

[Products Liability Law Daily Wrap Up, CAUSATION—MOTOR VEHICLE EQUIPMENT—N.D. Ind.: Lack of expert evidence dooms motorcyclists attempt to hold helmet seller liable for enhanced injuries, \(Feb. 16, 2018\)](#)

Products Liability Law Daily Wrap Up

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By Pamela C. Maloney, J.D.

A motorcycle driver and passenger failed to present expert testimony to support a claim that alleged defects in the helmets they were wearing when their motorcycle crashed into a median caused enhanced injuries, a federal district court in Indiana ruled, granting summary judgment in favor of the helmet seller on the couple's design and manufacturing defect claims. In addition, the failure to prove both a causal link between the helmet seller's alleged failure to warn and the injuries sustained and to specify the dangerous condition that required a warning was detrimental to the couple's warning defect claim against the helmet seller. Finally, the court refused to recognize a state law claim for negligent recall and found no legal basis for the couple's right to file a private right of action based on the seller's failure to comply with federal regulations (*Timm v. Goodyear Dunlop Tires North America, Ltd.*, February 15, 2018, Simon, P.).

While the driver and passenger, a married couple, were traveling cross-country on a Harley-Davidson motorcycle, the rear tire, which had been manufactured by Goodyear Dunlop Tires North America, Ltd., suddenly went flat, causing the driver to lose control. The motorcycle crossed two lanes of traffic and struck the highway median at approximately 55-65 miles per hour. Both the driver and the passenger sustained severe head and brain injuries, bone fractures, lacerations, and, in the driver's case, a cervical spinal injury. At the time of the accident, both riders were wearing half helmets sold by Tegol Inc. Several months after the accident, the vendor was notified by the National Highway Traffic Safety Administration that the helmets failed to pass testing conducted by the agency. Tegol issued a recall notice advising owners that the helmets failed to conform to relevant motor vehicle safety standards for helmets and that wearers might not be adequately protected in the event of a crash, increasing the risk of personal injury.

The couple filed numerous strict liability and negligence claims against a number of companies, including design defect, manufacturing defect, and failure to warn, all of which were subsumed by the Indiana Products Liability Act (IPLA). Their claims against the helmet seller did not allege that the helmets caused the crash, but that a defect in the helmets caused their injuries to be more severe.

**Crashworthiness doctrine.** The couple's complaint against the helmet seller invoked the "crashworthiness" doctrine, which expands the proximate cause requirement to include enhanced injuries. To prevail on this claim, the couple was required to provide expert testimony to establish what injuries were enhanced injuries caused by the allegedly defective helmets. Nevertheless, the only evidence submitted by the couple to show that the helmets enhanced their injuries were medical records showing the extent of each of their injuries. Based only on those records, a lay juror would not be able to distinguish between the injuries caused by the motorcycle accident and the enhanced injuries caused by the alleged defect in the helmets without engaging in mere speculation. The court did note that the couple had offered to provide expert testimony at trial. However, the time for discovery had already closed and, in response to the pending motion for summary judgment, the couple was required to show all evidence that would convince a trier of fact to accept their version of the events.

In addition, the helmet seller had put forth their own expert who explained that the couple's injuries were the exact type of injuries that would be expected in a high-speed motorcycle crash, regardless of the make or model of the helmet. The expert further opined that the injuries sustained could have occurred even if the couple had been wearing any government-approved motorcycle helmet that was available on the market.

**Failure to warn.** The couple's failure to prove causation also doomed the failure-to-warn claim. Assuming the helmet seller had provided a warning that would have caused the couple to choose a different helmet, the couple must prove that the danger which materialized in this case would have been prevented by an appropriate warning. Given the un rebutted testimony by the seller's expert that the couple would have sustained the same injuries regardless of their choice in helmets, the couple could not show that, but for the lack of an adequate warning, they would not have suffered the same injuries.

Furthermore, the couple failed to specify the dangerous condition they should have been warned about or what the warning should have said or how it should have been conveyed. The essence of the failure-to-warn claim was that NHTSA testing of the helmets had revealed a dangerous condition that the seller should have warned about. Indiana courts have not yet recognized a post-sale duty to warn under the ILPA and, therefore, the couple's claim failed as a matter of law.

**Negligent recall; failure to comply with federal regulations.** The couple alleged numerous facts related to the seller's recall of the helmets. However, they failed to cite any case in which the Indiana courts had recognized a claim for negligent recall. It would be inappropriate for a federal court to create a new cause of action under state law and, thus, summary judgment was granted to the helmet seller on the negligent recall claim.

Similarly, the couple failed to identify any statute or case that recognized a private right of action based on the seller's failure to comply with NHTSA regulations. The IPLA, which provides the sole basis for causes of action against manufacturers and sellers of allegedly defective products, does not establish a cause of action for failure to comply with federal regulations. The Motor Vehicle Safety Act, pursuant to which the NHTSA regulations arise, also does not confer a private cause of action to enforce those regulations. Thus, summary judgment was granted in favor of the seller on this claim as well.

The case is No. [2:14CV232-PPS](#).

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Companies: Goodyear Dunlop Tires North America Ltd.; Tegol Inc.; Nanal Inc.

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