

[Products Liability Law Daily Wrap Up, EVIDENTIARY ISSUES—SPORTS AND RECREATIONAL EQUIPMENT—D. Md.: No new trial in defective bicycle case, \(May 19, 2017\)](#)

Products Liability Law Daily Wrap Up

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By Georgia D. Koutouzos, J.D.

Re-litigation of a product liability lawsuit against the manufacturer and seller of a children's bicycle was unwarranted following the jury's conclusion that the bike alleged to have caused a young girl's accident-related injuries was neither in a defective nor unreasonably dangerous condition when it was brought home from the store, the federal court in Maryland ruled, rejecting the plaintiffs' arguments and denying their motion for a new trial (*Callahan v. Toys "R" Us-Delaware, Inc.*, May 17, 2017, Coulson, J.).

After an 11-year old sustained personal injury when her bicycle's rear brake allegedly malfunctioned, her grandmother brought claims against the bike's seller, Toys "R" Us-Delaware, Inc., and the bike's manufacturer, Pacific Cycle Inc. The complaint asserted causes of action for strict liability, negligence, and breach of warranty, alleging that the bicycle had been placed into the stream of commerce and sold by the defendants in a defective condition because the rear brake contained a manufacturing and/or assembly defect and that the bike was unreasonably dangerous because the nonfunctional rear brake created a risk of danger to riders.

The trial court initially ruled that evidence of prior reports of brake failures involving the model of bicycle that allegedly led to the child's injury was inadmissible, as was in-court testing on the now five-year-old bike, evidence regarding a Consumer Product Safety Commission test that had been performed on the bicycle by the plaintiffs' expert, and any comments or implications that the bike was of an inferior quality because it was made in China (see *Products Liability Daily's* January 20, 2017 [analysis](#)). Following a four-day trial, the jury determined that Toys "R" Us was not liable for the child's injuries and that the bicycle was not in a defective or unreasonably dangerous condition when the child's grandmother had brought it home (see *Products Liability Daily's* January 24, 2017 [analysis](#)).

The plaintiffs moved for a new trial, arguing that the court made several reversible errors, among which were: (1) permitting the defendants to vary their theories/evidence and to turn the case from a personal injury lawsuit into an inquest regarding evidence tampering; (2) granting a spoliation instruction and allowing the defendants to argue that the plaintiffs and their counsel had tampered with evidence; (3) prohibiting the jury from inspecting the bicycle and taking it into the jury room; and (4) refusing to allow the jury to test and inspect the bicycle as impeachment evidence of the defendants' expert.

Change in theories. The plaintiffs contended that trial court erroneously had allowed the defendants to present a theory at trial that had not been disclosed in their pretrial memorandum—i.e., that the plaintiffs and their counsel had tampered with the evidence because the pressure necessary to squeeze the rear brake was different at the time of trial than it had been during the original inspection by the defendants' expert. This assertion and its underlying logic was unsupported, however, inasmuch as the defendants made it known early on that they believed that the bicycle's condition at the time of trial was not the same as it was at the time of the accident. As such, the plaintiffs were on notice of the defendants' assertions as to the bike's altered condition. Further, at no point did the defendants abandon their argument that the rear break was not defective on the day of the accident—a theory advanced during their opening and closing statements, supported by the testimony of their expert, and ultimately found compelling by the jury in returning its verdict that there was no defect in the bicycle.

Spoilation instruction. As for the plaintiffs' issue with the court's instruction to the jury regarding the change in the position of the bike's handlebars relative to the alignment of the front wheel between the time of its inspection by the defendants' expert and the time of trial, the instruction accurately represented the undisputed facts, was consistent with relevant case precedent regarding spoliation of evidence, and was narrowly-tailored.

The parties declined the option of having a separate hearing so as to determine the exact circumstances and causes regarding the altered position of the handlebars relative to the alignment of the front wheel. As a result, in determining whether the physical alteration of the evidence had been accompanied by a sufficiently culpable mindset, the available evidence before the court established that: (1) the bicycle was in the plaintiffs' exclusive control from the time of the accident up to and including the time of trial; (2) the bike's changed condition was more favorable to the plaintiffs' theory of the case; and (3) the only testimony offered regarding the type of act or force that would have been required to bring about the change was the opinion by the defendants' expert that the alteration had been done intentionally (as opposed to simple mishandling or environmental factors).

Given this record, it could be concluded that the change in the bike's condition had been brought about by a purposeful act. And while there was no direct evidence to suggest that the act had been done with a nefarious or deceptive purpose, an instruction regarding spoliation of evidence did not require a finding of deception or bad faith. Rather, it was sufficient that the plaintiffs knew, or should have known, that the position of the handlebars relative to the alignment of the front wheel was relevant to the defendants' theory of the accident and yet they had engaged in purposeful activity to correct the alignment prior to trial, all the while insisting to the jury and to the court that the bicycle was "in exactly the same condition." In light of those facts, a spoliation instruction was warranted because there clearly had been a purposeful act to alter the condition or appearance of an essential piece of evidence.

Inspection/testing. Moreover, the court's decision to preclude juror inspection and testing of the bicycle was proper. For one thing, such testing was outside of a layperson's experience and had the potential to be confusing and misleading. As such, it would be unfairly prejudicial in violation of the federal evidentiary rules. Secondly, even if the final determination regarding the plaintiffs' request for a juror inspection of the bike had been withheld until after a foundation had been laid, the ultimate prohibition of an inspection still would have been justified due to the obvious changes in the bicycle's condition. Any in-court inspection would have required jurors to not only conduct an industry-standard test that they likely had no experience in performing, but to do so while also taking into account undisputed changes in the bicycle's condition and figuring out whether and to what extent those changes would affect the validity of such a test. Such a determination fell outside the knowledge and comprehension of a layperson. Finally, the plaintiffs were otherwise permitted to introduce ample evidence to support their defect theory; consequently, the court's disallowance of juror testing did not justify a new trial.

As for their claim that an examination of the bicycle would have allowed the jury to assess the credibility of the parties' experts, the plaintiffs could not explain how a jury's own "testing" of the bike would have been helpful in determining whether the defendants' expert was telling the truth. Accordingly, the plaintiffs' motion for a new trial was denied.

The case is No. [15-02815-JMC](#).

Attorneys: Francis J. Collins (Kahn, Smith & Collins, P.A.) for Virginia Callahan. Jeffrey David Skinner (Schiff Hardin LLP) for Toys "R" Us-Delaware, Inc. and Pacific Cycle Inc.

Companies: Toys "R" Us-Delaware, Inc.; Pacific Cycle Inc.

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