IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-00784 COA

GWENDOLYN B. HUBBARD, MARIETA B. STRICKLAND, HERBERT BRYANT, TESSIE B. HARTFIELD, VONCILE B. HIATT, EVA B. RIDER, JOHN GLEN BRYANT AND DEBORAH ANN B. BARNES, WRONGFUL DEATH BENEFICIARIES OF JOSEPH NOEL BRYANT, DECEASED; AND VONCILE B. HIATT, EXECUTRIX OF THE ESTATE OF JOSEPH NOEL BRYANT, DECEASED — **APPELLANTS**

v.

GENERAL MOTORS CORPORATION AND DOSSETT-PONTIAC-CADILLAC-GMC, INC. — **APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	02/10/95
TRIAL JUDGE:	HON. RICHARD WAYNE MCKENZIE
COURT FROM WHICH APPEALED:	FORREST COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANTS:	VICTOR A. DUBOSE
	ROCKY WAYNE EATON
ATTORNEY FOR APPELLEES:	R. WEB HEIDELBERG
	LANNY B. BRIDGERS
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
TRIAL COURT DISPOSITION:	VERDICT FOR GENERAL MOTORS CORPORATION AND DOSSETT
DISPOSITION:	AFFIRMED - 10/21/97
MOTION FOR REHEARING FILED:	11/12/97
CERTIORARI FILED:	
MANDATE ISSUED:	3/30/98

BEFORE McMILLIN, P.J., HERRING, AND KING, JJ.

McMILLIN, P.J., FOR THE COURT:

This case comes to the Court as an appeal from a verdict in favor of the defendants rendered by a jury in the Circuit Court of Forrest County. The case was commenced as a personal injury action by

Joseph Noel Bryant against General Motors Corporation and Dossett Pontiac-Cadillac-G.M.C., Inc. Bryant claimed a structural failure in his 1989 Pontiac automobile caused him to lose control of the vehicle, leave the roadway, and strike a tree. Bryant received severe injuries which ultimately led to his death before trial. The case was revived by his estate and by the statutory beneficiaries of a wrongful death claim. References in this opinion to "Bryant" should be understood as referring collectively to the plaintiffs as of the time of trial.

This Court concludes that the issues raised on appeal are without merit and affirms the judgment entered on the jury's verdict.

I.

The Theory of Liability

Bryant filed suit against General Motors as manufacturer of the vehicle and Dossett as the selling dealer, asserting claims sounding in negligence, strict liability in tort, and breach of warranty. Bryant had purchased the new vehicle six months prior to the accident, and it had been driven less than 14, 000 miles. His theory of liability was that a metal housing called a "tripot" used to encase a portion of the front axle assembly spontaneously fractured, causing a loss of steering control of his vehicle and the resulting crash. The defendants countered with evidence that, before the accident, Bryant had taken the prescription drug Darvocet, which is known to promote drowsiness, and contended that Bryant went to sleep while at the wheel. Most of the factual evidence surrounding the accident itself was provided by a witness who was in a vehicle following behind Bryant at the time. This witness testified that Bryant's car suddenly swerved left and then back to the right, went down an embankment, and struck a tree. The witness claimed to have seen brake lights; however, an investigating officer testified that he observed no skid marks at the accident scene.

The fractured tripot assembly was recovered and introduced into evidence. An expert witness for Bryant testified that the fracture was the result of a defect in the manufacturing process. The defendants, on the other hand, produced an expert witness who offered his opinion that the fracture in the housing was caused by the impact of the accident itself.

At trial, Bryant also attempted to introduce testimony of an accident reconstructionist that, in his opinion, the braking system of the automobile was not functioning at the time of the crash. The trial court refused to permit this testimony, holding that malfunctioning brakes had not been made an issue for trial either through the pleadings or plaintiffs' discovery responses.

