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Kentucky Supreme Court Clarifies Products Liability Law in Reversal of \$18.2 Million Jury Verdict

In *Primal Vantage Company, Inc. v. Kevin O'Bryan, et al.*, Case No. 2020-SC-0247, 2022 WL 3641122 (August 18, 2022), the Kentucky Supreme Court clarified multiple products liability issues that will guide manufacturers through the litigation process to defend their products.

The case involved a plaintiff's catastrophic injuries sustained in a fall from a hunting tree stand manufactured by Primal Vantage. A 2017 trial of the products liability claims resulted in a jury verdict of \$18.2 million against the manufacturer, with 50% fault apportioned to the plaintiff. Reversing and remanding that judgment for a new trial, the Kentucky Supreme Court addressed multiple products liability issues.

First, the Supreme Court emphasized a trial judge's role as "evidentiary gatekeeper" to ensure that only admissible evidence is presented to a jury. In the context of this case, the admissibility issue focused on 78 other tree stand incidents on which the plaintiff's case was based. The Supreme Court determined that

the trial court abandoned its role as evidentiary gatekeeper and abused its discretion by allowing the jury to hear a wealth of other-incidents evidence before ultimately ruling that evidence inadmissible near the end of trial.

Finding that such an error was prejudicial, unfair, and affected the manufacturer's substantial rights, the Supreme Court reversed the trial court's judgment and remanded the case for a new trial.

Second, the opinion confirmed that a design defect claim requires proof of "an alternative, safer design that is practical under the relevant circumstances." In so doing, the Supreme Court rejected various purportedly alternative designs suggested by the plaintiffs, finding that those options were either not safer, or not feasible when this tree stand was manufactured.

Finally, the Supreme Court's opinion also clarified Kentucky law related to failure-to-warn claims. Considering whether it was proper to instruct a jury on "overlapping" negligence and strict liability theories on a failure-to-warn claim, the Supreme Court held that two instructions were permissible and distinguished the two theories because negligence focuses on the manufacturer's conduct and strict liability focuses on the product's condition. And while affirming the directed verdict for the manufacturer on the design defect claim, the Supreme Court held that a lack of a design or manufacturing defect did not preclude a strict liability failure-to-warn instruction premised on a product defect:

[F]or the purposes of strict liability underlying a failure-to-warn claim, a product may still be "defective" even if the product does not have a design defect.

This decision strengthens manufacturers' abilities to defend claims by confirming the requirement that trial judges make **threshold** determinations of substantial similarity before a jury can hear about any other incidents involving the product. The decision also clarifies Kentucky's legal standards for failure-to-warn and design defect claims, creating precedent to help focus the defense of all products in litigation.

For more information about this decision or questions about the implications for manufacturers facing product claims, please contact [Griffin Terry Sumner](#) or [Casey Wood Hensley](#), who represented this manufacturer, or any attorney in Frost Brown Todd's [Product, Tort and Insurance Litigation](#) practice group.

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