

Pennsylvania Superior Court Affirms Verdict Against Honda Motors Despite *Tincher*

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Product Liability Alert

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The Superior Court of Pennsylvania upheld a \$55 million verdict against Honda Motors in an appeal that addressed whether the groundbreaking case of *Tincher v. Omega Flex* negatively impacted the trial court's jury instructions and evidentiary rulings. The nonprecedential memorandum opinion in *Martinez v. Honda Motors* rejected Honda's challenges and held that the trial court properly instructed the jury and precluded evidence, providing insight into how at least one panel on the Superior Court views product liability law.

The underlying case involved the plaintiff, Carlos Martinez, who was injured in a vehicle manufactured by Honda. Martinez claimed that the seatbelt was defective, a reasonable alternative design was feasible, and that Honda failed to provide proper warnings. The jury returned a verdict for Martinez on all of the theories.

While Honda's post-trial motion was pending, the Pennsylvania Supreme Court issued the *Tincher* decision. *Tincher* held that the jury, not the court, should decide whether a product is unreasonably dangerous in a design defect case.

The court first addressed challenges to the jury charges with respect to the design defect claim. Honda argued that a new trial was required because the judge, not the jury, determined that the seatbelt was unreasonably dangerous, contrary to *Tincher's* holding. *Tincher* held that the plaintiff in a product liability case must establish that a product is unreasonably dangerous by using either a risk utility analysis or consumer expectation analysis. In *Martinez*, the trial court did a risk utility analysis before sending the case to the jury, concluding that Martinez met his burden. The Superior Court explained that their analysis is not solely contingent upon whether the judge or jury engaged in the risk utility analysis. Rather, the court must also look to the jury instructions to determine whether a portion of the jury charge included a risk utility analysis.

Martinez advanced a crashworthiness theory that required proof of a reasonable alternative design. While the language in the crashworthiness charge was not the exact language in a risk utility charge, the charge was not fundamentally flawed. A crashworthiness charge inherently requires a jury to balance the risk utility factors. Therefore, the court determined the jury could not have reached a verdict in the case without conducting a risk utility analysis. Essentially, the panel in *Martinez* decided that if a jury is given a crashworthiness charge, the court can first do the risk utility analysis and determine if a product is "unreasonably dangerous" before it goes to the jury.

Honda further argued for a new trial on the grounds that the court charged the jury with the "guarantor" / "any element" instruction from the *Azzarello*-era that was rejected by *Tincher*. The Superior Court disagreed and explained that while *Azzarello* was indeed overruled by *Tincher*, *Tincher* did not require a trial court to remove the "guarantor" language from a jury instruction.

Next, the court addressed Honda's argument that a new trial was required because the trial court did not allow Honda to introduce evidence of its compliance with applicable federal regulatory and industry standards. The Superior Court cited two Pennsylvania Supreme Court cases to reject this argument. The court found that *Guadio v. Ford Motor* and *Lewis v. Coffing Hoist Division, Duff-Norton* prohibited this evidence from being admitted and that *Tincher* did not overrule either of the opinions.

Finally, Honda challenged the trial court's denial of *Tincher's* applicability of failure to warn claims. The Superior Court, while acknowledging that *Tincher* applied to warning cases in *Amato v. Bell & Gossett*, held that Honda was not entitled to relief. In *Amato*, the court found that the failure to warn instruction did not prejudice the defendant because the proposed instruction was not justified by its theory of the case or evidence presented at trial. In *Martinez*, the court explained that it did not need to consider whether the trial court's instruction complied with *Tincher* because any such failure would amount to harmless error because the jury returned a verdict against Honda on both the design defect and failure to warn theories of liability. Therefore, Honda was not entitled to a new trial, because it could not prove that the court's instruction was prejudicial.

While *Martinez* is nonprecedential, it remains to be seen whether Honda will seek further appeal or if appellate courts will apply the same analysis in other cases. *Martinez* highlights the uncertainty in Pennsylvania products liability law. The Supreme Court of Pennsylvania has not built on products liability law since *Tincher*, rendering it unpredictable and unstable. When a claim is presented, it is essential to involve counsel at an early stage in order to preserve and develop the record to fit into the post-*Tincher* world.

If you have questions or would like additional information, please contact Jerry Anders (andersj@whiteandwilliams.com; 215.864.7003), Alison Russell (russella@whiteandwilliams.com; 215.864.6835) or another member of our Product Liability Group.

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