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Torts—PRODUCTS LIABILITY—FLORIDA REJECTS THE PATENT DANGER DOCTRINE—*Auburn Machine Works Co. v. Jones*, 366 So. 2d 1167 (Fla. 1979).

The holding in *Auburn Machine Works Co. v. Jones*[1] broadens the scope of a manufacturer's liability with respect to those dangers open and obvious to the casual observer. The obvious or patent danger doctrine was expressly rejected as an exception to the manufacturer's liability in a products liability action in tort.[2]

In *Auburn Machine*, a sixteen-year-old laborer was injured while laying telephone cable in a trench according to his superior's instructions. While working behind a trencher, Jones lost his footing because the side of the trench caved in. As a result, his foot became entangled in the exposed chain of the trencher, and he sustained injuries which required the amputation of his left leg below the knee. The danger presented by the trencher was obvious due to the lack of a guard or protective shield over the chain.[3]

On a motion for summary judgment, the trial court ruled for Auburn Machine, holding that the patent danger doctrine applied.[4] The Second District Court of Appeal reversed, holding that Auburn Machine, as summary judgment movant, failed to meet its burden in showing that no issues of material fact existed.[5] Based on the conflict between the Second District Court of Appeal in *Auburn Machine* and the First District Court of Appeal in *Farmhand, Inc. v. Brandies*[6] as to the applicability of the patent danger doctrine, the Florida Supreme Court exercised its jurisdiction to resolve the conflict.[7]

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1. 366 So. 2d 1167 (Fla. 1979).
2. *Id.* at 1167, 1172.
3. *Id.*
4. *Id.* at 1168. *See generally* Campo v. Scofield, 95 N.E.2d 802 (N.Y. 1950). In *Campo*, the New York court espoused the most precise statement of the patent danger doctrine to date:

> [T]he manufacturer of a machine or any other article, dangerous because of the way in which it functions, and patently so, owes to those who use it a duty merely to make it free from latent defects and concealed dangers. . . .
>
> If a manufacturer does everything necessary to make the machine function properly for the purpose for which it is designed, if the machine is without any latent defect, and if its functioning creates no danger or peril that is not known to the user, then the manufacturer has satisfied the law's demands.

Id. at 803-04. The *Campo* decision was overruled in Micallef v. Miehle Co., 348 N.E.2d 571 (N.Y. 1976).

5. Jones v. Auburn Mach. Works Co., 353 So. 2d 917 (Fla. 2d Dist. Ct. App. 1977), *aff'd*, 366 So. 2d 1167 (Fla. 1979).
6. 327 So. 2d 76 (Fla. 1st Dist. Ct. App. 1976).
7. 366 So. 2d 1167. FLA. CONST. art. V, § 3(b)(3) provides: "The supreme court . . . [m]ay review by certiorari any decision of a district court of appeal . . . that is in direct conflict with a decision of any district court of appeal . . . on the same question of law . . . ."

Under the obvious or patent danger doctrine a judge is compelled to rule as a matter of law that a manufacturer is not liable merely because the product was obviously hazardous.[8] Consequently, the manufacturer has an affirmative defense which functions as a total bar to recovery in the sense that the patent danger doctrine acts as an implied assumption of risk.[9]

Three prior decisions in the courts of Florida weighed heavily in the decision of the court in *Auburn Machine* to reject expressly the patent danger doctrine. In *West v. Caterpillar Tractor Co.*, the Florida Supreme Court considered a road grader's design defects in terms of strict tort liability.[10] In determining the contributory negligence of the plaintiff, the court viewed the obviousness of the danger as a factor in the defense of contributory negligence, as opposed to an exception to the manufacturer's liability.[11]

In *Blackburn v. Dorta,* a minor was injured when the dune buggy in which he was riding as a passenger overturned.[12] The Third District Court of Appeal reversed the judgment for plaintiff, noting that in other jurisdictions implied assumption of risk was an absolute bar to recovery, notwithstanding the adoption of comparative negligence in those jurisdictions.[13] However, the Florida Supreme Court reversed the appellate court's ruling, holding that "the affirmative defense of implied assumption of risk is merged into the defense of contributory negligence" subject to the principles of comparative negligence.[14]

In *Blaw-Knox Food & Chemical Equipment Corp. v. Holmes,*[15] an

8. *See* Campo v. Scofield, 195 N.E.2d 802 (N.Y. 1950).

9. *See* Rheingold, *The Expanding Liability of the Product Supplier: A Primer,* 2 HOFSTRA L. REV. 521 (1974). Under the *Campo* holding the patent danger doctrine is "an assumption of the risk defense as a matter of law, with the added disadvantage that the defendant was relieved of the burden of proving that the plaintiff had subjectively appreciated a known risk." *Id.* at 541. The defendant's burden of proving that the plaintiff subjectively appreciated a known risk, and voluntarily encountered it is traditionally required in an implied assumption of risk case. *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 68, at 447 (4th ed. 1971).

10. 336 So. 2d 80 (Fla. 1976). Strict liability is defined and discussed in RESTATEMENT (SECOND) OF TORTS § 402A (1965).

11. 336 So. 2d at 90.

12. 348 So. 2d 287 (Fla. 1977).

13. Dorta v. Blackburn, 302 So. 2d 450, 451 (Fla. 3d Dist. Ct. App. 1974), *aff'd,* 348 So. 2d 287 (Fla. 1977). *See, e.g.,* Hass v. Kessell, 432 S.W.2d 842 (Ark. 1968); Saxton v. Rose, 29 So. 2d 646 (Miss. 1947).

