Admissibility of Evidence Involving Absence of Prior Incidents/Injuries - What the Law is in Certain Major States

INTRODUCTION

According to jurisdictional materials and related cases, strategy for counsel is clear, lending valuable insight into admitting pertinent evidence involving absence of prior incidents/injuries. Even in the issue-friendly jurisdictions, certain stringent guidelines must be followed by defense counsel. Across most of the jurisdictions, it is apparent that (1) a solid foundation must be established for introduction of evidence re: absence of prior accidents/injuries; (2) a nexus/relevance to contested issues must be shown; (3) evidence must be introduced in such a way as to refrain from confusing or misleading the jury, and; (4) evidence to be admitted must involve reasonably similar to substantially identical circumstances. The closer the facts/relation to the subject case, the likelier the evidence will be found to be Asimilar@ and thus admissible.

In an uncertain jurisdiction, such as Texas, counsel should also consider whether plaintiff may have waived claims of judicial error in admitting such evidence due to similar evidence being proffered in plaintiff=s case-in-chief.

If the above guidelines are met, a court with maximum discretion and minimum case law on the issue will be hard-pressed to deny admittance of evidence (unless the case is in the jurisdiction of Michigan).

The following are the findings on a key state-by-state basis:

CALIFORNIA

California courts hold that evidence of absence of prior accidents is **admissible**.

The case of first impression in California is *Benson, et al., v. Honda Motor Company, Ltd.*, *et al.*, 26 Cal.App.4th 1337, 32 Cal.Rptr.2d 322 (1994). While stopped at a red light the Bensons= 1984 Honda Accord was struck in the rear by a full-sized GMC pick-up. Mr. Benson slid backward into the rear seat where Mrs. Benson was sitting, causing her to sustain severe injuries to her face. The Bensons claimed that Honda=s management knew from crash tests that the Accord=s front seat back design was defective because it allowed the seat back to yield upon impact, thereby thrusting front seat occupants into rear seat occupants. The primary focus of the three week trial was that Honda should have altered the design or should have warned its users of this alleged defect.

In defense of the claims of notice of a design defect, Honda searched its accident claims records and found that it possessed no other claim of a rear seat occupant injured as a result of the yielding front seat design. Following an in-limine hearing, the Court permitted Honda=s expert to testify that ANo incidents of injury to a back seat passenger from a yielding front seat back had ever been reported to Honda.@ This statement was based on 913,000 Honda Accords with similar front seats sold in the

United States. At the close of trial, the Court refused to instruct the jury on punitive damages because the Bensons had not presented any direct evidence that any officer of Honda was aware of results of rear-end crash tests.

On appeal, the Court held that the manufacturer was entitled to present evidence regarding absence of prior similar claims. California made a strong showing of admissibility of absence of prior claims evidence when the Benson court indicated, AWe agree with the Supreme Court of Arizona which held that ›*per se* inadmissibility is manifestly incompatible with modern principles of evidence.=@ *Jones v. Pak-Moore Mfg. Co.*, 145 Ariz. 121, 700 P.2d 819 (1985). Although the courts have carved out more definitive requirements in following cases and different jurisdictions, the Benson Court defined initial guidelines, as follows:

(1) Must be a showing of foundational requirements.

(2) AThe court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time, or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.@ (Evid.Code '352).

(3) The Court should consider what causes of action are alleged, the nature of the action, the character of the evidence proffered and the purpose for which the evidence is intended to be used.

(4) Evidence of absence of prior similar claims may be brought in cases concerning negligence and strict products liability. Whether a court ought to do so will depend on the purpose of such evidence and foundational requirements.

NEW YORK

New York courts hold that evidence of absence of prior accidents is **admissible**.

Elements for admitting absence of prior claims evidence in New York are:

(1) Conditions must be shown to be Asimilar@ as those occurring at the time of the incident.

(2) The court must charge the jury that such evidence is only a factor for consideration and not conclusive.

In *Zeigler v Woolfert=s Roost Country Club*, 291A.D.2d. 609, a woman brought a case for personal injury when she fell on a stairway when her foot allegedly became lodged

between railroad ties used as stairs. The Court admitted statistical evidence as to lack of accidents on the stairs in more than three years and instructed the jury that Aproof demonstrating the absence of prior accidents on the steps could be considered as evidence that the stairs were not dangerous.@ Such evidence is regarded as a factor for consideration and not conclusive. See also *Cassar v. Central Hudson Gas & Electric Corp*., 134A.D.2d. 672.

PENNSYLVANIA

Pennsylvania courts have held that evidence re absence of comparable accidents/injuries is **admissible**.

