

Fourth District Decision on the Similarity Requirement for Purposes of Discovery in Products Liability Cases

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Fourth District Decision on the Similarity Requirement for Purposes of Discovery in Products Liability Cases On December 2, 2010, the Fourth District Court of Appeal issued its decision in [Alvarez v. Cooper Tire & Rubber Co.](#), 4D08-3498, --- So. 3d ---, 2010 WL 4861514 (Fla. 4th DCA Dec. 2, 2010). Alvarez addresses the similarity requirements for purposes of discovery in products liability cases. Specifically, the court held that “the discovery standard of substantial similarity for other products with similar defects is not a correct interpretation of Florida’s scope of discovery rule.” Recognizing that discovery should be allowed for products that are similar, the court determined:

- All passenger-light truck tires (at issue in the case) are grouped together for purposes of FDOT regulations and, therefore, the record “discloses no plausible reason why, if passenger-light truck tires are substantially similar for purposes of federal regulation of interstate commerce, they are not also substantially similar for the subject matter of discovery . . .”
- Similarity, defined as “comparable in substance, comes closest to the text and purpose of rule 1.280(b)(1) with its focus on the broader *subject matter* of the claims and defenses. A better measure for discovery regarding other products would thus be *comparable in substance rather than substantially similar*.”
- Florida law has “direct authority for allowing discovery of evidence from other cases involving merely a *similar* product to prove that the product on trial was dangerously defective.”

- Concerning fishing expeditions, “[a]n enlarged scope of relevancy for discovery purposes seems to embrace a strong policy to allow parties to do some *fishing* to learn what possible trial evidence may actually be out there. As in this case, where all the relevant information lies in the hands of the opposing party who claims trade secrets as a bar, it would be necessary to do some casting about of lines and nets to learn precisely what the opposition knows that it does not want its adversary to know.”
 - Claims involving other products, to be discoverable, “need bear only a *similarity in substance* with the subject matter of the claim. In this discovery context, *Perret’s* specification of unadorned similarity is more coherent with the essential purpose of rule 1.280(b)(1) to enlarge relevancy to the entire subject matter rather than to contract it to trial evidence.”
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