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- ANTITRUST & TRADE REGULATION
- APPELLATE LITIGATION
- AVIATION
- BANKRUPTCY, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
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- CLASS ACTION DEFENSE
- COMMERCIAL LENDING & FINANCE
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- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE
- INSURANCE, BANKING & FINANCIAL SERVICES
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- INTERNATIONAL
- LABOR & EMPLOYMENT
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
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- PUBLIC FINANCE
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WESTERN DISTRICT DISMISSES CLAIM THAT AIR BAGS FAILED TO DEPLOY DUE TO DEFECT

***Lowery v. General Motors Corp.*, 2007 WL 4374291 (W.D.La. Dec. 14, 2007)**

David Lowery was seriously injured when his Chevrolet Blazer left the highway and struck a tree head-on. Lowery contended that the severity of his injuries was amplified because the vehicle's air bags did not deploy on impact. He sued General Motors in federal court alleging that the Blazer was not "crashworthy" and that the air bags were defective in design or construction, or because of an inadequate warning.

General Motors moved for summary judgment, and the summary judgment was initially heard by Magistrate Judge Hayes of Louisiana's Western District. General Motors submitted an affidavit from one of its engineers which stated that the air bags were not unreasonably dangerous. Lowery failed to submit any opposition at all to the motion.

Magistrate Judge Hayes recommended that the motion for summary judgment be granted due to Lowery's total lack of proof. She noted that the mere occurrence of an accident is not proof of a defect. Further, although in some circumstances the doctrine of *res ipsa loquitur* (the thing speaks for itself) may assist a plaintiff in proving a defect when he has no direct proof, here Lowery had not urged *res ipsa loquitur*, much less established the requisite criteria for applying the doctrine.

Magistrate Judge Hayes' recommendation was forwarded to District Judge Robert James for his review. This time, Lowery did submit an objection, albeit untimely, and with no explanation for why he had failed to oppose the motion initially. Lowery's objection attached a report from an expert who stated that the air bags were defective.

Judge James adopted Magistrate Judge Hayes' recommendations and granted General Motors' summary judgment. Judge James pointed out that an expert report, unaccompanied by any affidavit or deposition testimony, is nothing more than hearsay and not competent evidence to oppose a summary judgment. Further, even considering the contents of the hearsay report, the report did not fully address Lowery's burdens under the Louisiana Products Liability Act.

Judge James gave Lowery every benefit of the doubt by considering his objection to Magistrate Judge Hayes' recommendation, even though it was filed late and Lowery had not originally opposed General Motors' motion for summary judgment. Judge James' dismissal of Lowery's claims that the air bags were defective underscores that plaintiffs who bring product liability claims must be ready to properly buttress those claims, and that in most cases this must be done through competent expert testimony.

– Madeleine Fischer

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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