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**NEW YORK COURT OF APPEALS CASE COMPILATIONS: ALAMI V.
VOLKSWAGEN OF AMERICA, INC.**

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ALAMI V. VOLKSWAGEN OF AMERICA, INC.¹

(decided February 19, 2002)

I. SYNOPSIS

In writing for the majority, Judge Wesley, of the New York Court of Appeals, held that regardless of the initial cause of a fatal accident, public policy would not preclude a claim to recover wrongful death damages caused by an alleged design defect in a motor vehicle.² In his dissent, Judge Rosenblatt argued that a plaintiff engaged in a serious violation of the law should not profit from their illegal activity if they are injured as a direct result of that activity.³

II. BACKGROUND

Silhadi Alami (decedent) was driving his Volkswagen Jetta home when his vehicle left an exit ramp and collided with a steel utility pole.⁴ His blood alcohol content exceeded the legal limit set forth in *Vehicle and Traffic Law* § 1192(2).⁵ He died as a result of his injuries: fractured ribs, a ruptured liver, and massive internal hemorrhaging.⁶

The decedent's widow sued Volkswagen of America, Inc. to recover damages for wrongful death. The plaintiff contended an alleged defect in the vehicle's design exacerbated the decedent's injuries and was the direct cause of his death.⁷ Volkswagen moved for summary judgment asserting that the decedent's intoxication precluded recovery on public policy grounds.⁸ The defendant argued that the decedent's intoxication was the sole cause of the

1. 97 N.Y.2d 281(2002).

2. *Id.* at 284.

3. *Id.* at 289.

4. *Id.* at 284 (Alami was driving at approximately 35 mph when his car went off of the exit ramp).

5. *Id.*; N.Y. VEHICLE AND TRAFFIC LAW §1192(2) (McKinney 2001).

6. *Alami*, 97 N.Y.2d at 284.

7. *Id.*

8. *Id.*

crash and that no defect or malfunction in the Jetta caused or contributed to it.⁹

In support of her claim, the plaintiff submitted to the court an affidavit and report from an expert who had inspected the vehicle, the autopsy report, photographs at the scene of the accident, police reports and crash test results from Volkswagen and the federal government.¹⁰ The expert reported structural deficiencies in the manufacture of the vehicle caused its floorboard to buckle upward during the collision, thus causing the decedent to be thrown forward and suffer thoracic and abdominal injuries that led to his death.¹¹ The expert concluded that if the vehicle had a transverse stringer¹² to provide adequate structural support and a three-point combination lap harness the decedent would have survived the crash suffering only minimal injury.¹³

The Supreme Court, Westchester County granted Volkswagen's motion for summary judgment based upon the holdings in *Barker v. Kallash*¹⁴ and *Manning v. Brown*.¹⁵ Under *Barker* and *Manning* a plaintiff is precluded from recovering damages if they are injured as a direct result of a serious violation of the law.¹⁶ Thus, the plaintiff's claim was precluded based on the court's finding that decedent's drunk driving constituted a serious violation of the law and his injuries were the direct result of that violation.¹⁷ The plaintiff appealed the order and the Appellate Division affirmed.¹⁸

The Appellate Division reviewed evidence submitted by the defendant showing that the decedent was highly intoxicated when he lost control of his vehicle.¹⁹ Utilizing this evidence, the court held that "the negligent manner in which the decedent was operating

9. *Alami*, 97 N.Y.2d at 284.

10. *Id.*

11. *Id.*

12. A transverse stringer is a specific part for an automobile.

13. *Alami*, 97 N.Y.2d at 285 (the safety features mentioned were readily available in the automobile industry).

14. 63 N.Y.2d 19 (1984).

15. 91 N.Y.2d 116 (1997).

16. 63 N.Y.2d at 39.; 91 N.Y.2d at 122.

17. *Alami*, 97 N.Y.2d at 285.

