

When selling a used 1997 Chevy Tahoe to an Oregon family, a Portland car dealership decided to install new tires one size larger than those required by General Motors, the vehicle manufacturer. Four years and 35,000 miles later, a steel belt separation occurred to the left-rear tire, with a subsequent rollover on a Mexican freeway. Both a mother and daughter were killed, and another minor daughter incurred brain injury.

Plaintiffs sued Cooper Tire, the tire manufacturer, for strict products liability, and joined the local car dealership for negligence in installing the wrong size tires. The larger tires raised the center of gravity of the SUV, thereby altering its instability ratio and making the vehicle more likely to roll over during a “tire event” such as a de-treading. The tire manufacturer settled the products liability claim, leaving the car dealership to go to trial on the negligence theory only.

In Oregon, when a co-defendant/tortfeasor settles with plaintiffs, that co-defendant remains on the verdict form and the jury assesses its proportionate share of liability for causing the accident, even though that co-defendant no longer is represented at trial. But also the burden of proof shifts from plaintiffs to the remaining defendant to prove the settling party’s fault.

With the development of this “new” case-within-a-case, our car dealership client had to determine whether it could present a strict liability products defect case against the tire manufacturer within a negligence only case. Also problematic was the validity of a document discovery subpoena served on Cooper Tire’s Oregon registered agent when the documents were located in Ohio, and Cooper Tire housed no documents in Oregon (and was no longer a party-defendant in the case).

Further concern involved a Rule 104 hearing requested by plaintiffs to disqualify a defense tire expert, who had testified in another jurisdiction that he “would not hire himself as a tire expert”, because he had never designed any tires. Nicole Nowlin, an Oregon Super Lawyers’ “Rising Star”, worked to qualify him as a trial expert in spite of his own words that he was not.

Obtaining records from Mexico regarding the police investigation of the accident was unusual, given the difference in both culture and laws. Our Spanish-speaking attorney, Aukjen Ingraham, was instrumental in maneuvering through the myriad minutia of international red-tape and obtaining the documents necessary to develop a reconstruction of the accident.

In the end, a favorable settlement was reached days before the trial was scheduled to start. Both the car dealership and its carrier were pleased with the outcome of eliminating the risk of a sympathetic verdict by payment of a reasonable settlement sum.