

## CONSUMER EXPECTATION TEST APPLIES IN A PRODUCT DEFECT CASE

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*Brethauer v. General Motors Corporation*

Ct. Appeals, Div. One, March 31, 2009

Authored by the [JSH Appellate Team](#)

Plaintiff, who asserted he was wearing a seatbelt, was ejected from his vehicle and injured. He filed a products liability action against GM alleging, among other things, that it had defectively designed and manufactured the vehicle's seatbelts and was thus liable for the resulting injuries. At trial, the jury was instructed as to the "consumer expectation test" for the manufacturing defect claim, and on the risk/benefit analysis for his "design defect" claim. The jury returned a defense verdict and Plaintiff appealed.

The court of appeals noted that while the consumer expectation test might sometimes work well in the design defect cases, it provides no resolution for those cases in which the consumer would not know what to expect, because he would have no idea how safe the product could be made. Consumers have expectations about how safely seatbelts will perform. These expectations are based on the importance of "buckling up" and on laws regulating motorists' use of seatbelts. Thus, the trial court erred by failing to instruct the jury on the consumer expectation test. The error, however, was not reversible because Plaintiff's substantial rights were not prejudiced. The jury, despite being instructed on the risk/benefit analysis for the design defect claim, reached a verdict for GM. The Court thus determined that a jury likely would not reach a different conclusion had it been instructed on the consumer expectation test.