18. *Alami v. Volkswagen of America, Inc.*, 718 N.Y.S.2d 604 (App. Div. 2000).

19. *Id.*

his vehicle was the sole proximate cause of the collision and his fatal injuries.”²⁰ The Court of Appeals granted a motion for leave to appeal to resolve the issue of whether a claim alleging a defective vehicle design is precluded on public policy grounds where intoxication was the cause of the fatal automobile accident.²¹

III. DISCUSSION

The *Barker/Manning* rule is premised on public policy.²² It is premised on the notion that one may not profit from one’s own wrong²³ in tort actions seeking compensation for injuries resulting from their own criminal activities of a serious nature.²⁴ In *Barker*, the court precluded the plaintiff’s claim against those who had facilitated his construction of a pipe bomb because “to permit an action for injuries sustained as a consequence of the plaintiff’s own grievous criminal conduct—the construction of a ‘pipe bomb’—would contravene fundamental public policy of this State.”²⁵ In *Manning*, the court precluded a “joyrider” from bringing a claim against her fellow wrongdoer for injuries received during their unlawful ride.²⁶ According to the court, the plaintiff unjustifiably engaged in an activity, which was hazardous to the public at large—clearly a serious violation of the law—and her injuries were the direct result of her knowing participation in the activity.²⁷

Citing *Barker* and *Manning*, Volkswagen and *Amici*²⁸ argued for preclusion of the plaintiff’s claim on public policy grounds.²⁹ “Where a plaintiff has engaged in unlawful conduct, the courts will not entertain suit if the plaintiff’s conduct constitutes a serious vio-

20. *Alami*, 718 N.Y.S.2d 604

21. *Alami v. Volkswagen, Inc.*, 96 N.Y.2d 714 (2001); see also, *Alami*, 97 N.Y.2d at 285.

22. See *Reno v. D’Javid*, 42 N.Y.2d 1040 (1977) (The *Alami* court noted that this policy was first applied when they denied the claim against a doctor for negligence in performing an illegal abortion).

23. *Riggs v. Palmer*, 115 N.Y. 506 (1889).

24. *Manning*, 667 N.Y.2d at 338.

25. *Barker*, 63 N.Y.2d at 29.

26. *Manning*, 667 N.Y. at 339.

27. See *id.* at 339.

28. 2001 NY Lexis 3387 (N.Y. 2001) (granting motion for Amicus Brief of Product Liability Advisory Council); 2001 NY Lexis 3389 (N.Y. 2001) (granting motion for Amicus Brief of Mothers Against Drunk Driving).

29. *Alami*, 97 N.Y.2d at 285.

lation of the law and the injuries for which the plaintiff seeks recovery are the direct result of that violation.”³⁰ Here the decedent was driving while intoxicated and lost control of his vehicle as a result of that intoxication.

Rebutting the defendant’s contention, the plaintiff argued that since her action was based upon defects in the vehicle’s design and their role in her husband’s death, *Barker* and *Manning* did not bar her claim.³¹ Plaintiff did not contest Volkswagen’s assertion that decedent’s intoxication was the cause of the vehicles collision with the utility pole.³² The plaintiff maintained that her husband’s intoxication was not the direct cause of the injuries for which she wished to recover.³³

In analyzing whether the plaintiff’s claim would be precluded on public policy grounds the Court of Appeals did not emphasize the issue of whether the decedent was engaged in a serious violation of the law. “Operating a motor vehicle while in an intoxicated condition is indisputably a serious violation of the law.”³⁴ Rather, the court emphasized that the plaintiff’s claim was premised on the design defect and not the decedent’s intoxication as the cause of the injuries for which she sought recovery.³⁵

According to the court, *Barker/Manning* extends the basic principle that one may not profit from one’s own wrong.³⁶ In essence, the *Barker/Manning* rule established that a plaintiff could not rely upon an illegal act or relationship to define the defendant’s duty.³⁷ In this case, the court refused to extend application of the *Barker/Manning* beyond claims where the parties to the suit were involved in the underlying criminal conduct, or where the criminal plaintiff seeks to impose a duty arising out of an illegal act.³⁸

The court distinguished the plaintiff’s claim from *Barker* and *Manning*. Although operating a motor vehicle while intoxicated

30. *Alami*, 97 N.Y.2d at 285.

