

Hello again!

Although product liability defendants often complain about unscrupulous plaintiffs' lawyers, they are usually content to say "good riddance" with a defense verdict or a small settlement. In a particularly egregious situation, Chrysler recently decided to go further. They sued three Texas lawyers from the Kugle law firm in San Antonio and filed grievances against them with the Texas bar for allegedly fabricating fraudulent claims and evidence tampering. This is not the first time Chrysler has taken such action. They previously sued lawyers in Philadelphia and St. Louis for allegedly bringing frivolous or fraudulent cases.

The Texas case arose out of the crash of a Dodge Neon in Mexico. The driver and three children died. The driver's widow sued Chrysler for \$2 billion claiming a defective steering wheel decoupler [designed to separate after a collision to prevent the driver from being impaled] separated prematurely and caused the crash. When Chrysler representatives inspected the wrecked car, the steering decoupler was in fact broken. However, Chrysler learned through an anonymous letter that the decoupler was intact when the three lawyers' investigator inspected and photographed the car shortly after the accident. Chrysler obtained the photos and moved to dismiss. At a subsequent hearing, police and emergency personnel testified that an investigator working for the lawyers had offered them cash and free travel to "forget" that the widow had told them that her husband probably had fallen asleep at the wheel. The case was dismissed and the lawyers were fined \$920,489 by the court for evidence tampering and attempted bribery.

Chrysler's lawsuit seeks "actual damages in the form of reasonable attorneys' fees, expenses, lost employee time and other losses incurred in defense of the Fabila lawsuit" and unspecified punitive damages. Although this is an extreme example, it is not uncommon for a product manufacturer to obtain a favorable result by "educating" plaintiff's counsel early in the litigation with solid evidence that there is no basis for a product defect claim and threatening a future claim for sanctions if the case is not withdrawn.

On another topic, there has been no progress in the U.S. Congress toward meaningful tort reform. In Update #3 (sent May 22, 2003), I indicated that I was "pessimistic" that this would happen. Although I remain pessimistic on the federal level, I should point out that there are other tort reform battlegrounds -- state legislatures. In 2003 four states -- Arkansas, Georgia, Idaho and Ohio -- have enacted significant tort reform legislation and such legislation has been introduced in a number of other state legislatures. Although this is a piecemeal solution and clearly not the type of comprehensive tort reform that product sellers have sought on the federal level, the state legislation does provide some relief to defendants in those states. The reforms enacted include damages caps (Arkansas and Idaho), class action and venue shopping reforms (Georgia) and ability to assert assumption of risk as a defense (Ohio).

Hope this is helpful. As always, let me know if you have questions or comments. Enjoy the rest of the summer!

Best regards.
Remy

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The Wiggin & Dana U.S. Product Liability Law E-Advisory is a periodic newsletter designed to inform clients and others about recent developments in the field of product liability law. Nothing in the E-Advisory constitutes legal advice, which can only be obtained as a result of personal consultation with an attorney. The information published here is believed to be accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues. If you have any requests for topics or other suggestions, please contact Remy Zimmermann 203.498.4316, jzimmermann@wiggin.com.