

Lucas and Cavalier Attorneys Obtain Dismissal of Wrongful Death Dresser Tip-Over Case

On June 2, 2020, Judge Paul S. Diamond of the United States District Court for the Eastern District of Pennsylvania issued an Order granting the Motion to Dismiss filed by LUCAS AND CAVALIER, LLC attorneys Robert M. Cavalier and Thomas L. Mueller on behalf of Defendant American Society for Testing and Materials (“ASTM”) in the case of DeLong v. American Home Furnishing Alliance, et al., No. 19-2766 (the “ASTM Case”).

This case involved the death of Ms. DeLong’s 2-year-old son, which occurred when an eight-drawer HEMNES dresser purchased from IKEA fell on top of him in his home in Florida. Ms. DeLong originally filed suit in Florida against various IKEA entities, and available information indicates the suit was settled for \$17.5 million. In the ASTM Case, Ms. DeLong sued ASTM and the American Home Furnishings Alliance, Inc., alleging both were responsible for promulgating and implementing safety standards with which the subject dresser complied but which she alleges were insufficient and caused her son’s death.

ASTM is an international standards organization which publishes consensus standards for a wide range of materials and services, with over 12,500 ASTM standards currently operating globally.

The ASTM Case originally was filed in the Court of Common Pleas of Montgomery County, Pennsylvania. Utilizing a relatively little-known procedural device called “snap removal,” ASTM, which ordinarily would be considered a forum defendant and thus precluded from removing the case to Federal Court, successfully removed the case to the Eastern District and defeated Plaintiff’s attempts to remand.

ASTM moved to dismiss the allegations against it, arguing (1) ASTM did not owe a duty of care to Plaintiff, (2) ASTM did not increase the risk of harm to Plaintiff, (3) ASTM did not breach a duty owed to Plaintiff, and (4) public policy considerations dictated a finding of no liability.

Because there is no clear, binding precedent addressing these issues, a nationwide survey of related cases and other authorities was necessary. Chief among our arguments was an explanation of the role ASTM plays in furniture and other industries. We argued ASTM publishes voluntary safety standards and exercises no control over the eventual design, manufacturing, or selling of the dresser, all of which were controlled by IKEA. Furthermore, even if the voluntary safety standards published by ASTM were inadequate as Plaintiff alleged, she could not allege ASTM increased the risk of harm to her son. In fact, the publication of safety standards unquestionably *decreases* the risk of harm compared to furniture not designed to comply with those standards.

During the pendency of ASTM’s Motion to Dismiss, Plaintiff attempted to engage in what would have been costly and cross-country discovery, including a government testing of the subject dresser. We vehemently opposed all proposed discovery and testing, arguing it would be inappropriate to engage in these activities which we believed would be wasteful in the event our

Motion to Dismiss was granted. Despite Judge Diamond's Standing Order indicating discovery would not be stayed due to a pending dispositive motion, he granted our Motion to Stay all discovery and testing of the dresser, pending the outcome of the dispositive motions.

In granting ASTM's Motion to Dismiss, Judge Diamond held ASTM did not owe a duty to the eventual users of products following ASTM standards, and ASTM did not assume the duty to Plaintiff by publishing the subject safety standards. He thus dismissed Plaintiff's Complaint with prejudice.

This case's outcome recently was discussed in a Law360 article entitled "Trade Groups Escape Suit Over Child Killed by IKEA Dresser." The case previously was discussed in The Legal Intelligencer, The Philadelphia Inquirer, and various local affiliate news channels in Florida and Pennsylvania. Furniture safety also was a topic in a recent Netflix documentary entitled "Broken," which featured Ms. DeLong and other furniture safety advocates.

The attorneys at LUCAS AND CAVALIER, LLC were pleased with the outcome of this case and believe Judge Diamond's legal analysis was sound. We are available to discuss this case and the issues presented therein and will stay current with the legal issues presented in the case.