

Circuit Court for Baltimore City
Case No. 24-C-20-000877

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 2014

September Term, 2021

MUTUAL BENEFIT INSURANCE
COMPANY, ET AL.

v.

MACK TRUCKS INC. ET AL.

Reed,
Friedman,
Ripken,

JJ.

Opinion by Friedman, J.

Filed: January 18, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. R. 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

BACKGROUND

After a single-vehicle crash of a cement truck, plaintiff, Mutual Benefit,¹ brought products liability claims against defendant, Mack Truck, Inc.,² in the Circuit Court for Baltimore City. In discovery, Mutual Benefit produced an expert report jointly prepared by Robert L. Miller, a certified accident reconstructionist and mechanical engineer, and by Joel Schubbe, Ph.D., a material science engineer, which made three conclusions:

1. The failure of the right fourth axle suspension caused Mr. Lipman to lose control of the 2018 Mack cement truck.
2. There is no evidence that Mr. Lipman caused or could have prevented this crash.
3. The cause of the right fourth axle suspension failure was the loss of clamping force of the insulator cap[, which] was compromised by bolt failures.

The expert report itself discusses two possible causes of the bolt failures—under-torquing or over-torquing—but did not conclude whether these were the cause of the bolt failure. As we understand it, and as the parties agree, discovery crystalized the idea that there are three possible causes of this bolt failure: (1) under-torquing; (2) over-torquing; or (3) overloading.³ The parties further agree that if the bolt failure was caused by under- or

¹ Mutual Benefit is the subrogated insurer of the truck's owner, LC Concrete, Inc., and its employee, the driver of the truck, Stephen E. Lipman.

² The remaining defendants are the truck's manufacturer, Mack Trucks, Inc., and seller, Baltimore Truck Center, Inc.

³ It is not plain to this Court whether the parties are discussing a single episode of overloading on the day of the accident or chronic overloading of the truck over its lifetime. If the jury believes that overloading, either once or repeatedly, was the cause of the bolt failure, then these defendants will not be liable.

over-torquing, Mack Trucks could be liable, but if the bolt failure was caused by overloading, Mack Trucks could not be liable.

Because the expert report does not make a conclusion about the cause of the bolt failure, Mack Trucks moved for summary judgment arguing there was no genuine dispute of material fact and that it was entitled to judgment as a matter of law. The circuit court agreed and granted summary judgment. We review that decision *de novo*, that is, without deference to the circuit court. *Frankel v. Deane*, 480 Md. 682, 700 (2022).

ANALYSIS

In a products liability claim, the plaintiff must prove (1) the existence of a defect; (2) that the defect was caused by the seller; and (3) a causal relation between the defect and the injury. *Jensen v. Am. Motors Corp.*, 50 Md. App. 226, 234 (1981). Moreover, our courts permit the jury to draw the inference of a product defect from the event of an accident but only if the evidence (which might include physical evidence as well as expert or lay testimony) tends to eliminate other causes such as misuse of the product or alteration. *Harrison v. Bill Cairns Pontiac*, 77 Md. App. 41, 50-51 (1988). Apparently relying on the expert report's failure to identify the cause of the bolt failure, the circuit court granted summary judgment. If the expert report had been the only information in the summary judgment record, we have no doubt that the circuit court's determination would have been correct, because that expert report did not eliminate the possibility that another cause—specifically, overloading—was the cause of the bolt failure.

Here, however, there was significant evidence that overloading was not the cause of the bolt failure. *First*, Dr. Schubbe, in an errata to his deposition transcript, testified that

“[w]ithout plastic necking of these bolts, the failure is most likely due to under[-]torquing or over[-]torquing of the bolts. The absence of failure of the other suspension components makes it unlikely [that] the failure of the bolts was due to overloading.” *Second*, the testimony of Christopher Grochmal, the corporate designee for LC Concrete, was reasonably clear to the effect that he was concerned about the potential problems of overloading, took steps to ensure that the truck he ordered was rated to withstand more than the load it would carry, and although he hadn’t weighed the truck on the day of the accident, he took steps to ensure that the trucks in the fleet were not overloaded. *Finally*, Mr. Miller, Mutual Benefit’s mechanical engineering expert, testified that the truck had insufficient capacity to hold an overload of concrete, which gives rise to the inference that it was not overloaded.

Of course, these three items of evidence that the truck was not overloaded are each closely contested. Mack Trucks will have significant tools with which to cross-examine the evidence described here and may also introduce its own evidence that the truck was overloaded. But that’s precisely the point. Whether the truck was overloaded is a closely contested factual question for a jury to resolve. *Frankel*, 480 Md. at 703-04. We reverse the grant of summary judgment and remand this case for further proceedings not inconsistent with this opinion.

**JUDGMENT REVERSED. CASE
REMANDED FOR FURTHER
PROCEEDINGS NOT
INCONSISTENT WITH THIS
OPINION. COSTS TO BE ASSESSED
TO APPELLEES.**