The trial court, at the conclusion of the evidence, directed a verdict in favor of Dossett on Bryant's separate claim that Dossett had failed to properly repair the vehicle's brake system. All other issues were submitted to the jury for resolution, and the jury returned a verdict against Bryant. Bryant's post-trial motions were denied, and Bryant perfected this appeal, asserting ten separate issues.

II.

The Form of the Verdict Instruction

Bryant complains that the trial court refused to give a form of the verdict instruction that would have permitted the jury to return a verdict against one defendant but in favor of the other defendant. His

argument is based on the idea that the jury could have found against General Motors on a claim of negligence and that such negligence could not have been charged to Dossett. However, any finding of liability against General Motors, whether based on negligence, strict liability, or breach of warranty, would have required the jury to conclude that the vehicle as manufactured by General Motors was defective and unreasonably dangerous. Thus, the jury would have been compelled, had it properly followed the law, to return a verdict against Dossett as a matter of law under principles of strict liability in tort. A verdict against General Motors and in favor of Dossett would, therefore, have been unsustainable as being arbitrary and capricious. It is nonsensical to suggest that, under those circumstances, it was reversible error to refuse to permit the jury the opportunity to return a verdict contrary to the law. The trial court properly determined that, on the theory of recovery advanced by the plaintiff, the verdict had to be either against both defendants or in favor of both. The form of the jury instruction reflected this fact, and there is no basis to claim reversible error on this issue.

III.

Other Jury Instructions Granted to Defendants

Although assigned as a single issue by Bryant, this aspect of the case actually involves ten separate instructions requested by the defendants and given by the trial court, each one of which Bryant claims to be reversible. We begin our analysis with the general observation that jury instructions must be considered as a whole. We are not to confine our consideration to one particular instruction in isolation. *Flight Line, Inc. v.Tanksley,* 608 So. 2d 1149, 1157 (Miss. 1992). If, based upon a review of the instructions as a whole, the Court can conclude that the jury has been reasonably, though not perfectly, apprized of the applicable law, there can be no reversible error based upon an isolated defect in a particular instruction. *Id.*

A.

Instruction D-16

Instruction D-16 told the jury that the mere fact that Bryant had been injured did not constitute proof of any breach of duty owed him by the defendants and that Bryant was required to "show by a preponderance of the evidence that [the defendants] breached some duty" in order for the plaintiff to recover. Bryant complains that this instruction was confusing because its mention of "breach of duty" dealt with negligence only and did not take into consideration Bryant's alternate theories of strict liability or breach of warranty. The instructions given in this case, when considered as a whole, set out satisfactorily all theories of recovery asserted by the plaintiff. This instruction, which does little more than tell the jury that the plaintiff is required to prove something other than injury in order to recover, is a statement of the obvious, which we find to be of little utility. Nevertheless, we do not find the use of the term "duty" particularly confusing, nor to necessarily limit itself to questions of negligence. The term certainly has application in the law of contract, which would cover the warranty claim. As for the strict liability claim, it can be fairly said that the manufacturer or seller has a duty to the consumer that is, in essence, absolute -- that duty being to furnish a product free from any defect that renders the product unreasonably dangerous to the consumer. When this instruction is read in conjunction with all remaining instructions, we do not conclude it to be so confusing as to lead the jury to believe that it must find negligence on the part of the defendants to return a plaintiff's verdict. Though the instruction may not have been particularly helpful, neither do we find it so prejudicial as

to warrant reversal in this case.

B.

Jury Instruction D-19A

This instruction, apparently given in order to reiterate the fact that the trial court had directed a verdict in favor of Dossett on the issue of negligent repair told the jury that Dossett "was not negligent, and did not fail to exercise reasonable care in inspecting, distributing, maintaining, servicing and repairing Mr. Bryant's automobile and its component parts." Bryant claims the instruction was overly broad since the only issue on which the court had directed a verdict was the claim of negligent repair of the brakes. To the extent the instruction is too broad, it cannot constitute reversible error since there was no jury issue that Dossett was negligent in *any* aspect of inspecting, distributing, maintaining, servicing, or repairing the vehicle. Any extra language was merely surplusage which we do not find prejudicial to the jury's deliberation of claims of strict liability and breach of warranty -- claims not related to issues of negligence. *City of Jackson v. Wright*, 151 Miss 829, 836, 119 So. 315, 317 (1928). Neither was this instruction, limited in effect only to Dossett, prejudicial to the jury's consideration of independent claims of negligence asserted against General Motors.