14. 348 So. 2d at 293. The doctrine of comparative negligence was adopted in Florida in Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973).

For an excellent comment on *Dorta* see 6 FLA. ST. U.L. REV. 211 (1978). In *Dorta* the supreme court held that contributory negligence is not an absolute bar to recovery as that would be inconsistent with the reasoning behind *Hoffman.* Furthermore, the court concluded that as implied assumption of risk is now merged into the defense of contributory negligence, that defense cannot act as a total bar to recovery.

15. 348 So. 2d 604 (Fla. 4th Dist. Ct. App. 1977).

employee was injured when he fell into hot oil. The Fourth District Court of Appeal denied the defendant's motion for directed verdict, basing the denial on the invalidity of the patent danger doctrine. The court, relying on *Blackburn v. Dorta,* held that "the patent danger doctrine is also merged into the defense of contributory negligence and the principles of comparative negligence."[16]

Prior to the *Auburn Machine* decision, the status of the patent danger doctrine was in question in Florida. The First District Court of Appeal construed the patent danger doctrine as an exception to the manufacturer's liability in *Brandies.*[17] *Brandies* relied primarily on a 1950 New York case, *Campo v. Scofield,*[18] wherein the patent danger doctrine was introduced as an exception to manufacturer's liability regarding injuries incurred from obviously dangerous products. The *Campo* case, however, was itself overruled by the New York Court of Appeals in *Micallef v. Miehle Co.* two months after the *Brandies* decision.[19] Other jurisdictions outside of Florida have also responded to the public's aversion to the harshness of the *Campo* rule by rejecting the patent danger doctrine.[20]

According to the *Auburn Machine* opinion, the "modern trend in the nation is to abandon the strict patent danger doctrine as an exception to liability and to find that the obviousness of the defect is only a factor to be considered as a mitigating defense . . . ."[21] The primary justification presented in favor of joining the modern trend was succinctly stated in terms of furthering the public interest.[22] That is, most accidents resulting from obviously dangerous

16. *Id.* at 607.

17. 327 So. 2d 76 (Fla. 1st Dist. Ct. App. 1976). The First District Court of Appeal even acknowledged that the Judicial Conference which recommended New York's comparative negligence statute said that the patent danger rule "should be considered . . . as a factor to be weighed by the trier of fact in determining whether to diminish damages." *Id.* at 80 n.4.

18. 95 N.E.2d 802 (N.Y. 1950).

19. 348 N.E.2d 571 (N.Y. 1976). In support of the New York court's decision to overrule *Campo,* the court stated:

> *Campo* suffers from its rigidity in precluding recovery whenever it is demonstrated that the defect was patent. Its unwavering view produces harsh results in view of the difficulties in our mechanized way of life to fully perceive the scope of danger, which may ultimately be found by a court to be apparent in manufactured goods as a matter of law.

Id. at 577.

20. For a comprehensive list of other jurisdictions which have rejected the *Campo* doctrine see Respondent's Brief on Merits at 16-25, Auburn Machine Works Co. v. Jones, 366 So. 2d 1167 (Fla. 1979).

21. 366 So. 2d at 1169. For a thorough analysis of the history of the patent danger doctrine see 7 CUM. L. REV. 561 (1977).

22. 366 So. 2d at 1170-71. *See Micallef,* 348 N.E.2d at 577, in which the court stated that "[a]pace with advanced technology, a relaxation of the *Campo* stringency is advisable. A casting of increased responsibility upon the manufacturer, who stands in a superior position

products result in harm or fatalities. Consequently, the public has expressed a concern for holding the manufacturer of such products liable. In light of the superior position of manufacturers to provide safeguards and to discover defects in their products, the modern trend of rejecting the patent danger doctrine is entirely appropriate.

The *Auburn Machine* holding does not entirely abrogate the patent danger doctrine in Florida. In negligent design cases, the holding merely reduces the doctrine from an absolute bar to recovery to a factor in resolving the issue of whether the plaintiff exercised reasonable care. Reducing the affirmative defense of patent danger will have an impact in all products liability cases involving obviously dangerous products, and particularly in those cases wherein injuries are sustained due to the lack of a guard over any class of moving parts. Regardless of whether a particular manufacturer's competitors have relatively inexpensive safeguards available, the manufacturer must provide safety features which the experts of the field deem warranted in order to avoid liability.[23]

In sum, the court has made it apparent in Florida that the patent danger doctrine will no longer be an absolute bar to recovery and the absence of safety devices on inherently dangerous machinery is actionable, even if the danger encountered by the injured plaintiff is obvious.[24] This conclusion has its basis in the belief that in our highly technological society, the manufacturers hold themselves out as experts, and the consumers are forced to rely on that assertion. The manufacturer is in a better position than the consumer to know if a product is properly designed and safely made for its intended purpose. In addition, the court believes that the patent danger doctrine tends to encourage poor design since the manufacturer may rely on the obviousness of the danger to avoid liability.[25] Therefore, after *Auburn Machine,* it appears that in similar cases a plaintiff shall be provided an opportunity for a jury trial. The trial will give litigants an avenue for presenting issues in language of proximate or legal cause so as to lend credence to the higher standard of care required of manufacturers on the basis of the *Auburn Machine* mandate. In light of the recent developments outlined by the Florida Supreme Court in *Auburn Machine,* the adoption of the modern form of products liability with respect to obviously dangerous products is a needed and timely change.

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to recognize and cure defects, for improper conduct in the placement of finished products into the channels of commerce furthers the public interest."

23. *See, e.g., Micallef,* 348 N.E.2d 571.
24. 366 So. 2d 1167.
25. *Id.* at 1170-71.