.*; *Celotex Corp. v. Catrett*, 106 S.Ct. 2548 (1986). In this diversity case, we apply federal procedural rules and Louisiana substantive law.

The district court analyzed Walker's credentials under the four-step test set forth by this Court en banc in *Christophersen*. As a general framework for judging proffered expert testimony, the *Christophersen* Court outlined four "guideposts" for the trial court to consider:

"(1) Whether the witness is qualified to express an

expert opinion, FED.R.EVID. 702;

(2) whether the facts upon which the expert relies are the same type as are relied upon by other experts in the field, FED.R.EVID. 703;

(3) whether in reaching his conclusion the expert used a well-founded methodology, *Frye* [*v. United States*, 293 F.2d 1013 (D.C. Cir. 1923)]; and

(4) assuming the expert's testimony has passed Rules 702 and 703, and the *Frye* test, whether under FED.R.EVID 403 the testimony's potential for unfair prejudice substantially outweighs its probative value." *Christophersen*, 939 F.2d at 1110.

In this appeal, Lofton challenges the trial court's reliance on this four-step analysis, arguing that *Christophersen* has since been abrogated by the Supreme Court's ruling in *Daubert v. Merrill Dow Pharmaceuticals*, 113 S.Ct. 2786 (1993). In *Daubert*, the Supreme Court ruled unequivocally that *Frye*'s rigid "general acceptance" test was at odds with the "'liberal thrust' of the Federal Rules [of Evidence] and their general approach of relaxing the traditional barriers to opinion testimony." *Id.* at 2794 (citations omitted). In light of *Daubert*, we recognize that to the extent *Christophersen* attempted to read the Federal Rules of Evidence as assimilating *Frye*, that portion of our decision is no longer good law. *See Daubert*, 113 S.Ct. at 2794 (deeming such an interpretation of the Rules "unconvincing"). In the present case, however, the district court did not have to consider whether Walker's methodology was "well-founded" or "generally accepted" because it found that Walker's qualifications failed to satisfy the *first* prong of the *Christophersen* test. Thus, the court never reached the *Frye* analysis embodied in the third prong. Even

assuming *Daubert* eliminated *Christophersen*'s third prong, several post-*Daubert* decisions demonstrate the remainder of *Christophersen* has survived.[1] *See Marcel v. Placid Oil Co.,* 11 F.3d 563, 567 (5th Cir. 1994); *Rosado v. Deters,* 5 F.3d 119, 124 & n.9 (5th Cir. 1993); *see also Porter v. Whitehall Lab, Inc.*, 9 F.3d 607, 614 (7th Cir. 1993); *Elkins v. Richardson-Merrell, Inc.*, 8 F.3d 1068, 1073 (6th Cir. 1993).

Christophersen's first prong was based solely on FED. R. EVID. 702, which provides as follows:

> "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." FED. R. EVID. 702.

Under Rule 702, simply demonstrating a general knowledge in a particular field does not necessarily qualify a witness as an expert on every specific issue associated with that field. *See Christophersen*, 939 F.2d at 1113 (commenting that an M.D. degree "alone is not enough to qualify [the witness] to give an opinion on every conceivable medical question"). The trial court must

[1] As Justice Blackmun noted in *Daubert*, the supersedence of the *Frye* test by the Federal Rules of Evidence in no way signaled the opening of uncontrollable floodgates to questionable scientific evidence. On the contrary, the Rules maintained the trial judge's traditional role as gatekeeper to screen unreliable evidence. *See Daubert*, 113 S.Ct. at 2795 ("under the Rules the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable"). Justice Blackmun reasoned that unlike an ordinary witness, "an expert is permitted wide latitude to offer opinions, including those that are not based on first-hand knowledge or observation. . . . Presumably, this relaxation of the usual requirement of first-hand knowledge . . . is premised on an assumption that the expert's opinion will have a reliable basis in the knowledge and experience of his discipline." *Id*. at 2796.

scrutinize the potential expert's actual qualification to render an opinion that will assist the trier of fact. *Id.* at 1113. Consequently, Walker's background in mechanics does not automatically qualify him as an expert on automotive restraint systems absent an adequate showing of his expertise in that particular area. General Motors argues, and the district court found, that Lofton failed to make such a showing.

Although Walker received a degree in mechanical engineering in 1949, he holds no postgraduate degrees and has never taken any courses dealing with automotive design, manufacture, air bags, or supplemental restraint systems. He admits that he has no training, experience, or expertise respecting air bags; and while he did install seat belts in two of his own vehicles, he has never designed an actual seat belt system for any production vehicle. He has never performed any dynamic tests to determine the effectiveness of seat belts or air bags. Nor has he ever examined or dissembled a seat belt system similar to that used in a 1990 Cadillac Seville. Walker does not state that the particular seat belt in question failed to meet federal safety standards, or even that the belt's alleged inherent defect actually caused Lofton's injuries. We also note that Walker spent a total of eight hours working on this matter. Of those eight hours, seven hours and fifteen minutes pertained to travel time. Thus, after only forty-five minutes of consideration, Walker concluded that the restraint system in the 1990 Cadillac Seville was defective. He inspected the seat belt "less than 30 minutes" and did not disassemble it. Walker testified on deposition that he did not find, or indeed look

