

## Products Liability LAW BLOG

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## Directed Verdict in Products Liability Trial!

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<http://seproductsliabilitylaw.blogspot.com/>*

On May 30, 2012, I tried a non-jury products liability case in the Lexington County Court of Common Pleas. The case was smaller, but it had some interesting issues that are blogworthy. I also received a directed verdict, which was a nice result for a good client. Set forth below is a summary of the case.

**FACTUAL BACKGROUND:** The plaintiff was an individual who restored a 1950 Chevy Styleline Deluxe automobile. (The car to the right is not the actual car, but looks pretty much the same). After refurbishing the car himself, the plaintiff decided he wanted to paint it a “candy apple” red. This is significant because “candy” jobs are not your typical automobile paint job. They have multiple coats and steps, and the thickness of the paint is thicker than a regular paint job. The plaintiff took the car to a body shop and spoke with someone about painting it. Long story short, the painter painted the car once and found the paint was “lifting.” This basically means the multiple layers of paint did not remain set. The painter wiped all the paint off, started over, and saw the same thing happening again on the second paint job. He spoke with the paint retailer about the problems with the paint, and the retailer recommended some additional steps. After taking the additional steps, both the painter and the plaintiff were satisfied with the paint job. The plaintiff took the car home and began to put the chrome back on



himself. While he was replacing the chrome, he found the paint was “soft” (as he described it); it began lifting again and curling around the chrome.

**PROCEDURE AND DISCOVERY:** The plaintiff filed his lawsuit on November 23, 2010. The Complaint alleged a products liability lawsuit against the paint manufacturer and retailer, including typical claims of strict liability, negligence, and breach of implied warranty of particular purpose. The Complaint alleged every possible defect relating to the paint, but it was devoid of any allegation of negligence whatsoever against the painter. The paint manufacturer was not properly served and was in default when I was retained to represent it. I moved to set aside the default, and the court granted the motion based on the insufficiency of service of process.

During discovery, we deposed the plaintiff, retailer, painter, and corporate representative for the manufacturer. The plaintiff also named the painter as his expert witness, but he did not name any other expert with regard to paint manufacture or design. If you follow this blog, you know I have blogged extensively about the necessity of expert witness testimony in a products liability case. In a design defect case, South Carolina's appellate courts have stated unequivocally that a plaintiff must provide expert testimony to sustain his burden of proof with regard to design defect.

Recognizing the painter was not qualified to opine about paint chemistry or manufacturing process, I moved for summary judgment. The basis of the motion was that if the court excluded the painter as an expert witness, then my client was entitled to summary judgment based on applicable South Carolina law. The motion was denied, and the case was set for trial. After attempting to resolve the case, we reached an impasse and decided to try the case.

**TRIAL:** Plaintiff did not request a jury trial. Therefore, on May 30, 2012 Judge Letitia Verdin presided over the one-day trial and heard testimony and argument. The court heard testimony from the plaintiff and from his "expert," the painter. The court recognized the painter could not opine as to paint design or manufacture. Therefore, the court limited his testimony to paint application and the steps he took to apply the paint at issue. My cross examination of the plaintiff and his painter focused on the fact that this particular paint job requires certain steps, and discovery revealed that either (1) certain steps were not followed, or (2) they could not be accounted for by the painter or the plaintiff. After testimony by the plaintiff and painter, the plaintiff rested his case.

At the directed verdict stage, I focused on the fact that *res ipsa loquitur* cannot serve as a basis for a products liability claim in South Carolina. See, e.g., *Watson v. Ford Motor Co.*, 389 S.C. 434, 452-53, 699 S.E.2d 169, 179 (2010) ("We also note that Respondents may not rely solely on the fact that an accident occurred to prove their products liability case under a negligence theory since South Carolina does not follow the doctrine of *res ipsa loquitur*."). In other words, there is substantial case law requiring that a plaintiff provide proof of defect (i.e., without speculating as to possible defects just because the product did not perform as intended).

**DISPOSITION:** After hearing the various motions, Judge Verdin granted a directed verdict for the paint manufacturer, but denied the retailer's directed verdict motion. The retailer opted not to present a defense, and Judge Verdin took his case under advisement. She later decided in favor of the retailer, as well, and issued an Order on July 30, 2012 in which she rendered a defense verdict and dismissed the case in its entirety with prejudice.

**GENERAL COMMENTS:** I never understood why the painter was not named as a party in this case since he was the individual charged with actually applying the paint. The application stage for this paint is critical because of the complexity of a candy paint job. Be that as it may, the court recognized the evidentiary issues in this products liability case and issued a directed verdict because the plaintiff failed to sustain his burden of proof

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### **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.

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