



And The Defense Wins

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DRI members [Beth Schneider Naylor](#) and [Douglas R. Dennis](#) of **Frost Brown Todd LLC** in Cincinnati, Ohio, [Shelley G. Hurwitz](#) of **Holland & Knight LLP** in Los Angeles, California, and [Richard A. Ergo](#) and [Cathleen S. Huang](#) of **Bowles & Verna LLP** in Walnut Creek, California, were successful in defending summary judgment in the Ninth Circuit United States Court of Appeals from the decision of the United States District Court, Southern District of California in favor of their clients in a product liability lawsuit. *Shalaby v. Newell Rubbermaid, Inc., et al*, App. No. 09-56331 (9th Cir., May 17, 2010).

In rejecting the plaintiffs' contention that the "consumer expectations" test applied, the Ninth Circuit cited *Stephen v. Ford Motor Co.*, 134 Cal. App. 4th 1363 (2005) holding that the plaintiffs' theory of defect and causation was highly technical in nature and was not within the common experience of the jury, therefore, requiring expert testimony. The Ninth Circuit affirmed the district court decision to exclude the plaintiffs' experts for failing to meet the minimum standards under Rule 702 and *Daubert* for reliability and for relevance. The appellate panel held that because the plaintiffs were unable to establish a prima facie case without experts, summary judgment in favor of the defendants was proper and affirmed the trial court decision.

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