for, any particular manufacturing defect, and was unable to say that there was such a defect. He said "It could be just worn out." He said "I didn't consider it a design defect." He considered it "was defective not in its design but in its operation." However, he was of the opinion that all seat belts in production model automobiles are defectively designed. We observe that the use of the term "knowledge" in Rule 702 "connotes more than subjective belief or unsupported speculation." *Daubert*, 113 S.Ct. at 2795. We are unable to conclude that the district court abused its discretion in finding Walker unqualified to render an expert opinion on the air bags or seat belts in Lofton's vehicle.

Having so concluded, we must now consider whether, Walker's testimony being absent, General Motors is entitled to summary judgment. Louisiana courts often refer to the type of situation Lofton presents as a "crashworthy" case because the plaintiff does not allege that a defect in the defendant's automobile actually caused the collision, but rather that the defect enhanced her injuries. *Armstrong v. Lorino*, 580 So.2d 528, 530 (La. App. 4 Cir.), *writ. denied* 584 So.2d 1166 (1991). Thus, to prevail on her claim, Lofton must prove that her General Motors automobile had a defect which made it unreasonably dangerous in normal use, and that the alleged defect enhanced or worsened the injuries she would have otherwise sustained in the accident. *Id*. Although expert testimony is ordinarily required to prove the existence of a design defect, *cf. Traut v. Uniroyal, Inc.*, 555 So.2d 655, 656 (La. App 4 Cir. 1989), "[a] defect may be inferred from the circumstances of the accident." *Brown v. Sears, Roebuck and Co.*, 514 So.2d 439, 444

(La. 1987); *Himel Marine, Inc. v. Braquet*, 629 So.2d 425, 427 (La. App. 3 Cir. 1993), *writ denied* 632 So.2d 770 (1994).

Lofton contends that even without expert testimony she should be allowed to go to the jury on the basis that her seat belt did not function as expected. As Lofton views the matter, a restraint system has only one functionSQto prevent the driver from striking the windshield and steering column in the event of an accident. Because the air bag and seat belt in her Cadillac failed to do so, she reasons they must be presumptively defective. Lofton essentially asks the Court to hold the manufacturer liable under *res ipsa loquitur* principles, and thus we will address her arguments accordingly.[2]

As a general rule, negligence is not to be presumed. *Res ipsa loquitur* represents an exception to this rule and, as such, it "must be sparingly applied." *Spott v. Otis Elevator Co.*, 601 So.2d 1355, 1362 (La. 1992). Liability will only be implied in situations where three requirements are met:

> "(1) the circumstances surrounding the accident are so unusual that, in the absence of other pertinent evidence, there is an inference of negligence on the part of the defendant; (2) the defendant had exclusive control over the thing causing the injury; (3) the circumstances are such that the only reasonable and fair conclusion is that the accident was due to a breach of duty on defendant's part." *Id.*

While the second factor, exclusive control by the defendant, is

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[2] Under Louisiana law, the exclusive means to recover for defective product design is the Louisiana Products Liability Act, LA. REV. STAT. ANN. § 9:2800.51 *et seq.* (West 1988). However, Louisiana courts will allow a claimant to utilize the principles of *res ipsa loquitur* to prove her case. *State Farm Mutual Automobile Insur. Co. v. Wrap-on Co.*, 626 So.2d 874, 877 (La. App. 3 Cir. 1993).

obviously lacking in the present case, the Louisiana Supreme Court has substantially liberalized this requirement. The plaintiff now must only prove "the circumstances indicate that it is more probable than not that the defendant caused the accident and other plausible explanations do not appear to be the probable cause of the accident." *Id.*

Lofton, however, has failed even to satisfy this relaxed standard. General Motors maintains that there is no evidence of any other failures of this seat belt, and Lofton offers nothing to indicate otherwise. The fact that her seat belt did not prevent her from striking the steering column could indeed have been the result of a General Motor's defect, but it could also have been the result of numerous intervening factors.[3] Lofton was not driving a new automobile. At the time of the accident, her Cadillac had approximately 17,000 miles. Lofton, who would have had the burden of proof at trial, offered nothing below in the way of summary judgment evidence tending to show that any such operational failure was due to a condition of the seat belt which existed when General Motors had custody of the vehicle. This precludes a presumption that the restraint system was defective when the vehicle left General Motors' hands.

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[3] For instance, the dealer can tighten or loosen the seat belts after the car leaves the manufacturer, the driver can adjust the restraint system herself, and problems with the seat belts can develop over time.

In fact, Walker claimed the seat belt was not defective in its manufacture, but rather there was an operational defect in the manner in which the seat belt functioned in this particular accidentSQ*i.e.*, a low-speed intersectional collision.

Conclusion

Accordingly, the district court's grant of summary judgment is

AFFIRMED.