C.

Jury Instruction D-25

This instruction dealt with the issue of the certainty of the proof on damages. Bryant claims that the use of the phrase "with reasonable certainty" placed too high a burden on the plaintiff, since damages must only be established by a preponderance of the evidence. *See Amiker v. Brakefield*, 473 So. 2d 939, 939-40 (Miss. 1985). Though Bryant has apparently correctly cited the law, we decline to reverse for two reasons. First, there was no contemporaneous objection to the instruction by Bryant's counsel when the proposed instruction was under consideration, and the issue is, therefore, waived. *T.K. Stanley, Inc. v. Cason*, 614 So. 2d 942, 954 (Miss. 1992). Secondly, the jury returned a verdict for the defendants on the issue of liability and never reached the issue of damages. There can be no prejudice to the plaintiff in such a circumstance.

D.

Jury Instruction D-13

This instruction told the jury that, absent proof of some defect in the automobile, the jury was obligated to return a defendant's verdict. Bryant claims this was reversible error, arguing that it was not necessary to prove any defect in the automobile in order to recover under theories of negligence or warranty. This Court finds this proposition puzzling. The entire theory of Bryant's case was that the metal tripot assembly spontaneously failed, causing Bryant to lose control of the vehicle. A finding of spontaneous failure of the housing would necessarily be the equivalent of a finding that it was in a defective condition. If the jury concluded that the accident was not caused by a failure in the tripot assembly, then there was no alternative theory advanced by the plaintiff which would support a claim of negligence or breach of warranty. We find this issue to be without merit.

E.

Jury Instruction D-32

This instruction dealt with the allegation of negligence against General Motors. In its opening sentence, the instruction limited itself to the "issue of negligent manufacture." Bryant now claims that granting the instruction was reversible error "because it limited the negligence of General Motors to manufacturing and excluded from the jury's consideration negligence in all other areas." Bryant does not illumine us as to what these "other areas" are. When a case is tried on a number of separate theories of recovery, it is practically impossible to deal with all of them in each individual instruction. There were other instructions that dealt with Bryant's remaining theories of recovery, and this instruction does not, by any stretch, preclude the jury from considering those alternate theories. *See Splain v. Hines,* 609 So. 2d 1234, 1239 (Miss. 1992). This issue lacks merit.

F.

Jury Instruction D-35

This instruction dealt with the concept of what would constitute an "unreasonably dangerous" condition in Bryant's automobile. The instruction briefly told the jury about the necessity for a risk-utility analysis under *Sperry-New Holland v. Prestage,* 617 So. 2d 248 (Miss. 1993). Bryant claims the instruction was confusing. Risk-utility analysis in determining whether a product is unreasonably dangerous is an appropriate consideration only where the product has reached the consumer in its intended condition, though there is some attendant risk associated with the use of the product. It involves the idea that certain products, free of any manufacturing defect and functioning strictly according to design, necessarily carry with them some inherent risk in their use. Risk versus utility considerations require the jury to balance the benefits derived from the availability of such a product against the inherent risks that cannot be designed out of the product. A gasoline-powered chain saw, with its exposed cutting device capable of inflicting severe injury, would be an example. The exposed cutting chain that produces the risk of injury is the very aspect of the product that gives the device its utility, and in the proper case, the jury may have to balance these competing interests. However, when the claim is that the product has some flaw in manufacture or design that has caused the product to malfunction, risk-utility analysis has no application. There is *no* utility associated with an automobile so designed or manufactured that it is subject to catastrophic failure without warning when being put to its intended use.

