

Products Liability Law Daily Wrap Up, CLASS ACTIONS AND MULTI-DISTRICT LITIGATION—HOUSEHOLD PRODUCTS—10th Cir.: Goodyear loses appeal of class certification of claims that radiant heating hose was defectively designed, (May 9, 2014)

By Susan Lasser, J.D., and John W. Scanlan, J.D.

A petition by The Goodyear Tire & Rubber Company to reverse class action certification for a group of Colorado homeowners who alleged that a defect in Goodyear rubber hoses in their radiant heating systems resulted in leaks that caused damage to their homes was denied without further explanation by the U.S. Court of Appeals for the Tenth Circuit in an unsigned decision ([The Goodyear Tire & Rubber Co. v. Helmer](#), May 7, 2014, Per Curiam).

Background. Homeowners in Colorado who used Goodyear’s Entran 3 brand of rubber hose in their radiant heating systems sought class certification of their strict liability for design defect claim, alleging that Entran 3 tubing degrades and leaks as the result of a design defect that will inevitably fail in all Entran 3 tubing. Entran 3 hose is embedded in various parts of a home (the floor, walls, or driveways, for example) and conveys heated fluids through those areas, dispersing heat in the process. Entran 3 contains a new design that includes an inner tube of EPDM rubber (a type of synthetic rubber) surrounded by an ethylene vinyl (EVOH) barrier designed to prevent oxygen transmission. The entire hose is encased in an EPDM outer cover.

Summary of lower court’s decision. The district court had determined that the Colorado homeowners had satisfied the class action requirements of numerosity, commonality, typicality, adequacy of representation, and predominance.

The owners of at least 132 homes in Colorado that had been shown to have contained the allegedly defective product were already ascertained members of the class, and other unidentified members could be determined relatively easily because people with Entran 3 in their homes could objectively ascertain if they were class members. The relatively large size of the group and the geographic diversity of the members—who were scattered throughout relatively remote mountain towns in the state—suggested to the district court that joinder would be impracticable.

There were common questions of law: the homeowners claimed that Goodyear designed a defective product, they identified two alleged defects, and they provided scientific and technical evidence to support their theory. The potential class members in the current case were exposed to the same injury regardless of the factual differences between them—the allegedly inevitable degradation of a product embedded in concrete that was designed to function appropriately for a long time.

The named homeowners were typical of the putative class, as they demonstrated that in homes where the installation was proper (even by Goodyear’s estimation), similar cracking and rupturing could occur and did occur, including homes owned by named plaintiffs. They also offered persuasive evidence in rebuttal to Goodyear’s expert’s conclusions that the EPDM rubber was sufficient for its intended purpose and showed that Goodyear’s expert’s conclusions did not fully explain the failure of the Entran 3 hose. The district court had found that Goodyear offered no evidence to support its assertion that the named plaintiffs could not adequately represent the class due to conflicts between members of the class or class counsel.

Finally, the district court had determined that Goodyear failed to demonstrate a fatal dissimilarity that would defeat the plaintiffs’ showing of predominance. Under Colorado law, proof of a design defect requires proof of causation. While Goodyear had argued that that incorrect installation caused the named plaintiffs’ injuries, the type of malfunction did not seem to vary from plaintiff to plaintiff, according to the court. The range of facts looked like “the typical, normal range of installations that all purchasers of the tubing would employ.” Therefore, the lower court had concluded that a class directed at answering the question of whether the rubber was bound to degrade and the EVOH was improperly bonded would generate common answers rather than require an individualized inquiry in each case.

The case number is 14-700.

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Companies: Goodyear Tire & Rubber Co.

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