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EXPLORING THE CHANGING FACE OF PRODUCT LIABILITY

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Court Rejects "No Tire, No Case" Rule for Product Liability Cases

By John Mitchell

Defining what is required to prosecute a product liability action, the United States District Court for the Western District of Michigan has rejected the "no tire, no case" requisite as part of a *prima facie* showing in a product liability case in *Drooger and Hunsaker v Carlisle Tire & Wheel Co.* The "no tire, no case" rule is claimed to provide that in order to proceed with a product liability action, one needed to have the product available. Pursuant to the opinion of Judge Richard Allen Enslin, a plaintiff may go forward in a product liability case absent the product at-issue and may prove his or her case through expert and circumstantial evidence.

The opinion goes further than simply providing for proof of product defects through expert and circumstantial evidence. The Court expressly stated that the "no tire, no case" rule does not apply. It even states that to suggest there is such a rule, and such proofs as a requisite part of a *prima facie* case, is a misreading of prior authority. The Court considers the authority that discusses the "no tire, no case" rule to be improperly applied by defense counsel and that the authority usually cited in support of such a *prima facie* requisite does not include a categorical rule that without possession of the defective product, a plaintiff cannot pursue a claim. The Court held that "a Michigan products liability plaintiff can prove liability without the defective product by way of circumstantial evidence, and the absence of the offending product is not always fatal to such a claim. In other words, the Court formally rejects a 'no tire, no case' rule in this case."

The Court's opinion is also significant for its detailed discussion regarding choice of law issues. Finally, it is

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In defending product liability actions, it is important to recognize that the absence of a product is not fatal to a plaintiff's case. This should not, however, mean that the absence of a product cannot prove to be problematic, if not fatal, to a plaintiff under certain circumstances. Unique circumstances, particularly as it pertains to spoliation of evidence, may directly and adversely impact upon a plaintiff's ability to prosecute an action absent the product. A key distinction is whether or not the unavailability of the product is unique only to the defense counsel and defense experts as opposed to whether all parties are similarly situated as to their inability to evaluate, inspect and test the product.

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an opinion of some potential significance regarding the prosecution of class actions. Although decided on a narrow issue, the Court denied certification of a class in this property damage case. Most often, product liability class actions can be defeated when the putative class members claim personal injury. This is a unique case to the extent that it provides a basis to deny certification of a property damage class, as well.

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