



The Voice

And The Defense Wins

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Porter Wright attorneys and DRI members [Terrance Miller](#) and [Elizabeth Moyo](#) secured an appellate victory for Yamaha Motor Corp., U.S.A. In *Adkins v. Yamaha Motor Corp., U.S.A.*, 2014- Ohio-3747, the Fourth District Court of Appeals of Ohio affirmed the trial court's decision awarding summary judgment to Yamaha. The decision was due in large part to plaintiff's failure to present expert testimony to support his defect claim in a product liability lawsuit.

Plaintiff was the passenger in a Yamaha Rhino while riding with a friend in Lawrence County, Ohio, on December 1, 2007. Plaintiff claimed the Rhino rolled over while they were side-traversing a hill and landed on plaintiff, allegedly causing permanent injury to his ankle. The original complaint was filed against Yamaha in Lawrence County Common Pleas Court in 2009, alleging that the Rhino was defective in design due to its instability and propensity to rollover. Although plaintiff pursued the claim, he failed to identify an expert witness or take any discovery from Yamaha. When Yamaha moved for summary judgment based on the lack of expert testimony in the original action, plaintiff voluntarily dismissed the action without prejudice but re-filed his complaint within a year. In the re-filed action, Yamaha again filed a motion for summary judgment based on plaintiff's lack of expert testimony. In response, plaintiff relied on the fact that his friend and owner of the Rhino had taken it to an authorized Yamaha dealership after the accident as part of a voluntary repair program Yamaha entered into with the Consumer Product Safety Commission. The voluntary repair program called for the removal of the rear anti-sway bar and the addition of two-inch spacers to the rear axle. Plaintiff claimed the testimony from the Rhino owner and the alleged "recall" campaign were sufficient evidence of the alleged design defect to survive summary judgment. Both the trial and appellate courts disagreed with plaintiff.

This appellate decision is significant for the defense bar as it is an example of the type of complex product liability case that truly requires expert testimony. Although courts have historically recognized the need for expert testimony in product liability cases involving automobiles, under Ohio law and not unlike other states, not all product liability cases involve complex products and require expert testimony. For example, the Fourth District mentions one of its previous cases, *Aldridge v. Reckart*, 4th Dist. Galia No. 04CA17, [2006-Ohio-4964](#), which involved an unguarded conveyor system, and the court found that expert testimony was not necessary to support the plaintiff's design defect claim that the system should have been guarded. Thus, the *Adkins* decision is significant for manufacturers of recreational vehicles as it is the first Ohio case that expressly states: "the design of an off-road recreational vehicle and its stability ordinarily is a complex, technical matter. Thus, a design defect claim involving an off-road recreational vehicle ordinarily requires expert testimony."

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