Elements for admitting absence of prior claims evidence in Pennsylvania are:

(1) Threshold requirement of abundant situations of substantially identical circumstances.

(2) Evidence may not raises collateral issues which may confuse both the real issue and jury.

(3) Despite the threshold requirements above, issue is still within the discretion of the trial court.

Though evidence regarding absence of comparable accidents/injuries seems to be the consistent stance by the courts, such evidence is only admissible if the party first establishes substantial similarity of conditions and still may fall within the discretion of the court if such showing will raise collateral issues, or confuse the real issues and the jury. See *Spino v. John Tilley Ladder Co*., 448 Pa.Super.327. See also, *Michetti v. Linde Baker Material handling Corp,* 969 F.Supp.286; *Birt v. K-Mart, Inc.*, 1997 WL 908978; *Com., Dept. Of Transp. v. Weller*, 133 Pa.Cmwlth. 18; *DeMarines v. KLM Royal Dutch Airlines*, 580 F.2d 1193.

OHIO

Ohio courts hold that evidence of absence of prior accidents is **admissible**.

Elements for admitting absence of prior claims evidence in Ohio are:

(1) Must be substantially similar conditions, and;

(2) Must be an adequate number of situations to make an absence meaningful. Evidence of absence of prior accidents/injuries is admissible when absence of injuries documented during product use under substantially similar conditions and adequate

number of situations existed to make an absence meaningful*, Blanton v. Internatl. Minerals & Chemicals Corp.*, 125 Ohio App.3d 22. The court in the case of *Drake v. Caterpillar Tractor Co.*, 15 Ohio App. 429, states that Afew recent decisions can be found applying a general rule of exclusion. A large number of cases recognize that lack of other accidents may be admissible to show (1) absence of the defect or condition alleged, (2) the lack of causal relationship between the injury and the defect or condition...@

MICHIGAN
Michigan courts hold that evidence of absence of prior accidents is **inadmissible**.

Michigan takes a hard-line stance on admitting absence of prior incidents evidence. They cite this as Agenerally unreliable negative evidence@ and have indicated that it would be a collateral issue that would tend to result in jury confusion. The leading case of *Grubaugh v. City of St. Johns*, 82 Mich.App. 282, held that AEvidence of absence of accidents has less probative value than evidence of previous accidents since evidence of prior accidents involves positive proof directly tending to establish existence of defect, whereas evidence of absence of accidents usually involves generally unreliable negative evidence and does not tend directly to prove absence of negligence.@ Note that there are very few reported cases in Michigan that deal with this issue.

FLORIDA
Florida courts hold that evidence of absence of prior accidents is **admissible**.

Elements for admitting absence of prior claims evidence in Florida are:

(1) A showing of substantial similarity of conditions (inclusive of equipment used and proximity in time).

(2) Must avoid confusion of issues.

As a general rule, evidence of occurrence or nonoccurrence of a prior accident is admissible in a negligence action where it pertains to use of same type of appliance or equipment under substantially similar conditions, *Lasar Mfg. Co, Inc v. Bachanov*, 436 So.2d 236. In a case where the trial court refused to allow such evidence, the homeowner was not permitted to testify about the accident-free history of his ladder in the absence of showing a substantial similarity of conditions, *Ashby Div. of Consol. Aluminum Corp. v. Dobkin*, 458 So.2d 335.

TEXAS
Texas courts hold that evidence of absence of prior accidents is **admissible in some**

case and **inadmissible in others**. No clear pattern has been established.

Elements for admitting absence of prior claims evidence as a threshold requirement in cases where admitted in Texas are:

(1) Evidence must follow strict relevance to contested issues.

(2) Evidence is inadmissible if it creates undue prejudice, confusion or delay.

(3) Accidents must occur under reasonably similar, but not necessarily identical, circumstances to those surrounding the litigated event.

(4) The foregoing will be held in the discretion of the court.

Texas decisions appear to leave the admissibility of evidence of absence of prior accidents in the highly discretionary hands of the court. Although this is true in a number of states, there is usually a visible trend or pattern of consistency. Discretion in Texas does not follow the customary path and changes on a case-by-case basis.

Guy v. Crown Equipment Corp., 394 F.3d 320, involved a products liability action against a forklift manufacturer stemming from an accident which resulted in the forklift operator=s left leg injury. The court found that the probative value of more than 2000 non-left-leg injury accident reports involving the manufacturer=s forklifts, was outweighed by potential prejudicial effect. The court indicated that the non-left-leg injury reports would have confused the issues and misled the jury.

On the other hand, in *Nissan Motor Co. Ltd. v. Armstrong*, 145 S.W.3d 131, the court stated that defendant may introduce evidence of absence of other accidents to rebut claims that the product was dangerous.