We, therefore, conclude that this instruction was improperly given as having no relevance to the issues being tried. Nevertheless, we conclude that the instructions, read as a whole, properly, if not perfectly, informed the jury of its duty. Rather than misinforming the jury in such a manner that it could fairly be said to have led them astray, this instruction was so uninformative as to impart essentially no meaningful information. The jury, as a practical matter, had to look elsewhere for its instruction, and we find the remaining instructions adequate to inform the jurors of their duty. *Starcher v. Byrne,* 687 So. 2d 737, 742 (Miss. 1997).

G.

Jury Instructions D-39 and D-41

We combine these two instruction complaints for consideration. Both dealt with the issue of negligent repair of the vehicle by Dossett. As we have already observed, the trial court properly ruled that Dossett's alleged negligent repair of the braking system was not an issue at trial. There was no other allegation or proof of negligence against Dossett. Therefore, these instructions, perhaps objectionable as being repetitive to the point of excess, were not incorrect, nor were they confusing. The giving of these instructions was not reversible error.

H.

Jury Instructions D-42 and D-48

We combine our consideration of these two instructions, also. Both of these instructions dealt with the necessity for the plaintiff to prove by a preponderance of the evidence some defect in the vehicle that proximately caused Bryant's injuries. Bryant only offers the argument that they were prejudicial and confusing since they were not tied to a particular theory of recovery. All three of Bryant's alternate theories of recovery -- negligence, strict liability, and warranty -- necessarily required a finding that the automobile was defective. Again, except for the fact that the defendants insisted on belaboring every element of the defense in repeated instructions, we do not find these instructions particularly harmful to the plaintiffs' various theories of recovery. We decline to reverse because of the trial court's decision to grant these instructions.

IV.

Bryant's Requested Instructions Denied by the Trial Court

Bryant complains that the trial court denied three of the plaintiff's requested instructions. It is suggested that the denial of these instructions constituted reversible error. We will consider the first instruction separately and combine our discussion of the next two, since they deal with the same issue.

A.

Proposed Instruction P-25

Instruction P-25 dealt with Dossett's duty to "distribute, service, maintain, inspect, and repair" its products so as "to sell and distribute safe and not dangerous or defective automobiles." It also asserted Dossett's "duty to exercise reasonable care in maintaining, repairing and servicing said automobiles." This Court considers this an instruction sounding purely in negligence. The sole claim of negligence against Dossett, for repair of the braking system, was taken from the jury by the trial court -- a decision we have already considered and concluded was a correct ruling. The trial court was correct in denying this instruction.

B.

Proposed Instructions P-35 and P-36

These instructions dealt with the issue of whether the jury could return a verdict against one defendant and not the other. They also addressed the issue of an apportionment of damages between the two defendants based on percentages of fault in the event of a finding of liability against both defendants. On the theories of recovery that this case was submitted to the jury, it would have been error as a matter of law to return a verdict against Dossett and not against General Motors, since there was no separate claim against Dossett that was not based upon some defect in the design or manufacture of the vehicle. Considered from the other angle, any finding of liability on the part of General Motors, whether based upon (a) negligence in the design or manufacture of the tripot housing or (b) upon strict liability or (c) breach of implied warranty for the housing's spontaneous failure, would have necessarily implicated Dossett on principles of strict liability and implied warranty. Thus, on the facts of this case, a verdict in favor of one defendant but against the other would have been contrary to law, and it cannot be error to deny the jury the opportunity to return an improper verdict.

As to the failure to instruct on apportionment between joint tort-feasors, we conclude that the right to have the jury so instructed is one belonging primarily to co-defendants. The jury's first obligation is to assess the total damage incurred by the plaintiff without regard to the respective fault of any number of co-defendants. *See* Miss. Code Ann. § 85-5-7 (Miss. 1991). The subsequent duty to apportion the damages between the defendants works to the plaintiff's detriment by depriving the plaintiff of a source of collection of his damages that existed at common law. It would be speculative in the extreme to suggest, in this case, that the jury returned a verdict in favor of both defendants for the sole reason that it was not permitted the opportunity to divide Bryant's damages between these two defendants.

