



Tenth Circuit Affirms Precedent-Setting Dismissal in Computer Duster Product Liability Case

Court Rules "Illegality Defense" Bars Recovery Despite Kansas Comparative Fault Framework

Kansas City, MO (September 4, 2025) - The United States Court of Appeals for the Tenth Circuit today affirmed a landmark dismissal in *Messerli v. AW Distributing, Inc.*, establishing important precedent regarding the application of the illegality defense in product-liability cases in Kansas. The decision, authored by Circuit Judge Tymkovich, represents the first appellate ruling applying Kansas's illegality defense to bar a product-liability claim where the plaintiff's injury resulted from criminal conduct.

Case Background

The case arose from the tragic death of Kyle Messerli, who died from acute Difluoroethane (DFE) intoxication after allegedly inhaling computer duster products manufactured by various defendant manufacturers. Messerli had become addicted to "huffing" computer dusters, inhaling four or more cans daily before his fatal overdose in August 2020.

Kyle's father, Robbin Messerli, brought wrongful death and survival claims against the manufacturers, alleging design defects, failure to warn, and other product-liability theories under Kansas law. The plaintiff argued that defendants knew their products were being abused but failed to implement adequate safeguards.

District Court Ruling

The U.S. District Court for the District of Kansas dismissed all claims with prejudice, ruling that because inhaling computer duster violates Kansas criminal law (K.S.A. § 21-5712), the illegality defense barred recovery. The district court rejected plaintiff's argument that Kansas's comparative-fault statute had abrogated the illegality defense.

Tenth Circuit Decision

Writing for a three-judge panel, Circuit Judge Tymkovich affirmed the dismissal, holding that Kansas's illegality defense remains viable in product-liability cases despite the state's adoption of comparative-negligence principles.

"The illegality defense existed for all tort actions at common law—that includes products liability actions," the court wrote. "Without clear abrogation from the Kansas Legislature or Kansas Supreme Court, it is still available to defendants."

The court distinguished the illegality defense from comparative-negligence defenses that Kansas courts have previously abrogated, explaining that the illegality defense serves a different policy purpose:

"The public policy rationale for the illegality defense is different enough than that of comparative negligence that it is not an 'analogous defense,'" the opinion states. "The Kansas Legislature decided that the jury is well-positioned to weigh the relative faults of two parties but this case is not about weighing fault."

Key Legal Holdings

Illegality Defense Survives Comparative Fault: The court held that Kansas's comparative-negligence statute does not implicitly abrogate the illegality defense, which serves the distinct policy of preventing plaintiffs from benefiting from their own criminal conduct.

Product-Liability Application: The decision establishes that the illegality defense applies to product-liability claims in Kansas, not just traditional tort actions, when the plaintiff's illegal conduct proximately caused the injury.

Policy Distinction: The court emphasized that the illegality defense is grounded in the principle that "courts should not lend assistance to one who seeks compensation under the law for injuries resulting from his own acts when they involve a substantial violation of the law."

Broader Implications

The decision aligns Kansas law with other jurisdictions that have applied illegality or wrongful-conduct defenses to product-liability claims. The court cited decisions from the Eleventh Circuit, Mississippi, Iowa, and Michigan as supporting this approach.

The ruling provides important guidance for manufacturers facing product-liability claims involving criminal misuse of their products in Kansas (and other states with similar legal framework), establishing that such illegal conduct can serve as a complete bar to recovery rather than merely reducing damages under comparative-fault principles.

The appeal was led by Scott D. Kaiser, Stephen E. Nichols, Holly Pauling Smith and Cailynn Hayter of Shook, Hardy & Bacon L.L.P. The plaintiff was represented by Ruth Anne French Hodson of Sharp Law, LLP.

The case was heard by Circuit Judges Tymkovich, Phillips, and Carson.

Messerli v. AW Distributing, Inc., No. 23-3241 (10th Cir. Sept. 3, 2025).

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