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5th Circ. Says No New Trial For Family In Magnet Injury Case

By **Michael Phillis**

Law360 (October 8, 2020, 4:06 PM EDT) -- The Fifth Circuit said the parents of a young boy who suffered major injuries after swallowing magnetic toys called Buckyballs aren't owed a new trial because a lower court followed Mississippi law when it excluded certain evidence against the toymaker.

The panel on Wednesday left intact a jury verdict that cleared Buckyball maker Maxfield & Oberton Holdings LLC of defective design allegations. It upheld a lower court's decision to largely exclude from the eight-day trial evidence about the U.S. Consumer Product Safety Commission's actions against the company and its move to largely ban the magnets.

Those actions happened after the parents of Braylon Jordan purchased the product in 2011, and under the Mississippi Product Liability Act, defective design claims are based on what the manufacturer knew "at the time the product leaves the control of the manufacturer or seller," the court said.

"The evidence that the Jordans sought to introduce is made immaterial by the terms of the MPLA," the panel wrote. "Evidence of post-sale information may therefore be properly excluded due to its potential prejudicial effect."

The court said Mississippi's products liability law clearly sets out that Maxfield & Oberton's conduct can only be evaluated through March 2011, when the Jordans bought the Buckyballs. Although evidence of the CPSC's 2012 enforcement actions against Maxfield & Oberton "may have cast M&O in a different light at trial," the evidence was properly kept out, the court said.

In April 2012, doctors discovered Jordan had ingested eight magnets, "causing major damage to his stomach and intestines." He survived after more than a dozen surgeries that left him without a small bowel and forced him to relearn basics like how to sit up, according to court documents. The family sued in 2015.

After the trial, the family argued evidence about the CPSC's actions was wrongly excluded and stopped them from adequately addressing a key question at trial — whether the company sold the magnets as adult or children's toys. The family also argued the rules allowed the company to present a skewed picture of the facts at trial.

Before 2010, Buckyball magnets — strong magnets that can be crafted into shapes — included a label that said they were appropriate for children 13 or older. The CPSC issued a call to change that label because of the high strength of the magnets, which shouldn't be sold to kids under 14. After the recall, the company said that the magnets weren't for kids, a recommendation recorded on labels starting in 2011, according to the opinion.

The CPSC later **pursued** an administrative enforcement action against the company after declaring the magnets "substantial product hazards." In 2014, a standard was adopted that, in effect, **stopped their sale**. The company asked for this evidence, which occurred after the 2011 sale at issue, to be excluded and the lower court largely agreed, the opinion said.

The panel also rejected arguments from the Jordans that the jury should have been instructed that a magnet strength standard "preempted state law on the defect element of their claim" and that the jury could conclude the products were defective based on that standard. The panel said the Jordans should have raised that issue during a pretrial conference and because they waited to bring it up until the trial had started, the district court had the authority to deny their request.

Lewis W. Bell, a Watkins & Eager PLLC attorney for the company, said the panel got it right.

"They applied Mississippi product liability law," he said, adding that the plaintiff must prove that the manufacturer knew about a defect at the time of sale or when the product left its control. "I think the Fifth Circuit got that right. They applied the language of the statute in affirming the lower court's rulings and the jury verdict."

A representative with the family did not immediately return a request for comment Thursday.

Circuit Judges Carl E. Stewart, Edith Brown Clement and Gregg J. Costa sat on the panel for the Fifth Circuit.

The Jordan family is represented by C. Victor Welsh III, Crymes M. Pittman and Ann R. Chandler of Pittman Roberts & Welsh PLLC.

Maxfield & Oberton Holdings LLC is represented by Lewis W. Bell and Steven D. Orlansky of Watkins & Eager PLLC.

The case is Meaghin Jordan et al. v. Maxfield & Oberton Holdings LLC, case number 19-60364, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Gemma Horowitz.