Had the jury returned a plaintiff's verdict in the form given it by the trial court, the matter of the apportionment of the total verdict between the two defendants might have been a legitimate issue to be resolved between the defendants. The jury's verdict for the defendants, however, rendered that issue moot.

V.

Discovery Fraud

Bryant, during discovery, had requested copies of all recall notices or service bulletins relating to the tripot assembly as installed in Bryant's automobile. General Motors contended originally that no such documents existed. Ultimately, a number of service bulletins were produced that contained references, in various contexts, to the tripot assembly. The trial court conducted a mid-trial review of these documents and permitted the introduction of fifteen of them as exhibits for the jury's consideration. It appears that the court's ruling on admissibility was undertaken more out of an abundance of caution than upon a finding of particular relevance of the documents.

Bryant now argues that General Motors wilfully concealed these documents and that this discovery abuse warrants the ultimate sanction of a directed verdict against General Motors on the issue of liability. *See* Miss. R. Civ. P. 37(b)(2)(C). This Court has reviewed the bulletins admitted into evidence and finds them to have little or no probative value on the issue tried to the jury. None of them even remotely show that a spontaneous failure of the device was a likely event. They deal,

rather, with such esoteric subjects as the proper tool to use when disassembling the housing, matters to check regarding the condition of the housing in the event disassembly was required, and how to deal with interference noise in the transaxle.

Bryant, having gained access to this information, has failed to suggest how any of the information contained in these routine bulletins would have been probative on his claim of spontaneous failure. The matter of discovery abuse was submitted to the trial court for resolution, and the court resolved the issue against Bryant. Nothing in the record or in the appellant's brief before this Court convinces us that the trial court abused its discretion in this regard. That being the case, this Court is without authority to intervene. *Cooper v. State Farm Fire and Casualty Co.*, 568 So. 2d 687, 692 (Miss. 1990).

VI.

Exclusion of Expert Testimony for the Plaintiffs

Bryant wanted to introduce the testimony of an accident-reconstructionist who, based upon the absence of skid marks and the testimony of a following driver that she saw brake lights, was prepared to offer an opinion that the brakes on the car failed to operate during the accident sequence. The trial court refused to permit this testimony on the basis that Bryant's sole theory of recovery advanced throughout the discovery phase of the trial was the failure of the tripot housing. There was no error in this ruling. Pre-trial discovery serves the legitimate purpose of framing the issues to be tried and preventing a trial by ambush. *Witt v. Mitchell,* 437 So. 2d 63, 65 (Miss. 1983). Had Bryant intended to advance a claim of brake failure, it was incumbent on counsel to reveal that intention during discovery so that the defendants could be prepared to meet the claim.

Bryant also complains of the exclusion of the testimony of a metallurgist who was prepared to testify that, after the accident, General Motors began using a higher grade of steel in the manufacture of the tripot assembly. The court refused to admit this testimony as being evidence of subsequent remedial measures, inadmissible under Mississippi Rule of Evidence 407(a). *Sawyer v. Illinois Cent. Gulf R.R..*, 606 So. 2d 1069, 1075 (Miss. 1992). This was a correct application of the rules of evidence, and there is no basis for relief in this instance.

Finally, Bryant claims reversible error for the trial court's refusal to permit a retired General Motors engineer to testify as to the adequacy of General Motors's testing procedures on the tripot housing. The proof showed that this expert had not worked at General Motors since 1976 and had not been employed in the automotive industry since 1980. He had never had any direct experience in the design or manufacture of this type assembly. The trial court concluded that this expert was not qualified by education or experience to offer helpful information to the jury in regard to the adequacy of quality control in General Motors's design and manufacturing process. M.R.E. 702 The control over the admission or exclusion of evidence is vested in the sound discretion of the trial court. *Walker v. Graham,* 582 So. 2d 431, 432 (Miss. 1991). We may reverse for the exclusion of evidence only if we find the trial court abused its discretion, and the exclusion affected a party's fundamental right to a fair trial. *Id.* We can find no such abuse in the trial court's ruling on this issue.

