

Proximate Cause with Teeth: Recent Case-Dispositive Expert Exclusions in Product Liability Cases

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Under both strict product liability and negligence theories, plaintiffs must establish proximate causation where there is a reasonable certainty that the defendant's acts caused the injury. *See, e.g., Show v. Ford Motor Co.*, 659 F.3d 584, 588 (7th Cir. 2011). Several recent cases have emphasized the *Daubert* requirement that expert testimony supporting proximate cause for product liability claims must be non-speculative and backed by reliable, reproducible, scientific methodologies. In the following two cases, *Hillman* and *White*, the courts' exclusion of expert opinions proved fatal to plaintiffs' design defect and failure to warn claims.

HILLMAN EX REL P.J.H. V. TORO

After an electric lawnmower accident, Plaintiffs brought strict product liability and negligence claims against Toro, the manufacturer, alleging that the lawnmower was unreasonably dangerous, and that Toro was negligent because the mower (1) failed to include an independent braking system, a separate interlock system, or a "Roll-Over Protection System" (ROPS) and (2) lacked sufficient warnings or instructions. *Hillman ex rel. P.J.H. v. Toro Co.*, No. 4:21-cv-04081, 2024 WL 4353032, at *6-7 (C.D. Ill. Sept. 30, 2024).

The product at issue was a residential, riding lawnmower. *Id.* at *1. The mower was not equipped with a ROPS, which has been shown to prevent operators from severe injury or death in the event of a lateral rollover. *Id.* at *2. At the time the mower was designed and manufactured, the industry safety standard did not require mowers to be equipped with ROPS. *Id.* To tow the mower, one of the Plaintiffs disengaged its rear drive wheels by pushing in the bypass pins on the back of the mower. *Id.* at *5. When the other Plaintiff tried to ride the mower, she forgot to pull the bypass pins back out to re-engage the wheels as the manual instructed, leaving the mower without steering or brakes. *Id.* She lost control on a steep decline and sustained extensive injuries when it fell off a retaining wall. *Id.*

After the court excluded the testimony of all three of Plaintiffs' experts as unreliable, it granted summary judgment for Toro on all claims, finding that Plaintiffs could not establish proximate cause to their injuries based on defective design or that an alternative warning would have changed Plaintiffs' behavior and prevented their injuries.

DEFECTIVE DESIGN

Plaintiffs presented three experts to show that Toro's alleged design defects were the proximate cause of Plaintiff's injuries. The court conducted a *Daubert* analysis to determine the admissibility of these experts. *Hillman*, 2024 WL

The first expert testified that an extra braking system would have prevented the accident. But the court excluded this opinion because the expert based it solely on another expert's reconstruction and did not rely on or conduct any specific testing of his own. *Id.* at *10-11. The court further found that the mower still had braking capabilities but that it could not be engaged due to Plaintiff's failure to follow the bypass pin procedure as instructed. *Id.* The court also excluded the expert's opinion that an anti-rollover device like ROPS would have prevented the accident, finding his methodology unreliable. The expert had attempted to correlate the deployment speed of airbags in automobiles to the impact of the mower on an operator during a "nosedive at a similar speed." *Id.* at *11-12. The court further found it fatal that the expert could not point to a specific anti-rollover device that would have prevented the accident, but instead speculated about these systems and their general purpose. *Id.* at *12.

The court also excluded Plaintiffs' second expert whose opinions included that (1) Toro had a duty to warn users that pushing in the bypass pins rendered the machine incapable of directional control or braking, and (2) the mower was defective and unreasonably dangerous due to the absence of braking and anti-rollover systems. *Id.* at *13. The court first found that these opinions were impermissible legal conclusions. *Id.* at *13-14. Further, to the extent Plaintiffs claimed the expert's opinion that "[h]ad there been a functional brake, the accident does not occur," was directed to elements of causation, the court found it was not based on any testing and was "too obvious to be helpful" to the factfinder. *Id.*

Plaintiffs' final expert opined that a ROPS would have prevented the accident, but the court excluded it as unreliable and irrelevant. *Id.* at *14-15. First, the expert did not identify, design, or test the efficacy of an anti-rollover device on the subject mower or on any other mower under the same conditions as this case. *Id.* at *15. Moreover, the expert's definition of "rollover" and opinions were based on data related to "lateral" rollovers and not "longitudinal" rollovers where a mower rolled forward off an incline and landed down nose first. *Id.* at *14.

