

Products Liability LAW BLOG

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Case Brief: Deloach v. Whitney, 275 S.C. 543, 273 S.E.2d 768 (1981)

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Today's Case Brief is *Deloach v. Whitney*, 274 S.C. 543, 273 S.E.2d 768 (1981). It stands for the principle that South Carolina's strict liability statute does not extend to negligent installation of a non-defective product. It also illustrates the importance of carefully considering the legal theory you use for a case.

FACTUAL BACKGROUND: Plaintiff won four tires in a raffle by Defendant tire company. 275 S.C. at 544, 273 S.E.2d at 769. Defendant installed the tires. *Id.* During part of the installation, a deteriorated valve stem, which was not part of the tire, was left on the wheel. *Id.* Plaintiff sustained injuries when the valve stem ruptured and he lost control of his car. *Id.*

PROCEDURE: Plaintiff sued Defendant and alleged negligence, breach of warranty, and strict liability in tort. 275 S.C. at 544, 273 S.E.2d at 769. Significantly, Plaintiff withdrew the causes of action for negligence and warranty and proceeded solely on strict liability in tort. *Id.* Defendant moved for a directed verdict at trial on strict liability, and the trial court denied the motion, finding services included within the scope of South Carolina's strict liability statute. *Id.* The sole issue submitted to the jury was whether Defendant was liable under a strict liability theory for failing to install a new valve stem or not warning Plaintiff of the deteriorated condition of the one on the wheel. *Id.*



The jury returned a verdict for Defendant. *Id.* Plaintiff moved for a new trial because Defendant's closing argument was improper and prejudicial. *Id.* This motion was granted, and Defendant appealed. *Id.*

ISSUE(S): (1) Whether the trial court's denial of Defendant's motion for directed verdict was erroneous, and (2) whether Plaintiff should have been granted a new trial. 275 S.C. at 544, 273 S.E.2d at 769.

DISPOSITION: The trial court erred in granting a new trial because Defendant was entitled to a directed verdict as a matter of law, and any prejudice from Defendant counsel's closing argument was harmless. 275 S.C. at 545-46, 273 S.E.2d at 769-70.

RULES AND OPINION: Defendant moved for a directed verdict on the issue of strict liability because there had been no "sale" to bring the transaction within S.C. Code § 15-73-10. 275 S.C. at 544-45, 273 S.E.2d at 769. The statute imposes liability upon sellers of defective, unreasonably dangerous products. *Id.* at 545, 273 S.E.2d at 569. The court refused to expand the statute to include negligent installation of a non-defective product (e.g., the tire). *Id.* The alleged defect was already present when Defendant performed his service. *Id.* Defendant neither supplied nor used a defective product in conjunction with mounting the tires on Plaintiff's car. *Id.* As stated by the court:

The actionable conduct, if any, resulted from his negligence in not examining the value stem. We conclude this action does come within to scope of § 15-73-10, *supra*. We decline to expand the scope of strict liability in South Carolina to include the negligent installation of a non-defective product.

Id. As a result, the trial court should have directed a verdict, and there was no issue for the jury to decide. Any prejudice from the closing argument was harmless (and moot). 275 S.C. at 545-46, 273 S.E.2d at 769-70.

This blog contains BRIAN A. COMER'S personal views of various topics in South Carolina products liability law. Please read my DISCLAIMER & TERMS OF USE about the nature of this blog, and understand that you are accepting its terms before reading any of my posts. I welcome your comments.

About Brian Comer

Brian Comer is a shareholder and Chair of the firm's Products Liability Practice Group. Brian was a magna cum laude graduate of the University of South Carolina Honors College where he majored in International Studies and Economics. He also served as Student Body President during his undergraduate career. Brian received his Juris Doctor from the University of South Carolina School of Law and has an International Masters in Business Administration from the University's Moore School of Business. During law school, he was a member of the South Carolina Law Review and the Order of Wig and Robe. Prior to joining Collins & Lacy, Brian was a partner with a large national firm based in Columbia, South Carolina.

Brian is the founder and contributing author of South Carolina Products Liability Law Blog, for individuals and product manufacturers who are interested in this area of law. His goal is to provide current information on trends in products liability law in the Palmetto State.

About Collins & Lacy, P.C.

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