

Season's Greetings!

It's been a while since my last update. That's because (a) I've been busy and (b) there hasn't been much to report. Now that things have slowed down a little, I want to tell you about a recent victory by Ford in a discovery battle.

In a fairly routine case, Elizabeth Russell sued Ford in federal court in Alabama claiming that she was injured because the seat belt buckle in her Ford Explorer "inertially unlatched" during an accident. Rather than follow the normal course of requesting that relevant documents be produced, Russell filed a motion for access to certain Ford databases to do her own search for similar previous unbuckling incidents. The trial judge granted the request despite Ford's objection. The judge thereafter denied a motion for reconsideration.

Because discovery orders are not appealable prior to the conclusion of a case, Ford took the unusual step of going to the Court of Appeals for an interlocutory writ of mandamus directing the trial judge to vacate his order. Although Russell argued that the trial court order was proper under the procedural rule which allows a party "to inspect and copy...[inter alia] data compilations from which information can be obtained....," the appellate court agreed with Ford that the rule "does not grant unrestricted, direct access to a respondent's database compilations." The Court ruled that -- at least initially -- the respondent should perform electronic searches necessary to produce the requested information. "Russell is unentitled to this kind of discovery without -- at the outset -- a factual finding of some non-compliance with discovery rules by Ford. By granting the sweeping order in this case, the district court clearly abused its discretion."

I find this case interesting for several reasons: (1) we routinely advise clients who are sued in Alabama (and other notoriously pro-plaintiff venues) to remove cases to federal court if possible because the legal rulings will presumably be fairer; obviously, that presumption didn't hold at the trial level in this case; (2) Ford's writ of mandamus maneuver paid off and may be a tactic used more frequently by defendants confronted with clearly erroneous trial court discovery orders; and (3) by limiting the scope of discovery, the Court of Appeals has gone against the general trend of permitting broad discovery to "the little guy" and has rejected a literal interpretation of the discovery rule quoted above.

Hope this is helpful. As always, let me know if you have questions or comments.

Happy Holidays!

Remy

For more information on U.S. product liability law please contact Remy Zimmermann, Shaun Sullivan or Alan Schwartz at 203.498.4400. Please visit

www.wiggin.com