Without expert testimony proving proximate cause, the court found that no genuine issues of material fact remained on Plaintiffs' strict liability and negligence design defect claims and granted Toro summary judgment. *Id.* at *16.

FAILURE TO WARN

The court noted that "failure to warn claims do not always require expert testimony because a lay juror does not need any specialized knowledge to determine whether there was a known risk and whether it was sufficiently disclosed." *Id.* at 16. As an alternative theory of liability, Plaintiffs alleged Toro failed to warn regarding (1) the fact that pushing bypass pins to disengage the mower motors also disengaged the service brake, (2) the fact that the lack of ROPS made the mower dangerous, (3) how to safely tow the mower on a non-flat surface, and (4) the fact that the "electric brake" was just a parking brake and was not designed to stop the mower while it was in motion. *Id.* at *16.

However, the court found that Plaintiffs failed to present *any* evidence demonstrating that a lack of adequate warnings was the proximate cause of injuries. Plaintiffs presented evidence of other accidents involving Toro products to show foreseeability and causation, but none were admissible because they were not under "substantially similar circumstances" to the "relatively unique" incident here. *Id.* The court further found that Plaintiff failed to heed the warning that already existed in the mower's instruction manual or to show that any alternative warning would have changed Plaintiffs' behavior and prevented injuries. *Id.* Thus, the court concluded that Plaintiffs could not sustain their failure to warn claims even with non-expert evidence.

WHITE V. GENERAL MOTORS LLC

In *White v. General Motors LLC*, plaintiffs filed a class action against General Motors ("GM") alleging the manufacturer knowingly equipped several of its vehicles with a defective engine, causing excessive oil consumption and posing serious safety risks to drivers. No. 1:21-CV-00410, 2024 WL 4213764, at *1 (D. Colo. Sept. 17, 2024).

Previously, GM moved to strike Plaintiff's technical expert's opinions. The expert opined that the "root cause" of the oil consumption defect was GM's piston rings. The court granted GM's motion, holding that the opinion was not based on sufficient facts or data because the expert did not test, inspect, examine, or physically handle any of the subject vehicles. *Id.*

In GM's subsequent summary judgment motion, GM argued that because the court excluded the root cause opinions, Plaintiff could not prove causation, a required element of the remaining breach of implied warranty claims. Plaintiff made two counterarguments: (1) causation may be inferred if he provided the jury with evidence that would make the causation inference reasonable and (2) the claim will not require the jury to answer any technical questions, thereby making expert testimony unnecessary.

The court found Plaintiff's arguments unpersuasive. First, the court noted that expert testimony is "generally" required "when proof of causation requires answering technical questions which are beyond the discernment capacity of laypersons." *Id.* at *3. Here, the court found it "difficult to see" how a jury could determine whether premature ring wear and excess oil consumption was caused by the alleged design defect using "the experience of ordinary persons." *Id.* at *3-4. After collecting cases, the court reasoned that the causation question was at least as technical as other cases where courts determined expert testimony was required. Plaintiff offered no analogous cases where courts permitted a similar technical issue to proceed to trial without expert testimony. Plaintiff thus could not prove the required element of causation, and the court granted summary judgment for GM. *Id.* at *6.

KEY TAKEAWAYS:

These recent cases highlight critical implications for parties involved in product liability claims. First, they underscore the necessity of robust expert testimony to establish proximate cause in complex cases with technical questions. Companies must ensure that their experts not only have credible qualifications but also employ reliable methodologies supported by empirical evidence—particularly testing on the implicated products.

Second, the ruling demonstrates the importance of clear and specific evidence linking alleged design defects to the injury sustained. Claims that rely on generalized opinions without specific testing are likely to be deemed inadmissible, as shown in these courts' exclusion of several expert opinions relying merely on "common sense."

Finally, companies should keep in mind that legal conclusions presented by experts are likely to be excluded. Instead, experts should always frame their opinions in the language of technical assessments rather than legal standards.

Law clerks Jenna Han and Kelly Perreault contributed to this blog post.

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