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First U.S. Paintball Case: Not the Fault of Maker or Seller That Girl Partially Blinded by Paintball Marker

News
May 8, 2002

DENVER - Although paintball has been a popular recreational activity for 20 years, the first paintball product liability case ever tried in the United States was decided May 1 - for the defendants - in Larimer County, Colorado, District Court.

Defendants were Brass Eagle, Inc., manufacturer of the paintball marker alleged to have been used, and Wal-Mart Stores, which sold the marker. (The actual marker had been destroyed and was therefore not available as evidence.) Representing the defendants in this victory was Denver-headquartered Wheeler Trigg O'Donnell.

In 1998, three young men drove by an ice cream parlor. One of them shot 14-year-old Jorel Lynn Travis, who was standing outside with a group of friends, using a paintball marker. As a result, Travis was blinded in one eye. Travis sued the young men, who settled, and also sued Brass Eagle and Wal-Mart for more than $1 million, saying that they knew the marker was dangerous but made and marketed it anyway.

Defendants responded that the companies were not responsible for the injury because it resulted from misuse of the product. Both the box in which the marker was purchased

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and the manual that it came with had warnings about proper eye and face protection.

The court granted summary judgment in favor of the defendants on plaintiff's negligence *per se* claim, and directed a verdict in favor of the defendants with respect to plaintiff's claims of violation of the Colorado Consumer Protection Act, breach of implied warranty of merchantability, breach of implied warranty of fitness for a particular purpose, and punitive damages. Plaintiff's claims of strict liability and negligence went to the jury.

Representing Brass Eagle and Wal-Mart in this case were WTO attorneys Michael L. O'Donnell and Carolyn J. Fairless, assisted by Michael T. Williams and Wendy A. Harvey. Special counsel for Brass Eagle was William M. Griffin III, of Friday Eldredge & Clark in Little Rock, Ark. Representing plaintiff were Michael Montgomery and Peter Dusbabek of Denver-based Montgomery, Kolodny.

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