



## The Voice

### And The Defense Wins

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DRI member [Gerard Cook](#), a partner with **O'Halloran, Kosoff, Geitner and Cook, LLC** in Northbrook, Illinois, recently obtained summary judgment on behalf of WM Barr & Co., Inc. in a product liability suit involving a cleaning solvent called Goof Off. Goof Off is manufactured by WM Barr & Co. The suit was venued in the United States District Court for the Northern District of Illinois, Eastern Division.

The suit arose out of a flash fire which occurred while the plaintiff was using Goof Off to remove paint from a basement floor in his home, badly burning him. Goof Off is an extremely flammable solvent, primarily composed of acetone. The plaintiff claimed that the fire was ignited by static electricity, and that the product's warning label failed to warn of this danger, and that it failed to warn of the danger of vapor migration. The defense asserted that the fire was ignited by the hot water heaters in the basement area and that the product's warning labels specifically warned against this hazard, instructing users to extinguish all pilot lights and to not use the product in basements. In any event, the defense asserted that plaintiff's claims were preempted by the Federal Hazardous Substances Act and associated Consumer Product Safety Commission regulations. The court agreed that the product's warnings complied with these federal regulations.

In granting summary judgment, the court noted that the FHSA does not require manufacturers to provide detail warnings about every possible way in which the products principal hazard—in this case flammability—might manifest. Likewise, the court found that the plaintiff failed to prove his strict liability claims, which, under Illinois law, requires showing that the injury resulted from a product that was unreasonably dangerous when it left the manufacturer's control by applying the consumer—expectation and/or risk utility tests.

Plaintiff had claimed that Goof Off was unreasonably dangerous because an ordinary consumer would not expect a product to ignite when used in a reasonably foreseeable way. The court rejected this argument, noting that the plaintiff testified at his deposition that he read Goof Off's label and understood the product to be extremely flammable.

The court also found the plaintiff's risk—utility test claim unavailing because plaintiff failed to provide evidence that the magnitude of the danger of Goof Off outweighed the utility of the product.

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