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## Plaintiff Says Radiator Specialty Can't Prove Product Wasn't Unreasonably Dangerous

NEW ORLEANS -- A benzene plaintiff has asked a federal court to award partial summary judgment with respect to claims asserted against Radiator Specialty, arguing that the defendant has not presented any evidence to oppose the plaintiffs' claims that the defendant's product was unreasonably dangerous. *Wagoner, et al. v. ExxonMobil Corp., et al.*, No. 09-07257 (E.D. La.).

In the July 15 motion filed in the U.S. District Court for the Eastern District of Louisiana, the plaintiffs alternatively ask the court to preclude the defendant from presenting evidence at trial on the issue of whether the product was defective and whether alternative designs were available.

However, on July 26, Radiator Specialty opposed the motion, contending that the court has already determined that Liquid Wrench has "lawfully required warnings and those warnings were adequate as a matter of law."

Wagoner was also exposed to benzene-containing materials when he worked as mechanic in the 1970s, at which time he emptied, cleaned and de-greased engines, according to the lawsuit. Wagoner continued to work as a home mechanic from 1975 to 2008, the complaint says. As a result of this exposure, Wagoner allegedly developed multiple myeloma.

Among the products Wagoner allegedly used was Liquid Wrench, manufactured and distributed by Radiator Specialty Co.

However, the plaintiffs now say that under both Louisiana and Alabama choice of law provisions, the claims as they relate to Radiator Specialty should be governed by Alabama law.

"Mr. Wagoner was injured by his exposure to the benzene in Liquid Wrench while he worked as a mechanic in Alabama during the 1970's," the brief states. "Additionally, Mr. Wagoner was a resident of Alabama throughout this same time period. Although Mr. Wagoner continued to use Liquid Wrench after 1978, his exposure to benzene contained [in] Liquid Wrench ended in 1978. [Radiator Specialty Co.] phased out the production of the raffinate based Liquid Wrench in 1978."

Under Alabama law, the plaintiffs state that they are entitled to summary judgment on claims asserted against Radiator Specialty since they have not presented any testimony to counter the claims in the lawsuit.

The plaintiffs specifically argue that testimony demonstrates that Liquid Wrench was "unreasonably dangerous and defective," and, further, that safer designs were available.

Since Radiator Specialty has not offered any evidence to contest this testimony, the plaintiff asks the court to grant the motion for partial summary judgment. In the alternative, the plaintiffs seek to exclude Radiator Specialty from "offering any opinions, or evidence at trial on the issue of whether Liquid Wrench was unreasonably dangerous, defective, and whether alternative designs were available and/or feasible."

The defendant says that under Alabama law, which says that an adequate warning is an affirmative defense under the state's Extended Manufacturers' Liability Doctrine.

Further, this court has already found that the plaintiffs' failure to warn claims were preempted under the Federal Hazardous Substances Act.

"Pursuant to Alabama law, a product's 'danger' can be removed through a proper warning and this Court has already determined that the raffinate formula Liquid Wrench bore the lawfully required warnings," the opposition brief states. "The contrary opinion, that all such benzene-containing products are unreasonably dangerous, rests solely upon the ipse dixit of [a plaintiff expert] and is of no evidentiary value."

The plaintiffs have also filed motions to exclude ExxonMobil from introducing hearsay evidence and the parties have exchanged a number of briefs to include several experts on both sides.

The plaintiffs are represented by L. Eric Williams Jr. of the Williams Law Office in Metairie, La.; and Amber E. Cisney and Richard J. Fernandez of Richard J. Fernandez LLC, in Metairie, La.

Radiator Specialty is represented by Lynn Luker of Lynn Luker & Associates in New Orleans and James M. Riley Jr. of Coats, Roase, Yale, Ryman & Lee in Houston.

Document is Available Call (800) 496-4319 or Search [www.harrismartin.com](http://www.harrismartin.com) Motion Ref# BEN-1107-03  
Opposition Ref# BEN-1107-05

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