VII.

Refusal to Exclude Testimony of Defendants' Expert Witnesses

General Motors designated two experts seven days before trial. Dossett, represented by the same law firm, failed to formally join in this designation. Bryant now claims that the testimony of these experts should have been excluded as unreasonably late as to General Motors and as to Dossett, having never been made.

The duty to seasonably supplement discovery to disclose additional experts is one that lies with the parties. *See* M.R.C.P. 26(f)(1) . In ruling on whether the supplementation was seasonable, the trial court is governed by the question of whether prejudice has arisen due to the untimeliness of the designation. *Motorola Communications and Elecs., Inc. v. Wilkerson,* 555 So. 2d 713, 718 (Miss. 1989). One expert, a metallurgist, was designated within four days of the time Bryant's primary expert on causation was made available to the defendants for a deposition. Bryant has shown no prejudice in terms of evidence or opinions offered by this expert that Bryant could have better met or rebutted with additional time. Absent such a showing, we cannot find error in the trial court's decision to permit this expert to testify. *Sumrall v. Mississippi Power Co.,* 693 So. 2d 359, 368 (Miss. 1997).

The other expert, a medical expert, testified on the effect of the medicine Darvocet in terms of producing drowsiness. The evidence had shown that Bryant ingested a number of Darvocets in the period before the accident, and the defendants advanced the theory that the wreck was caused by his losing consciousness while driving. The expert's opinion that medication may have been a contributing factor was ultimately stricken when it was discovered that the opinion was based in part upon information concerning the time the medicine was ingested that had been derived from defense counsel's handwritten entries on Bryant's former wife's deposition. The time of ingestion suggested by defense counsel's notes did not correspond to the time revealed in the former wife's deposition testimony. The jury was directed to disregard the expert's opinion, and there is a presumption that the jury followed the court's instruction. *Odom v. Roberts,* 606 So. 2d 114, 117 (Miss. 1992). There is no showing by Bryant that the timing of the disclosure of this witness had a material adverse effect on the preparation of plaintiffs' case or its presentation to the jury.

We find no merit in the rather technical argument that Dossett did not formally join in the designation of these experts until shortly before the trial. Even had Dossett had separate representation and never formally noticed its intent to rely upon expert witnesses called by General Motors, we are aware of no authority holding that the jury could not consider the testimony of General Motors's witnesses in weighing Dossett's liability. These experts, insofar as the record reveals, neither altered nor added to their proposed testimony based upon the fact that Dossett, somewhat belatedly, notified the plaintiffs of its intent to rely upon their testimony in support of its separate defense. Having concluded that the designation by Dossett probably was not even necessary, we cannot say that the timing of it constituted reversible error.

VIII.

Video Demonstrations

General Motors introduced into evidence two video demonstrations intended to show to the jury what the effect would be of a failure of the axle assembly protected by the tripot housing. The purpose was

to show that such a failure would not alter the path of the vehicle in the manner in which this accident occurred. Bryant claims the trial court erred in admitting these exhibits, but the argument on this issue is not clear. The appellant seems to be asserting a duty on General Motors to disclose its intent to introduce such demonstrative evidence prior to trial; however, we are pointed to nothing in the court record ordering such pre-trial disclosure of all exhibits, nor are we cited to any authority to support such a proposition. The decisions of the trial court when ruling on objections to the admission of evidence are reversible only for an abuse of discretion, the result of which is to deprive a litigant of his right to a fundamentally fair trial. *Walker v. Graham*, 582 So. 2d 431, 432 (Miss. 1991). We find no error in the trial court's ruling and conclude that this issue is without merit.

