

SPRING 2018 NEWLETTER

PRODUCTS LIABILITY UPDATE

By Rocky Little

Medina v Michelin North America, Inc., No. 05-16-00794-CV (Tex. App. – Dallas, January 29, 2018)

This suit alleging serious personal injuries is based on a one-vehicle roll-over accident, which was allegedly caused by the failure of an eleven-year-old tire which suddenly burst. Plaintiffs brought suit based on products liability, negligence, and post-sale duty to warn. The Medinas also sought to recover punitive damages based on gross negligence. Defendant, Michelin, moved for traditional and no-evidence summary judgment which the trial court granted. In order to prevail in a products liability cause of action, one must prove a design defect, and/or a manufacturing defect, and/or a marketing defect. To support their claims, the Medinas retained Troy Cottles, a forensic tire failure analyst and tire design and manufacturing consultant. Cottles testified that the tire's design and manufacture was faulty. Although Michelin moved to exclude Cottles' testimony, that motion was denied. Because Cottles provided more than a scintilla of evidence to support plaintiffs' claims for design defect, manufacturing defect, and negligence, the Dallas Court Of Appeals held that summary judgment in favor of Michelin on these grounds was improper.

The Court Of Appeals next addressed plaintiff's marketing defect claim that the tire at issue should have had a warning that it was unsafe after it was ten years old. Michelin asserted that because the Medinas failed to designate a warnings expert, there was no evidence to support any element of their marketing defect claim. The court, however, noted that an expert opinion is not necessary to prove a marketing defect claim. Additionally, in its no-evidence motion for summary judgment, Michelin failed to specifically identify which of the essential elements of a marketing defect claim it was challenging, which was necessary to support summary judgment on any of these grounds.

To prevail on a marketing defect claim, the plaintiff must establish, among other things, the alleged failure to warn and/or instruct must constitute a causative nexus in the product user's injury. To prove that the failure to warn caused plaintiffs' injuries, plaintiffs are aided by a "rebuttable presumption" that proper warnings would have been heeded. Plaintiffs brought forward more than a scintilla of evidence that a warning that the tire was unsafe after it was ten-years old would have been heeded. Consequently, traditional summary judgment on this basis was improper.

The Court Of Appeals also addressed the trial court's granting of Michelin's motion for summary judgment denying plaintiffs punitive damages claim based on gross negligence. Gross negligence is the breach of duty involving an extreme degree of risk, considering the probability and magnitude of the potential harm to others (an objective element) when the actor has actual awareness of the risk involved but nevertheless proceeds in conscious indifference to the rights, safety, or welfare of others (subjective element). To defeat summary judgment on their punitive

damages claims, plaintiffs were required to put forth more than a scintilla of evidence that (1) the tire in question posed an extreme degree of risk and (2) that Michelin had actual subjective awareness of the extreme degree of risk that the tire posed but nevertheless proceeded with conscious indifference to the consequence of its acts. The extreme degree of risk prong is not satisfied by a remote possibility of injury or even a high probability of minor harm, but rather the likelihood of serious injury to the plaintiff. In this case, plaintiffs failed to produce evidence to support their contention that Michelin had knowledge that its choice of a certain design over another design or failing to inform consumers of risks of using tires past a certain age resulted in an extreme degree of risk, and consciously chose to disregard that extreme risk.

The final issue addressed is whether Michelin had a “Post-Sale Duty To Warn” separate and distinct from any pre-sale duty to warn it may have had. The appellate court noted that Texas has not recognized a general duty to warn of product defects that were not discovered until after manufacture and sale. Plaintiffs argued that because Michelin knew of tire defects before the tire was sold, that it had a continuing duty to warn after sale. Because the Court Of Appeals could not find any legal precedent to support a continuing duty to warn after sale, it affirmed the trial court’s summary judgment on this issue in favor of Michelin.