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PLAINTIFFS CANNOT RELY ON EXPERTS TO SAY WHAT AN ORDINARY CONSUMER'S EXPECTATIONS WOULD BE IN A PRODUCTS LIABILITY CASE

In *Mansur v. Ford Motor Company*, the Court of Appeal ruled that a trial court did not have to instruct the jury that it could use the "consumer expectations test" to determine if a vehicle design was defective in a products liability case, because there was not enough non-expert evidence as to what an ordinary consumer would have expected of the safety of the vehicle.

Omeedeh Mansur was killed when her 1996 Ford Explorer rolled over, causing the vehicle's roof to be crushed and pushed against her head during the accident. Ms. Mansur's family sued Ford for strict product liability and other claims. The jury returned a verdict for Ford Motor Company, and prevented Ms. Mansur's family from using the consumer expectations test to prove that the Explorer was defectively designed.

The consumer expectations test is one method by which a plaintiff can prove that a product was defectively designed. This test requires a jury to simply ask whether the product performed as safely as an "ordinary consumer" would expect when it was used in an intended and reasonably foreseeable manner. Ford argued that Ms. Mansur's family could not be allowed to rely on this test because a vehicle's stability, roof strength, and other characteristics are beyond the experience of an ordinary consumer. Ms. Mansur's family argued that Ford was trying to improperly limit what it could present at trial.

The Court of Appeal agreed with Ford. If a product is one that is "within the experience of ordinary consumers," then a plaintiff can establish a design defect by presenting evidence about (1) the consumer's use of the product, (2) the circumstances surrounding his or her injury, and (3) the objective features of the product

Congratulations!

Congratulations to Jonathan A. Ross, Esq. and Arnold S. Levine, Esq. for their successful motion for summary judgment in the *Cohen v. Creative Light Entertainment, Inc., et al.*, case. Plaintiff was on a film production set when she was allegedly injured by a moving camera which struck her head and neck. Jonathan and Arnold proved that Plaintiff did not know who was operating the camera at the time of the accident, and that Plaintiff was only speculating that one of our client's employees had caused her injuries.

Congratulations to Kathryn "Kamil" Canale, Esq., for her outstanding settlement in the *Castaneda v. Control TFS West, Inc.* case. Plaintiff slipped and fell on dropped pepperoni slices on the floor of a shopping mall, and originally demanded \$250,000 in damages from the

relating to its safety. While this test obviously relies on what a jury would consider to be the experience of “ordinary consumers,” expert witnesses *cannot* be used to prove what a non-expert, “ordinary consumer” would or should expect of a specific product.

Here, plaintiffs did not present sufficient evidence from *non-experts* about the objective safety features of the Explorer, therefore, the consumer expectation test would not apply. Although Ms. Mansur’s family argued that Ford had advertised the Explorer as a “family vehicle,” this marketing strategy was simply too vague to give a consumer any insight as to the “objective features of the product which are relevant to an evaluation of its safety.” The mere fact that the Explorer was described as handling differently than an ordinary car was not enough to make an ordinary consumer think that the Explorer would never rollover, or that its roof was designed to handle a rollover accident.

Manufacturers of products, from automobiles to appliances to sporting equipment, can protect themselves from having a jury decide if their products are defectively designed based on a plaintiff-friendly, “consumer expectation” test at trial. By avoiding any puffery statements regarding the safety features of their products, and by including clear warnings regarding their use, manufacturers can help prevent questions of what an “ordinary consumer” would expect from arising in a product liability claim.

janitorial services company. After Kamil presented plaintiff with a motion for summary judgment based on her lack of evidence of any wrongdoing by our client, plaintiff settled at mediation for only \$10,000.



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