

Serial: 155161

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99002-SCT

IN RE: MISSISSIPPI RULES OF EVIDENCE

ORDER

This matter is before the Court en banc on the Motion to Amend Certain Rules of the Mississippi Rules of Evidence filed by the Supreme Court Advisory Committee on Rules. After due consideration, the Court finds that the amendment of Rule 407 and the Comment as set forth in Exhibit “A” will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that the petition is hereby granted to the extent that Rule 407 and its Comment of the Mississippi Rules of Evidence are amended as set forth in Exhibit “A” hereto. This amendment is effective on July 1, 2011.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forward a true certified copy to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Third Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this the 15th day of November, 2010.

/s/ George C. Carlson, Jr.

GEORGE C. CARLSON, JR.,
PRESIDING JUSTICE

TO GRANT: WALLER, C.J., CARLSON, P.J., RANDOLPH, LAMAR, CHANDLER AND PIERCE, JJ.

TO DENY: GRAVES, P.J., DICKINSON AND KITCHENS, JJ.

Exhibit A

Rule 407. Subsequent Remedial Measures.

When, after an injury or harm allegedly caused by an event, measures are taken which, if taken previously, would have made the injury or harm event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, ~~or culpable conduct,~~ a defect in a product, a defect in a product's design, or a need for a warning or instruction in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or for impeachment.

[Amended effective July 1, 2011.]

Comment

This rule prohibits evidence of subsequent repairs to be introduced for the purpose of proving negligence or liability, including products liability. However, it may be admitted into evidence for another purpose. The second sentence of the rule discusses its limitations. The rule mentions ownership, control, feasibility and impeachment as admissible purposes, but this is not an exclusive list of permitted grounds, only an illustrative list.

The primary reason for this rule is a sound one. If such evidence were admissible on the issue of culpability, then the person responsible would have less little incentive to correct the defect. By excluding subsequent repairs and remedies, the rule encourages the owner to render his the property safer, or at least does not discourage ~~him from making~~ repairs. The rule applies only to remedial changes made after the occurrence that produced the damages giving rise to the action. Evidence of measures taken by the defendant before the "event" causing "injury or harm" does not fall within the exclusionary scope of Rule 407 even if they occurred after the manufacture or design of the product. Courts applying Rule 407 ~~this principle~~ have excluded evidence of subsequent repairs, installation of safety devices, changes in company rules, and discharge of employees.

~~Under Mississippi common law, only two exceptions were noted to this principle: evidence of subsequent repairs was admissible (1) if the defendant had testified that modifications were not feasible and (2) if the defendant claimed that the modified conditions were the same conditions that existed at the time of the accident.~~

~~See *Chicago Mill & Lumber Co. v. Carter*, 209 Miss. 71, 46 So.2d 854 (1950); *Standard Oil v. Franks*, 167 Miss. 282, 149 So. 798 (1933). Rule 407 is more liberal than was the similar Mississippi practice.~~

[Comment amended effective July 1, 2011.]