

**[Products Liability Law Daily Wrap Up, DEFENSES TO LIABILITY—  
ELECTRONIC PRODUCTS—W.D. Okla.: Uncertainty over who designed  
defective battery pack stalls summary judgment motions, \(Oct. 24, 2017\)](#)**

Products Liability Law Daily Wrap Up

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By Kathleen Bianco, J.D.

Dueling summary judgment motions on an indemnification action arising from an underlying product liability suit involving an exploding battery pack were denied by a federal district court in Oklahoma because questions of material fact existed regarding who designed the battery pack (*McGehee v. Southwest Electronic Energy Corp.*, October 23, 2017, Cauthron, R.).

Two employees of a company, Teledrift, Inc., that manufactures and leases out a drilling tool called the ProShot were injured when the tool, which included a measurement while drilling (MWD) tool, an encasing drill collar, and a battery, was returned with the MWD tool wedged inside the drill collar. While attempting to remove the stuck component, the lithium battery cell inside the tool exploded, injuring the employees. The employees filed a product liability suit against the battery manufacturer, Southwest Electronic Energy Corporation (SWE), alleging defective design and warnings.

The battery manufacturer filed a third-party complaint for indemnification against the employer/manufacturer of the ProShot tool, alleging that the tool manufacturer was the designer of the battery pack. Both parties are seeking summary judgment on the indemnification complaint. The manufacturer of the ProShot contends that it is immune from paying indemnity under the workers' compensation immunity statute, while the battery maker invoked the dual-capacity doctrine, which allows product liability indemnification despite employer immunity.

**Indemnification.** Under Oklahoma's product liability indemnity law, a manufacturer shall indemnify and hold harmless a seller against loss arising out of a product liability action. In this case, the battery maker contends that it was merely an assembler of the battery pack that had been designed by the ProShot manufacturer. Therefore, under the law, the battery maker claimed to be a seller for purposes of indemnification. Furthermore, the battery maker argued that the intended meaning of "manufacturer," which was not defined by statute, includes the designer of a product. Upon review of the evidence, the court agreed that a designer of a product may be deemed a "manufacturer" who may be required to indemnify a seller. The court also concluded that this would qualify as a dual-capacity exception to worker compensation immunity.

**Battery pack designer.** Both parties presented evidence regarding their roles in the development of the battery packs. The battery maker contended that it built the battery pack according to the specification provided by the tool manufacturer. The tool manufacturer countered, asserting that the battery maker proposed at least three change to the battery pack that were adopted based on the battery maker's expertise and knowledge upon which the tool manufacturer had relied. Based upon the conflicting evidence presented, it was determined that questions of material fact remained in dispute related to who designed the battery pack. Consequently, summary judgment on this issue was denied.

The case is No. [CIV-15-145-C](#).

Attorneys: Reggie N. Whitten (Whitten Burrage Law Firm) for Jacob McGehee and Steven Ray Heath. Bradley K. Donnell (McAfee & Taft) for Southwest Electronic Energy Corp. J. Christopher Davis (Johnson & Jones PC) for Teledrift Inc.

Companies: Southwest Electronic Energy Corp.; Teledrift Inc.

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