

THE TRANSIENT TRANSMISSION

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It's a fact of life for both cars and people: As we get older, sometimes repairs need to be made and parts need to be replaced. But what happens if someone is injured by an old car and alleges that the vehicle or some part of it was defectively designed or manufactured by the car's maker? Can the vehicle's maintenance history have an effect on such a so-called "products liability" lawsuit? The answer is that it can have a *very significant effect*.

This was the situation involved in the recent case of *Jasinski v. Ford Motor Company*.

John Jasinski worked in a service station. In August 1986, a customer brought in her mother's 1971 Ford Country Squire station wagon for repairs. The history of this car — which was critical in this case — was as follows: In February 1971 the original owner had purchased it from a Ford dealer in Crestwood, Missouri. In 1983 the owner had sold the vehicle when it had approximately 78,000 miles on it to John Knieja. Knieja had received no information regarding the car's service or repair history for this 12-year period. In January 1986, Maxine Mash had purchased the car from Knieja.

Jasinski claimed that he drove the car into the service bay, turned off the engine, and placed the automatic transmission lever in what appeared to be neutral. Jasinski was standing in front of the car when another mechanic started the engine. The car lurched forward and injured Jasinski.

John and Kay Jasinski sued Ford. The Jasinskis alleged that the Ford's original C-6 transmission had a design defect which caused the accident. Ford made a motion for summary judgment to dismiss the case before it went to trial. The com-

pany noted that Mash had sold the car after the accident and that the Jasinskis had not located it. Ford therefore argued that the Jasinskis had no evidence that the transmission was in substantially the same condition as it was when originally installed or that it was even, in fact, still in the car at the time of the accident. The City of St. Louis Circuit Court granted Ford's motion. The Jasinskis appealed.

On January 21, 1992, the Missouri Court of Appeals, Eastern District, affirmed the lower court's ruling for Ford.

The Court of Appeals noted that, in a products liability lawsuit alleging injury caused by a defective product, the plaintiff must provide evidence of four facts. The plaintiff must show that (1) the defendant sold the product in the course of its business; (2) the product when sold was defective and unreasonably dangerous for its reasonably anticipated use; (3) the product was used in a reasonably anticipated manner; and (4) the plaintiff was damaged as a direct result of that defect.

Regarding the fourth element, the plaintiff must show that neither he nor any third person (that is, anyone other than the defendant) made alterations to the product, which could have created a defect that could have caused the injuries suffered. Ford had alleged that the Jasinskis had no evidence to prove this fourth element.

The Jasinskis responded by pointing to a *presumption* that "where the existence at one time of a certain condition or state of things of a continuing nature is shown, the presumption arises that such condition or state continues to exist until the contrary is shown." Thus, they argued that since the Ford originally contained the C-6 transmission, the court could *presume* that the car still contained it — and in substantially the same condi-

tion — at the time of the accident.

However, the court noted that such a presumption diminishes with time to a point when it ceases to exist or may actually be replaced by a directly opposite inference. Furthermore, the presumption does not apply to things which are not continuous by nature. The court observed that the Jasinskis had presented no evidence that a transmission will normally remain in a car in substantially the same condition for 15 years. Instead, the court noted that "Transmissions, like other parts of a car, do get replaced and repaired as evidenced by the numerous businesses that offer this service." Given the 12-year and 78,000-mile lapse in the history of the car, the court opined that such replacement or repair here was "possible if not likely." The court therefore concluded that "there is no presumption that a 15-year-old car, with no mechanical history of the first 12 years of the car's life, contains the same unaltered transmission."

The *Jasinski* case illustrates the difficulties a plaintiff can face in proving that his or her injuries were actually caused by a defective product. These difficulties are even greater when a long time has passed since the product's manufacture, because, for both cars and people, despite our best efforts, we rarely remain exactly "the way we were."

Lawrence Savell is an attorney and writer in New York City. This column provides general information and is not intended as a substitute for consulting a lawyer.