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Analysis of a Negligent Tort

Introduction

On December 13, 2014, the US Consumer Product Safety Commission (CPSC) posted information concerning a recall for UVEX bicycle helmets. According to the CPSC, the helmets, under the recall number 15-045, have been recalled by their German manufacturer UVEX Sports GmbH due to a risk of head injury. More specifically, the reason for the recall states that there is a problem with the helmets chinstrap which is used to secure the helmet to a riders head. The chinstrap can fail allowing the helmet to slip or fall off the rider's head. The potential risks of this are that it may interfere or distract riders when they are riding which can cause them to get into an accident. Moreover, if the helmet falls of during a crash, riders risk head injury due to lack of protection. In addition to the problems with the helmet's chinstrap, it also fails to comply with the impact requirements of CPSC safety standards. When the CPSC discovers a product that is in violation of its standards; it will inform them of the violation and what the manufacture can do to remedy the situation. Remedies include a recall of the product, discontinuing its sale or both. The decision to comply with these remedies is generally up to the specific manufacturer; however the CPSC can bring legal action to for manufacture to implement a remedy. Below is an analysis of the tort liability of UVEX Sports if they had not voluntarily issued a recall and a bicycle rider wearing the UVEX bicycle helmet was injured.

Analysis

A tort is defined as a private or civil wrong or injury resulting from a breach of a legal duty or the unreasonable actions of others (Glannon, 2000). One of the most common torts is negligence. Negligence refers to the failure to behave with the level of care that someone of ordinary prudence would have exercised under the same conditions (Glannon, 2000). Accordingly, for an injured party to bring a successful claim of negligence against UVEX Sports for their faulty helmets, they would need to prove: (1) UVEX had a duty to conform to a specific standard of conduct; (2) UVEX breached their duty; (3) UVEX's breach of duty was the actual and approximate cause of their injury; and (4) they are in some way injured. Additionally, there would be no defenses or ways for UVEX to avoid responsibility. All four elements must be present and proven before damages may be awarded.

The first requirement, UVEX's duty to conform to a specific standard has two elements, namely the existence of both a duty and standard of care. There are two common duties of care relevant to UVEX. A general duty of reasonable care is imposed on everyone. It requires that when people engage in any human activity they have a legal duty to do so as an ordinary reasonable person who will make efforts not to place others at foreseeable risk of harm through conduct. Second, under a theory of product liability, manufacturers have a duty to act reasonably in preventing injury or damage resulting from a fault or defect of their product (Bogus, 1999). The scope of each duty is determined by the standard of care UVEX is required to show. The basic standard of care, as mentioned, is the "reasonable person." The reasonable person is defined as the average person with the same

characteristics of UVEX and who has knowledge of UVEX's weaknesses, if any. In addition to the basic standard of care as described above, which is derived at common law, the government may pass a statute or law that creates a specific standard of care that replaces or overrides the basic standard (Glannon, 2000). This is known as a statutory standard of care. When the statute is designed to protect the class of people that were harmed and prevent the type of harm that occurred any violation is normally deemed per se or an automatic showing of negligence. In regards to manufacturers, most statutory standards of care are found in consumer protection statutes. In 1972, Congress passed the Consumer Product Safety Act (CPSA) in order to develop and safety standards to prevent "unreasonable and substantial risks of injury or death to consumers" (CSPA, 1972). Under Section 1203 of the CPSA, Congress promulgated specific standards for bicycle helmets to "reduce the likelihood of serious injury and death to bicyclists resulting from the impacts to the head" (CSPA, 1972). The law also required manufacturers to issue certifications of compliance with the standards. Applying these requirements to the facts present we see that UVEX had a duty as a manufacturer of bicycle helmets to ensure that the product had no defects either in its design, how it was manufactured or in any relevant warnings that consumers should have been made aware of. More generally, UVEX had a duty to protect its customers from being harmed by its product. This includes a duty to anticipate foreseeable dangers such as helmet movement during a crash. UVEX also had a duty to take any necessary precautions to ensure the quality of the product such as intense testing under all conditions to make sure that the chinstrap did not come

loose when it was most needed.

The second requirement that must be proven is a showing that UVEX breached its duties. A breach occurs when a party's conduct falls short of the level required by the applicable standard of care. In this case, a breach of a duty can be proven by showing what in fact happened. Moreover, the facts must show that UVEX acted unreasonably. As mentioned above, failure to comply with a statutory standard of care is commonly all the evidence needed to show a breach of duty. In this case, it is a fact that UVEX manufactured and sold the helmets. Between 2009 and 2014, UVEX shipped at least 46, 000 units of the helmets in question. Second, it is also clear that UVEX did not comply with the statutory requirements under CPSA Section 1203. Alternatively, under the tort principle *res ipsa loquitur* or "the thing speaks for itself", a bicycle rider need simply show that the fact the injury occurred is itself enough to show a breach (Glannon, 2000). Accordingly, a rider wearing a properly attached UVEX helmet crashes and suffers a head injury either because the helmet fell off during the crash or did not adequately resist the impact should be enough to find that UVEX breached its duty.

The third element that must be proven is whether there is a connection between UVEX's breach of duty and the bicycle rider's injury. In short, UVEX will be negligent if it failed to exercise a reasonable standard of care and their breach of duty but liability will only arise if the breach resulted in the subsequent injury to the rider. This is often referred to as causation. There are two types of causation, namely actual and proximate, which must be proven (Glannon, 2000). Actual cause shows that a rider's injury was, in fact,

caused by UVEX's breach of a duty. This can easily be proven by showing that the injury would not have occurred "but for" UVEX's defective helmets. As mentioned if the injury occurred as a result of the helmet falling off or its inability to resist impact then actual cause is proven. Proximate cause refers to the principle that although UVEX's breach might have resulted in the riders injuries it is only liable for injuries that are the foreseeable and normal consequences of their negligence. In this case, it is certainly foreseeable that a rider will get into an accident or crash. It is also normal (and even required in some jurisdictions) that riders wear helmet to protect themselves from a crash. Accordingly: UVEX manufactured the helmet to protect riders; the rider wears the helmet for protection; the rider crashes hitting his head; the helmet fails to protect the rider; UVEX is liable to the rider.

The final element that must be proven in the case is that there was an actual injury. In this case, the rider simply needs to show that he was somehow suffered a head injury while riding and wearing a UVEX helmet.

While UVEX may indeed be responsible for the injuries suffered by the rider, it may not be completely liable for any injuries suffered. In short, UVEX may have a defense or explanation that limits its liability. One of the most common (and relevant to this case) defenses is a principle known as contributory negligence. Contributory negligence holds that negligence on the part of the rider contributed to his injuries. Accordingly, if UVEX can show that, for example, the rider was performing in a manner, such as not attaching the chinstrap or engaging in extreme bike riding, that contributed to his own injuries then it can eliminate any recovery by the rider although it was negligent.

Resources

Bogus, C. T. (1996, Jan.) The Third Revolution in Products Liability. Retrieved on December 14, 2014, from <http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3063&context=cklawreview>

Consumer Protection Safety Act of 1976. Retrieved on December 14, 2014

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Glannon, J. W. (2000). The Law of Torts: Examples and Explanations. New York, NY: Aspen Publishers.