IX.

The Indemnity Agreement Between Defendants

General Motors, at some point prior to trial, agreed that it would indemnify its franchise dealer, Dossett, from any obligation for damages assessed against Dossett in this suit. Bryant claimed that it was entitled to have the jury made aware of this agreement; however, the trial court disagreed. Bryant now claims the failure to so inform the jury was reversible error since it was admissible to show "bias in the way and manner defense evidence was presented and withheld from the Bryants." No authority is cited for this proposition, nor does Bryant advance any logical argument for the idea that evidence of this agreement had "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable . . . than it would be without the evidence." M.R.E. 401. The sole fact of consequence to the determination of this action was whether or not the tripot housing on Bryant's vehicle spontaneously failed in the moments preceding his tragic accident. The indemnity agreement made this fact neither more nor less likely and was thus irrelevant to the issue being tried. The trial court was correct in excluding it from evidence.

X.

Directed Verdict on Dossett's Negligent Brake Repair

Bryant argues as a separate issue the trial court's decision to direct a verdict in favor of Dossett on the claim of negligent repair of the braking system. We have discussed this issue in considering the court's rulings on jury instructions and need add nothing here. The trial court properly concluded that Bryant had failed to put a braking system failure in issue in this litigation and refused to submit such a claim to the jury.

XI.

Exclusion of Bryant's Accident Reconstructionist

Bryant raises, as a separate issue, the exclusion of the testimony of the accident reconstructionist who was prepared to testify concerning a failure in the braking system of the automobile and its effect on causation of the accident. Bryant adds neither additional argument nor authority for this proposition that was not advanced in the issue covered in Section VI of this opinion and in the discussion of various requested jury instructions regarding negligent repair to

the braking system. For reasons already discussed, therefore, we conclude this separate issue to be without merit.

XII.

Evidence Concerning Ingestion of Darvocet

Bryant claims reversible error was committed when the trial court permitted evidence concerning Bryant's ingestion of the drug Darvocet prior to embarking on the journey that culminated in his accident. Much of that evidence, in the form of expert opinion, was stricken when it was discovered that the expert had considered times of ingestion that were related to him by defense counsel. The jury was instructed to disregard this evidence. Other evidence, relating generally to the propensity of Darvocet to induce drowsiness, was admitted. General Motors and Dossett advanced, as an alternate theory of the accident, the proposition that Bryant had simply gone to sleep while driving. The ingestion of a prescription drug known to induce drowsiness certainly made this claim more likely than not; therefore, such evidence was admissible for such worth as the jury elected to assign to it. There was no error in admitting the evidence.

We do not conclude that permitting the jury to hear opinion evidence that may have been based upon an incorrect premise so tainted the jury's consideration of the issues of this case that we must reverse on this account. The trial court was careful to instruct the jury to place no weight on the opinions of General Motors's expert which were based on data concerning the times Bryant took the suspect medication that the trial court deemed unreliable. We have no reason to conclude that the jury was unable to follow this instruction. *Johnson v. Fargo,* 604 So. 2d 306, 311 (Miss. 1992).

The central issue on which this case was tried was the likelihood that the tripot housing spontaneously failed, causing the accident. The issue of Bryant's ingestion of prescription drugs, though certainly relevant to General Motors's alternate theory of the accident, did not directly affect the proof for or against Bryant's theory of recovery.

XIII.

Conclusion

Bryant's case was asserted vigorously, and the defendants defended with equal vigor. The competing theories of causation were thoroughly developed, and the matter was submitted to the jury for resolution. After due deliberation, the jury returned a verdict against Bryant and in favor of the defendants, General Motors and Dossett. Nothing presented to this Court in the appellant's brief convinces this Court that this was anything other than a hard, but properly, fought case. We can find no basis to disturb the jury's verdict and the ensuing judgment.

THE JUDGMENT OF THE FORREST COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANTS.

BRIDGES, C.J., THOMAS, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.