

Case Note...

Carrier v. City of Amite

(2010-CC-2007 Louisiana Supreme Court, October 2010)

The parent of a child who was seriously injured in a bicycle accident brought suit against Sears, Roebuck & Co., the retailer who sold the child's bicycle helmet, alleging that the retailer breached its duty to provide helmet fitting instructions at the point of sale.

The Supreme Court held that summary judgment dismissing the claim against Sears was appropriate:

A threshold issue in any negligence action is whether the defendant owed the plaintiff a duty.... The central question presented in this case is whether plaintiffs established a legal duty on the part of a retailer, such as Sears, to provide point-of-sale fitting instructions for bicycle helmets.

Under current societal norms, we do not believe it is reasonable to require mass-marketing retailers, such as Sears, to offer specialized point-of-sale advice on the thousands of products they sell. Rather, it is typically understood the consumer will ask for assistance, if it is required..... **we find the responsibility to determine whether the helmet was properly fitted should rest with plaintiffs, not Sears.**

Plaintiff's expert was James Green. He testified he advised his clients to instruct their buyers on the proper use and fit of bicycle helmets. He admitted, however, that he knew of no rules or laws requiring retailers to fit and instruct buyers of bicycle helmets. The Court explained that:

"Under these circumstances, we must conclude Mr. Green's testimony reflects his own personal opinion as to what a retailer *should* do, and is not based on any objective standards

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establishing what a retailer is *required* to do. Courts have held that experts may not rely on their own conclusions as authority in the absence of any objective support. See *Grdinich v. Bradlees*, 187 F.R.D. 77 (S.D.N.Y.1999) (holding the expert's testimony was without foundation because "[w]ithout 'industry standards' to rely upon, [the expert] seems to base his conclusions on his own authority"). Thus, Mr. Green's testimony does not establish the existence of any statutes, regulations, or industry standards which would support the finding of a duty on a retailer to fit bicycle helmets at the point of sale."

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