

**Products Liability Law Daily Wrap Up, DESIGN AND MANUFACTURING DEFECTS—SPORTS AND RECREATIONAL EQUIPMENT—N.J. Super. App. Div.: Manufacturer of component of rock wall involved in accident unsuccessful in challenging adverse verdict, (Jun. 8, 2017)**

Products Liability Law Daily Wrap Up

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By Miriam A. Friedman, J.D.

The manufacturer of the cylinders used in a rock wall's auto-belay system, which injured a day camp counselor when they failed, had not demonstrated plain error in the trial court's determinations, a New Jersey appellate court found, affirming the jury verdict and molded judgment as well as the trial court's denial of the manufacturer's motions for a directed verdict and for judgment notwithstanding the verdict (*Willner v. Vertical Reality*, June 5, 2017, *per curiam*).

The sixteen-year old-counselor at Ivy League Day Camp was climbing a mobile rock wall while wearing a helmet and a harness attached to an auto-belaying cable, which is designed to prevent a climber from falling all the way down. When the counselor pushed off the wall in order to descend, he heard a loud noise, and the cable connected to his harness lost tension. He dropped to the ground, fracturing his ankle, and subsequently required surgery. Investigation indicated that the cast aluminum retainers in the hydraulic cylinders had failed, causing a loss of fluid from the cylinder and resulting in the auto-belaying cable losing tension.

The counselor and his parents filed a complaint alleging strict products liability, negligence, and per quod claims against Ivy League, Vertical Reality, Inc., the rock wall manufacturer, and ASCO Numatics, Inc., the manufacturer of the cylinders used in the rock wall's auto-belay system; they subsequently added defendant Vertical Reality Manufacturers, Inc. After an offer of judgment was rejected, the case proceeded to trial, and the jury ruled in favor of the camp counselor, finding that the rock wall was designed defectively; this design defect was the proximate cause of the accident; the cylinders had a manufacturing defect; the cylinders proximately caused the accident; the rock wall contained inadequate warnings; and Vertical Reality's inadequate warning proximately caused the accident. ASCO Numatics appealed.

**Directed verdict and JNOV.** The appellate court found that there was sufficient evidence in the record to support the jury's verdict that the cylinder was manufactured defectively and was a proximate cause of the accident. It was undisputed that the cracked cylinders resulted in the counselor's fall. Vertical Reality had asked ASCO Numatics to design a cylinder to match exactly the existing cylinders, which had been made by another company, but the ASCO Numatics cylinder used a retainer weaker than the screw-in head used by the existing cylinder and was made from weaker material.

**Failure to issue limiting instruction.** With regard to evidence admitted that was relevant to plaintiffs' design defect and failure to warn claims, which were ultimately dismissed against the manufacturer at the close of evidence, the appellate court found that a limiting instruction would have been appropriate but was not requested and that the manufacturer had not objected to the absence of an instruction as to the treatment of conduct evidence in the jury charge. Furthermore, when presented with a question from the jury, the trial judge's instruction explaining that the jury could not assign fault to the manufacturer if it did not find that the manufacturer had manufactured the cylinder defectively was succinct and accurate. The manufacturer did not object to the instruction, and the jury sought no additional guidance or clarification before rendering its verdict. Thus, the trial court's pre- and post-deliberation instructions were not in error.

**Molded judgment.** With regard to the manufacturer's contention that the judgment against it should have been vacated because its pro rata share of the total verdict was \$107,400, below the \$144,000 threshold to trigger sanctions, the appellate court noted that the manufacturer had not raised this argument before the trial court.

However, the court went on to find explicitly that *Wadeer*, cited by the manufacturer, did not compel the use of molded judgments in determining whether the offer of judgment rule was applicable and concluded that there was no reason to disturb the lower court's decision to award fees and costs based on the offer of judgment rule.

The case is No. [A-3870-13T4](#).

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Companies: Vertical Reality Inc.; Vertical Reality Manufacturing, Inc.

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