

WINTER 2015 NEWSLETTER

PRODUCTS LIABILITY UPDATE

By Rocky Little

***Tatsch v Chrysler Group, LLC*, No. 04-13-00757-CV, Court of Appeals of Texas, Fourth District, San Antonio, December 3, 2014.**

In 2008, Tatsch bought a 2008 Dodge Ram 5500 pickup truck that came with a (Chrysler) Cummins Diesel Engine Limited Warranty ("express engine warranty") spanning five years or 100,000 miles, whichever came first. In August 2011 after 37,000 miles, the engine ceased functioning, and the estimated cost of repairs was \$31,000. Chrysler denied Tatsch's request to repair the truck under the express engine warranty. Thereafter, Tatsch filed a claim with his comprehensive automobile insurance carrier, Infinity Mutual, which was denied. Infinity contended that the mechanical failure was caused by contaminated fuel, and therefore was excluded from coverage.

Tatsch sued Chrysler under the Texas Deceptive Trade Practices Consumer Protection Act ("DTPA") for breach of express warranty and for breach of implied warranty as defined by the Texas Business and Commerce Code. Tatsch also sued Infinity Mutual for various violations of the Texas Insurance Code as tied into the DTPA.

Express Warranty

Although the trial court granted Chrysler's No-Evidence Motion for Summary Judgment as to the express warranty, the Court of Appeals held that the trial court erred because Chrysler declined to repair a part it concedes was covered under the express warranty during the warranty period. Therefore, there was more than a scintilla of evidence that Chrysler failed to uphold its obligations under the express warranty. The trial court's no-evidence summary judgment on this issue was reversed and remanded.

Implied Warranty

To recover for breach of an implied warranty under the DTPA, a plaintiff must prove: (1) consumer status, (2) existence of the warranty, (3) breach of the warranty, and (4) damages resulting from the breach. Even though Chrysler was the manufacturer, and not the seller, the court noted that a manufacturer can be responsible, without regard to privity, for the economic loss which results from the breach of the implied warranty of merchantability. Under the DTPA, a seller impliedly warrants that his goods are fit for the ordinary purposes for which such goods are used. For goods to breach this warranty, they must be defective. However, the defect in an implied warranty of merchantability case is not the same as the defect in a strict products liability case. The plaintiff does not have to use direct or expert evidence to show that the goods are unfit. Rather, the burden to prove breach of implied warranty may be met with circumstantial evidence alone. Evidence of proper use of the good together with a malfunction may be sufficient circumstantial evidence. Because plaintiff's affidavit was conclusory rather than

factual, plaintiff failed to provide more than a scintilla of evidence in support of his claims for breach of implied warranty, and the trial court's no-evidence summary judgment on this issue in favor of Chrysler was affirmed

Unfair Settlement Practices Under the Insurance Code

Following the trial court's granting of Infinity Mutual's No-Evidence Motion for Summary Judgment, one of the issues facing the court of appeals was whether Tatsch presented a scintilla of evidence that Infinity Mutual failed to conduct a reasonable investigation before denying the claim. The court noted that the special relationship between the insured and insurer imposes on the insurer a duty to investigate claims thoroughly and in good faith, and to deny those claims only after an investigation reveals there is a reasonable basis to do so. Tatsch alleged that Infinity Mutual did not inspect the vehicle, request documentation, speak with any Chrysler or dealership personnel, or even request a fuel sample before denying the claim. Although Infinity Mutual contends the fuel was discarded before a sample could be taken, it admitted that it did not inspect the truck. The court held that failing to inspect the truck is more than a scintilla of evidence as to whether Infinity Mutual performed a reasonable investigation before denying Tatsch's claim, and reversed the trial court's granting of the no-evidence motion for summary judgment on this issue.