31. *Id.* at 286.

32. *Id.*

33. *Id.*

34. *Id.* at 285.

35. *Id.*

36. *Alami*, 97 N.Y.2d at 286.

37. *Id.*

38. *Id.* at 278.

was clearly a serious violation of the law, if Volkswagen defectively designed the Jetta, as asserted by the plaintiff's expert, it breached a duty to *any* driver of a Jetta involved in a crash regardless of the initial cause.³⁹ The plaintiff did not seek to profit from her husband's intoxication, she only asked for Volkswagen to honor its duty to produce a product that does not unreasonably enhance or aggravate a user's injuries.⁴⁰ The court concluded that the duty the plaintiff sought to impose on Volkswagen originated not from her husband's act, but from Volkswagen's obligation to design, manufacture, and market a safe vehicle.⁴¹ The court reasoned that if they were to extend *Barker/Manning* here they would "abrogate legislatively-mandated comparative fault analysis in a wide range of tort claims" and essentially relieve Volkswagen of its duty to manufacture safe automobiles.⁴²

The dissent vehemently disagreed with the majority's holding and contended *Barker/Manning* precluded the plaintiff's claim.⁴³ The preclusion doctrine prevents a plaintiff from profiting from his or her own criminal acts.⁴⁴ The *Barker/Manning* rule precludes a claim at the threshold of the plaintiff's application for relief, before the court can determine the defendant's culpability.⁴⁵ In *Barker* and *Manning* it was clear that the defendant's contributed to the plaintiff's injuries.⁴⁶ However, the court barred the suits rather than apply comparative negligence principles because the policy rationale of preclusion always existed independently from the rule of contributory negligence.⁴⁷

The dissent contended that the majority allows for injured plaintiffs, as a result of their own serious violations of the law, to more easily avoid dismissal by demonstrating that the defendant owed a duty that did not "arise out of" the illegality.⁴⁸ The majority's rationale invites people injured as a result of their own unlaw-

39. *Alami*, 97 N.Y.2d at 287. (emphasis added)

40. *Id.*

41. *Id.*

42. *Id.* at 288.

43. *Id.*

44. *Id.* at 286.

45. *Alami*, 97 N.Y.2d at 286.

46. *Id.*

47. *Id.*

48. *Id.* at 290.

ful acts to "blame others" and recover damages previously precluded under *Barker* and *Manning*.⁴⁹ The majority failed to provide a guideline for when a duty "arises out of" illegal conduct thereby creating the likelihood of inconsistency in the lower courts⁵⁰.

Although the dissent makes a valid point that the majority has potentially "opened the floodgate" to claims by plaintiffs who have been injured while engaged in serious illegal acts, this decision demonstrates that manufacturers will not be relieved of their duty of safety merely because a consumer is engaged in an illegal activity at the time of injury. An automobile is an inherently dangerous instrument that could lead to death upon collision. The manufacturer is obligated to manufacture and distribute a safe product. A design defect that compromises the safety of the vehicle is a breach of duty to *all consumers*, not only the sober ones. It is clear from the majority's opinion that they did not intend to allow plaintiffs to benefit from their illegal behavior. Rather, the court demonstrated their disapproval of a manufacturer attempting to deny responsibility for decedent's fatal injuries because he was intoxicated at the time of his accident.

IV. CONCLUSION

The court ultimately held that where an automobile manufacturer's defective design leads to fatal injuries, the manufacturer's duty of care to the driver is breached regardless of the cause of the crash.

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49. *Alami*, 97 N.Y.2d at 291.

50. *Id.*