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 event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. 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 impeachment.

(Added effective September 1, 2006.)

Committee Comment - 1989

The rule reflects the conventional approach to the admissibility of subsequent remedial measures. Based on policy considerations aimed at encouraging people to make needed repairs, along with the real possibility that subsequent repairs are frequently not indicative of past fault, such evidence is not admissible to establish negligence or culpable conduct. The evidence might be admissible to establish other controverted issues in the case or for impeachment purposes. The rule is consistent with existing Minnesota practice. See Faber v. Roelofs, 298 Minn. 16, 20-23, 212 N.W.2d 856, 859-860 (1973).

Under the rule subsequent remedial measures can be admissible to establish feasibility of precautionary measures in any case where such feasibility is in issue. Subsequent remedial measures are not admissible to prove defect in design defect cases. See Kallio v. Ford Motor Co., 407 N.W.2d 92 (Minn. 1987), rejecting Ault v. International Harvester Co., 13 Cal.3d, 113, 117 Cap.Rptr. 812, 528 P.2d 1148 (1975). The Committee is of the view that such measures are also inadmissible in failure to warn cases in view of Bilotta v. Kelly Co. Inc., 346 N.W.2d 616 (Minn. 1984), which held that design defect and failure to warn cases can be submitted to the jury on a single theory of products liability. See DeLuryea v. Winthrop Laboratories, 697 F.2d 222 (8th Cir. 1983).

Committee Comment - 2006

The amendment comes from Fed. R. Evid. 407, which was added in 1997. The amending language makes it clear that to merit protection under the rule the remedial measure must come after the accident or injury. This approach is consistent with current practice in Minnesota. See Myers v. Hearth Techs., Inc., 621 N.W.2d 787, 792 (Minn. App. 2001) (finding changes made before the accident do not qualify as subsequent remedial measures); Beniek v. Textron, Inc., 479 N.W.2d 719, 723 (Minn. App. 1992) (finding that design changes after plaintiff purchased the product, but before the accident, are not excluded by this rule).

In addition, the language insures that the protection under the rule does not depend on the legal theory advanced at trial. The Minnesota Supreme Court has already ruled that subsequent remedial measures are not admissible to prove defect in design defect cases. See Kallio v. Ford Motor Co., 407 N.W.2d 92, 97-98 (Minn. 1987). The 1989 Minnesota Supreme Court Advisory Committee Comment to Rule 407 provided that subsequent remedial measures "are also inadmissible in failure to warn cases in view of Bilotta v. Kelly Co. Inc., 346 N.W.2d 616 (Minn. 1984) which held that design defect and failure to warn cases can be submitted to the jury on a single theory of products liability." The amended language would also make subsequent remedial measures inadmissible to prove that a product was defective in a pure strict liability or a breach of warranty case.