



Client Alert

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Cooper Tire & Rubber Co. v. Koch

In its recent decision, *Cooper Tire & Rubber Co. v. Koch*, No. S17G0654, 2018 Ga. LEXIS 176 (Mar. 15, 2018), the Supreme Court of Georgia further clarified the duties surrounding preservation of evidence rules in Georgia. In *Koch*, the plaintiff's husband was involved in a motor vehicle accident when the tread on the left rear tire of his 2001 Ford Explorer detached. Following the accident, the vehicle and some of the tires were crushed for scrap. After Plaintiff filed a product liability suit against Cooper Tire for a tire defect, Cooper Tire filed a motion to dismiss the complaint or impose other sanctions for spoliating the vehicle and tires.

The Georgia Supreme Court concluded that the facts did not give rise to litigation being reasonably foreseeable or that it should have been reasonably contemplated by the plaintiff so as to trigger the duty to preserve the subject vehicle. Importantly, the Georgia Supreme Court noted that the duty of preservation is the same for plaintiffs and defendants: **"let us now eliminate any doubt: the duty is defined the same for plaintiffs and defendants,** and regardless of whether the party is an individual, corporation, government, or other entity." However, the Court explained the practical application of that duty may depend on the party's experience and sophistication in matters of litigation. Therefore – while the duty is "the same" for plaintiffs and defendants – corporate defendants (who are more experienced and sophisticated in litigation than individual plaintiffs), should take heed from the *Koch* decision and employ prudence when it comes to preserving evidence. When in doubt, *preserve the evidence*.

If you wish to further discuss this case, please contact a Swift, Currie, McGhee & Hiers' attorney at 404.874.8800 or via our website, swiftcurrie.com.

The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.