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The Michigan Product Liability Statute requires evidence of a defect to maintain a product liability lawsuit.

***CARDELLI, LANFEAR
& BUIKEMA, P.C.***

322 W. Lincoln
Royal Oak, Michigan 48067
(248) 544-1100
(248) 544-1191 (FAX)

5537 Glenwood Hills Parkway, SE
Suite 201
Grand Rapids, Michigan 49512
(616) 285-3800
(616) 285-1150 (FAX)

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Anthony F. Caffrey III

Attorney Caffrey manages the firm's appellate group, and specializes in appellate law, insurance coverage, dispositive motion practice, and research/writing.

Ahmed Hassouna

Attorney Hassouna is a member of the firm's appellate group, but also specializes in trial litigation.

Summary:

The Michigan Product Liability Statute requires evidence of a defect to maintain a product liability lawsuit.

The United States District Court for the Western District of Michigan recently held that a plaintiff seeking to recover in a product liability lawsuit under an implied warranty theory must establish that the product at issue was defective. In *Nordman v. OMGA S.p.A.*, 2006 U.S. Dist. LEXIS 70842, Attorneys Thomas G. Cardelli and Matthew T. Tompkins successfully obtained an

Order summarily dismissing Plaintiff Kendra Nordman's product liability lawsuit under several theories.

Kendra Nordman was injured while using a mitre saw to cut wood trim or molding while working at McBain Woodworking, L.L.C. According to her deposition testimony, Plaintiff turned away from the saw in order to stack a piece of wood, and as she turned back towards the saw, it caught her nylon work glove. As a result, Nordman lost her thumb and middle finger. Plaintiff sued several entities, including the manufacturer of the mitre saw, OMGA, alleging various product liability theories, such as negligent design, negligent manufacture, failure to warn, and breach of implied warranty.

The federal judge concluded, however, that Plaintiff failed to establish

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a prima facie case under any theory. The Court observed that Plaintiff failed to satisfy her burden, pursuant to MCL 600.2946(2), of demonstrating that there was a “practical and technically feasible” alternative design or manufacturing process. The Court further observed that the danger posed by the mitre saw was “open and obvious,” as necessary to obviate any duty to warn.

The more difficult question related to the “implied warranty” theory. Several Michigan appellate cases suggest that an implied warranty theory may be submitted to a jury in the absence of a design or manufacturing defect. *Kenkel v Stanley Works*, 256 Mich App 548; 665 NW2d 490 (2003); *Holloway v General Motors*, 403 Mich 614; 271 NW2d 777 (1978).

In this case, however, the judge

faithfully followed the import of MCL 600.2946(2), and reaffirmed that a plaintiff must demonstrate an alternative design or manufacturing process that was technologically and practically feasible. Because Plaintiff lacked evidence supporting her contention that the product was defective, her lawsuit was untenable under all theories.

In summary, the federal court faithfully upheld the requirement that a Michigan product liability plaintiff must establish a defect to sustain a lawsuit under an implied warranty theory.