

# state of the art

EXPLORING THE CHANGING FACE OF PRODUCT LIABILITY

6.20.07

## Possibilities of Product Defect are not Evidence

By **Caroline Grech-Clapper**

In *Needham v The Robo Group*, the US District Court of the Eastern District of Michigan dismissed Plaintiff's case for failure to establish the manufacturer's negligence with real evidence. The Court held that Plaintiff's proposed evidence did nothing more than describe possibilities without moving beyond the realm of speculation.

Plaintiff was a quadriplegic who used an inflated cushion to prevent pressure sores on his buttocks. The cushion was manufactured by Defendant. Plaintiff used the cushion for several years without incident. Plaintiff alleged that the cushion failed, which allowed him to "bottom out" on his wheelchair causing him to develop a pressure sore on his buttock. Plaintiff alleged that on the day of the incident the temperature dropped which ultimately caused his inflated seat to deflate. The deflated seat caused him to put pressure on his buttock, which lead to his developing a minor pressure sore on his buttock. The minor pressure sore developed into a serious pressure sore, causing him to be hospitalized and ultimately undergo surgery. Plaintiff was bedridden for three years following the surgery.

Plaintiff had several experts who offered alternate theories as to why his cushion bottomed out on his wheelchair. The Court stated that although the theories could be plausible explanations for what may have occurred, there was no evidence of any particular theory of causation.

The Court relied on several cases and stated that negligence is not established if the evidence of causation leads equal support to inconsistent conclusions or is equally consistent with contradictory

### SECRET WARDLE NOTES:

Speculation and conjecture are not evidence. A claimant must prove that their theory of causation is more likely than not what occurred. If competing theories are at best evenly balanced, then the claimant has not met their burden of proof. The success of this particular case turned on the examination of the Plaintiff's experts' opinions. The case was dismissed because no viable theory was established and no evidence other than mere possibilities was provided in support of the experts' opinions.

## CONTINUED...

hypotheses. The Court reasoned that when causation is not apparent to the common observer an expert opinion must be used to establish it. Further, an expert's opinion must be supported by more than subjective beliefs and unsupported speculation and should be supported by "good grounds".

The *Needham* Court relied on the facts that Plaintiff did not encounter problems with the cushion deflating on any other day when there was an extreme change in temperature. Plaintiff was able to use the cushion for several years without incident both before and after the day in question. Most importantly, the record did not contain any evidence that supported any of Plaintiff's theories of causation.

The Court dismissed the case, holding that mere possibilities that do not move beyond the realm of speculation are not substantive evidence and summary disposition is proper.

## CONTACT US

### **Farmington Hills**

30903 Northwestern Highway, P.O. Box 3040  
Farmington Hills, MI 48333-3040  
Tel: 248-851-9500 Fax: 248-851-2158

### **Mt. Clemens**

94 Macomb Place, Mt. Clemens, MI 48083-5651  
Tel: 586-465-7180 Fax: 586-465-0673

### **Lansing**

6639 Centurion Drive, Ste. 130, Lansing, MI 48917  
Tel: 517-886-1224 Fax: 517-886-9284

### **Grand Rapids**

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546  
Tel: 616-285-0143 Fax: 616-285-0145

### **Champaign, IL**

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183  
Tel: 217-378-8002 Fax: 217-378-8003

[www.secrestwardle.com](http://www.secrestwardle.com)

SECRET  
**SW**  
WARDLE

Copyright 2007 Secrest, Wardle, Lynch, Hampton,  
Truex and Morley, P.C.

This newsletter is published for the purpose of providing  
information and does not constitute legal advice and should  
not be considered as such. This newsletter or any portion of  
this newsletter is not to be distributed or copied without the  
express written consent of Secrest Wardle.

## CONTRIBUTORS

**Products Liability Practice Group Chair** Bruce A. Truex

**Group Co-Chair** Mark F. Masters

**Editor** Erene Golematis

We welcome your questions and comments.

## OTHER MATERIALS

If you would like to be on the distribution list for State of the Art, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at [marketing@secrestwardle.com](mailto:marketing@secrestwardle.com), or 248-539-2850.

### **Other newsletters include:**

**Benchmarks** – Navigating the hazards of legal malpractice  
**Blueprints** – Mapping legal solutions for the construction industry  
**Boundaries** – A guide for property owners and insurers in a litigious society  
**Community Watch** – Breaking developments in governmental litigation  
**Contingencies** – A guide for dealing with catastrophic property loss  
**Fair Use** – Protecting ideas in a competitive world  
**In the Margin** – Charting legal trends affecting businesses  
**Industry Line** – Managing the hazards of environmental toxic tort litigation  
**Landowners' Alert** – Defense strategies for property owners and managers  
**No-Fault Newslines** – A road map for motor vehicle insurers and owners  
**On the Beat** – Responding to litigation affecting law enforcement  
**On the Job** – Tracking developments in employment law  
**Safeguards** – Helping insurers protect their clients  
**Structures** – A framework for defending architects and engineers  
**Vital Signs** – Diagnosing the changing state of medical malpractice and nursing home liability  
**Update Illinois** – Current trends in Illinois law