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The Voice

And The Defense Wins

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The U.S. Court of Appeals for the Second Circuit recently affirmed a trial court victory for golf car manufacturer Textron Inc. in a product liability action involving quadriplegia injuries and a plaintiff's multimillion-dollar demand. **David S. Osterman**, chair of **Goldberg Segalla LLP's** product liability practice group, led the defense team, which also included fellow DRI members **Brendan T. Fitzpatrick**, **Andrew J. Scholz**, **Michael D. Shalhoub**, and **Robert M. Hanlon, Sr.**, attorneys in the firm's product liability and appellate practice groups.

The plaintiff, 18 years old at the time of the accident, was injured while operating a golf car at a golf course on Staten Island. He alleged that the golf car's two-wheel braking system was defectively designed in that it could lead to "yaw instability" under the circumstances of the accident. The plaintiff's product liability claims sounded in design defect, negligence, breach of implied warranty, and inadequate warnings.

Defense counsel's expert discovery of the plaintiff's experts exposed the weaknesses in their theories and methodologies, including scrutiny of computer simulations created and used by one expert. Based on defense counsel's *Daubert* motion, the U.S. District Court for the Eastern District of New York conducted an extensive *Daubert* hearing at which the plaintiff's experts testified. In March 2013, the court rendered a detailed opinion, which excluded the opinion testimony (and simulations) of the plaintiff's experts and, furthermore, granted summary judgment in favor of Textron.

On March 10, 2014, the Second Circuit affirmed the decision of the Eastern District of New York. Specifically, the Second Circuit determined that the lower court did not abuse its discretion in precluding the plaintiff's expert and that the district court "properly granted summary judgment to" Textron.

The case is *Valente v. Textron, Inc.*, 931 F. Supp. 2d 409 (E.D.N.Y. 2013) aff'd, 13-1456-CV, 2014 WL 903820 (2d Cir. Mar. 10, 2014).

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