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PLAINTIFF MUST IDENTIFY A SPECIFIC MANUFACTURING DEFECT INVOLVED IN AN IMPLIED WARRANTY CLAIM

Author:

Edward J. Higgins

Direct: (313) 983-4919

ehiggins@plunkettcooney.com


In a recent unpublished product liability opinion, *Crawford-Sachs v Goodyear Tire & Rubber Co.*, 2007 WL 948688 (Mich.App.), the Michigan Court of Appeals clarified that, in order to avoid summary disposition, a plaintiff pursuing an implied warranty claim must identify a specific manufacturing defect if defects attributable to someone other than the manufacturer cannot be ruled out.

The appellate court held that the plaintiff had failed to show, through either direct or circumstantial evidence, that the failure of a tire on the plaintiff's vehicle was the result of a manufacturer's defect. Therefore, the court upheld the trial court's granting of summary disposition to the defendant-manufacturer.

In this case, the plaintiff alleged that the right rear tire on her Ford Explorer suddenly deflated while she was driving on a highway, resulting in a rollover accident. The plaintiff's expert testified that the deflation was the result of tread separation, although the expert could not identify the cause of the separation. The expert also testified that there was no evidence that the separation was caused by a road hazard or tire puncture. The expert conceded, however, that improper tire inflation could result in a blowout. The expert also admitted that he was not qualified to testify as to whether the tread separation was due to under-inflation or a manufacturing/design defect.

The plaintiff argued before the appellate court that she was not required, under a breach of implied warranty theory, to identify the specific defect involved and that the failure of the tire, absent evidence of an external cause, was sufficient proof that the tire was not fit for its intended use.

Relying on *Kenkel v Stanley Works*, 256 Mich. App. 548, 665 N.W.2d 490 (2003), the appellate court rejected this argument, holding that a plaintiff *is* required to prove the specific defect when there are "multiple actors to whom a malfunction could be attributed." Given that under-inflation of the tire by the plaintiff could have been a cause of the malfunction, the plaintiff had to prove the specific defect



involved. The court observed that, although it may be reasonable (absent misuse) to infer that a defect is attributable to a manufacturer when a failure is caused by a defect in a reasonably inaccessible part of a structure not generally required to be repaired, replaced or maintained (such as the electronic circuitry inside a closed compartment of an automatic door that was at issue in *Kenkel*), the tire in this case was not such an inaccessible part. Therefore, the plaintiff was not entitled to such an inference of manufacturers' defect.

Recent federal district court decisions had suggested that Michigan product liability law did not require the plaintiff to specify a particular defect when proceeding under an implied warranty theory, thereby negating any requirement to offer expert testimony or employ the risk-utility test.

For a complete copy of the Michigan Court of Appeals ruling in *Crawford-Sachs v Goodyear Tire & Rubber Co.*, 2007 WL 948688 (Mich.App.), [click here](#).

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