

Negligence Claim Based on Design Defect

**Seasoned Experts, Swift Action Led to a Defense Verdict
for Medmarc Insured**

EXECUTIVE SUMMARY:

The owner of a motorized scooter carrier rack suffered severe injuries in a vehicle collision when her scooter fell off the carrier and onto a busy highway while attempting to retrieve the scooter. The plaintiff demanded \$2.5 million in damages in a negligence action. The jury found the scooter manufacturer not liable on all claims.

THE MANUFACTURER & THE PRODUCT

ScooterChair, Inc. manufactured, distributed, and sold wheelchairs, walkers, and motorized scooters. Its catalog also included accessories such as covers, batteries, and vehicle-mounted carriers.

THE INCIDENT

Lena Smith, a partially disabled woman, purchased a ScooterChair, Inc. carrier in 2003 to transport her motorized scooter. On September 6, 2005, Smith and a friend, Elena Gonzales, drove to Marlins Field in Miami, Florida, to attend a baseball game. En route, the scooter dislodged and fell from the carrier onto the highway. Smith pulled over onto the shoulder. After some discussion, Gonzales volunteered to retrieve the scooter from the highway.

As the two women waited in their vehicle for traffic to slow, an intoxicated

driver rear-ended the vehicle's driver's side. Smith sustained a traumatic brain injury and paralysis. Gonzales sustained whiplash and other serious injuries. The crash made the evening news.

THE ALLEGATION

Smith alleged multiple negligence claims based on design defect against Medmarc's insured, ScooterChair, Inc., as well as against the carrier manufacturer and seller. Although Smith used the carrier for almost two years without issue, she argued the carrier was poorly designed because it lacked a warning system to alert users when a scooter is not properly secured. She also argued that ScooterChair, Inc. did not have sufficient testing or reporting processes around improperly secured scooters.

DAMAGES

Smith's medical bills totaled nearly \$700,000. Her lawsuit demanded \$2.5 million in damages.

THE LEGAL PROCEEDINGS

At trial, Medmarc's panel attorney representing ScooterChair, Inc. brought to light the following flaws in Smith's case:

- ScooterChair, Inc. distributed, but did not manufacture, the carrier. Medmarc's attorneys successfully argued that ScooterChair, Inc. had no input in the carrier's design or manufacture.

- Medmarc’s products expert testified that the carrier was not defective, and a warning system was not necessary based on industry standard.
- ScooterChair, Inc. received no prior complaints about the carrier.
- Smith couldn’t remember if she secured the safety pins that secure the scooter to the rack. She admitted she never read the product manual.
- Smith purchased a pre-owned carrier. The previous owner testified he had no problems while using the product.
- Smith brought in an electronics expert who testified a warning device was “easy” and “inexpensive” to make. He admitted he had no formal electronics training.
- The plaintiff’s products expert admitted the carrier was mechanically sound; a “solid” product.

THE MEDMARC ADVANTAGE

Medmarc’s life sciences Products/Completed Operations policy provide coverage for bodily injury and property damage claims arising out of alleged defects in products designed, developed, manufactured, sold, handled, or distributed. Once Medmarc received ScooterChair, Inc.’s claim, it took immediate action.

“Medmarc understands the impact of a trial on our insureds’ ability to do business,” said Medmarc Vice President of Claims Sonia Valdes. “Public perception and brand reputation are highly important. That’s why we step in early and take extra care to investigate how and why incidents happen.”

RESULT

At the end of a five-day trial, the jury found ScooterChair, Inc. and all other defendants not liable on all claims. Smith’s motion for a new trial was dismissed on summary judgment.

In addition to securing a favorable verdict for ScooterChair, Inc., Medmarc’s legal team successfully recovered about \$30,000 in costs. All defense costs, including expert costs, fell within ScooterChair, Inc.’s deductible.

WHY EXPERIENCE MATTERS

For more than 40 years, Medmarc has protected medical device and life sciences companies against products liability and negligence claims of all sizes. Reviewing the facts around the ScooterChair, Inc. case, Medmarc and its legal team knew the case deserved to be aggressively defended.

“Medmarc developed a plan early on to resolve the case in our insured’s favor,” said Valdes. “As with all our insureds, we engaged defense lawyers with a long history of successful outcomes in cases brought against medical device and life sciences companies. Medmarc and the insured were both pleased with the outcome.”

Medmarc has a long history of insuring defending medical device manufacturers and providing risk management services.

To learn more about how Medmarc’s claims management, call us toll-free at 800.356.6886

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