



## The Voice

### And The Defense Wins

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DRI members [Scott A. Richman](#) and [Michael Correnti](#), both partners at **McDonald Toole Wiggins, P.A.** in Orlando, Florida, prevailed on final summary judgment in favor of their client, Ford Motor Company, before a U.S. District Court judge for the Middle District of Florida. The plaintiffs were the original owners of a 2003 Ford Escape that was alleged to have been equipped with a defective component that purportedly started a fire on February 22, 2011, that destroyed their house in Lake Mary, Florida, along with all of its contents. Plaintiffs sought to recover over \$300,000 for property damages and alleged punitive damages as well.

After the close of discovery, Ford moved for final summary judgment based primarily on the plaintiffs' lack of evidence and expert opinion to support that a defect existed in the vehicle, or that such defect proximately caused the fire. The plaintiffs responded, relying heavily on an argument that they were entitled to go to a jury based on an "inference of defect" permitted by Florida law, given that the product malfunctioned during normal operation and was so destroyed by this malfunction. The court rejected this argument and found that the "inference of defect" did not apply to this eight-year-old vehicle with 80,000 miles. The court further found that the plaintiffs were required to prove the existence of defect before the issue of causation could be considered, and that plaintiffs had failed to establish a genuine issue of material fact regarding the cause of the fire or any alleged defect. Notably, the court held that plaintiffs' lone expert, fire cause and origin investigator David Cheers, was not qualified to offer an opinion regarding defect and that his opinion merely stating that the fire started at or near the location of the allegedly defect part was insufficient to establish defect. Moreover, the court stated that the mere fact that a product is subject to a recall does not establish that the product is defective. Based on plaintiffs' failure to establish a genuine issue of material fact regarding defect or causation, the court determined that final summary judgment was appropriate in favor of Ford Motor Company. The plaintiffs' case was dismissed in its entirety.

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