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REGIONAL NEWS

Faulty-Design Testimony Allowed in Rifle Injury Case

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Of the Legal Staff

A federal judge has allowed expert testimony on the allegedly defective design in the case of a Winchester rifle that discharged and wounded a father and daughter during their hunting trip.

U.S. District Judge Nora Barry Fischer of the Western District of Pennsylvania held in *Trask v. Olin* that the plaintiffs' experts were qualified to offer opinions that the discharge of the Winchester Model 94 rifle, manufactured by Olin Corp., was caused by a defect and that Olin failed to warn of the alleged defect.

The case stems from a November 2009 hunting accident that the plaintiffs claim occurred when the rifle fell from a position in a tree where Wayne Trask and his daughter, A.T., were perched. They allege the rifle's hammer, half-cocked in the safe position, made contact with one of the rungs to the ladder adjacent to the tree, causing the weapon to fire.

The bullet passed through Trask's right leg, A.T.'s left ring finger, and his right hand. As a result, A.T. lost part of her finger and Trask had multiple surgeries on his leg and knee, resulting in an amputation due to infection.



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alleged that Olin failed to warn of such a danger. Conversely, Olin maintains that the rifle went off because its butt impacted the ground, a danger to which the company has issued warnings.

According to Fischer's memorandum, Olin moved to exclude testimony from the plaintiffs' experts, Michael Knox and Charles Powell. Knox is a forensic consultant, mechanical engineer, accident and crime scene reconstructionist and law enforcement officer, and Powell is a registered professional engineer, metallurgist and materials failure analyst, with experience in the design and performance requirements of firearms and gun safety systems.

Knox opined that the rifle discharged in the half-cocked position when the hammer made contact with the ladder. Powell said in his report that the Model 94 was defectively designed because there

Trask and his wife subsequently filed a suit against Olin, claiming that the rifle's design was defective because it discharged when contact was made with the hammer.

Additionally, they

was no barrier to protect the hammer from impact.

Olin argued that Knox and Powell were not qualified to offer opinions about whether the company should have issued warnings about the half-cock setting or initiated a recall.

The plaintiffs conceded that the two were not warning experts, Fischer said, but countered that they are qualified enough to offer expert testimony on whether a warning should have been provided or a recall started. Fischer agreed.

Knox and Powell "conceded that they are not 'warnings experts,' and disavowed any intent to testify as to the design or sufficiency of any such warning," Fischer said, "But, the facts that neither Knox nor Powell have sufficient backgrounds and experience to be qualified as experts in 'warnings,' does not warrant exclusion of their opinions in this matter."

Fischer said this case is Powell's sixth materials-failure analysis involving a Model 94 rifle.

"Overall, Powell has the type of specialized expertise in the design of firearms and firearms safety systems that the court would expect in this type of case," Fischer said.

Additionally, Fischer said, Knox has training in firearms and firearms safety, as

well as expertise in accident reconstruction and forensics.

"He has investigated hundreds of shooting incidents, has undergone extensive training with firearms, and has trained others, including teaching firearms safety courses," Fischer said. "The mere fact that he does not have the formal qualifications that Olin believes are the most appropriate does not render him unqualified."

The Trasks' attorney, Shanin Specter of Kline & Specter, said the defendant's objections were "boilerplate."

"I didn't think a *Daubert* hearing was necessary, but her honor thought otherwise and her opinion makes clear that their sufficiency objections are meritless," he said.

Henry M. Sneath of Picadio Sneath Miller & Norton in Pittsburgh represents Olin and did not return a call seeking comment.

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Copies of the 28-page opinion in Trask v. Olin, PICS No. 16-0415, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information.)

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