

RMA'S USED TIRE BULLETIN: WHAT IS ITS LEGAL EFFECT?

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Last December, the Rubber Manufacturers Association issued its Tire Information Service Bulletin entitled "Passenger and Light Truck Used Tires."

The Bulletin warned of risks associated with the installation of used tires, and recommended against installation of used tires that exhibited certain characteristics.

It is not this article's purpose to judge the technical soundness of RMA's conclusions; that is the province of the technical experts. The issue here is whether the Bulletin can be used in a court of law to establish a custom or standard of care applicable to the entire tire industry.

In other words, can the Bulletin be used – either by a plaintiff or defendant – in a products liability case to establish the standard of care required by law of a tire dealer or wholesaler?

Like many legal questions, the answer lies in the gray zone. This is so because a trial judge has considerable discretion in deciding what evidence can be admitted in a particular case, and trial judges vary widely in judicial philosophy and their approach to the admission of evidence.

That being said, it is quite possible that a trial judge might admit the Bulletin as *evidence* of industry custom or standard, but not – standing alone – as *establishing* an industry custom or standard. Thus, a judge might permit a jury to consider the Bulletin together with other evidence – such as expert testimony

– to determine whether a defendant's actions were negligent under a particular set of circumstances.

Even if admitted into evidence, the Bulletin's impact could be minimized on several grounds.

First, the Bulletin's objectivity can be attacked as reflecting the self-interest of RMA and its members. It can be argued that the Bulletin is not objective because RMA was at least partially motivated by a desire to enhance its own members' litigation posture at the expense of resellers and wholesalers of use tires.

Further, RMA's members – tire manufacturers – have a transparent interest in encouraging the public to purchase new tires rather than less expensive used tires. A Bulletin hostile to the use of used tires may be seen as intended to further that interest.

Finally, the degree of scientific rigor (or the lack thereof) utilized by RMA in developing and testing its standards would be a significant factor in determining the admissibility and evidentiary value of the Bulletin's conclusions.

In sum, although some courts might permit some use of the Bulletin, it likely would be deemed to be no more than a single thread in the tapestry of evidence submitted to determine the important issue of whether a tire dealer or wholesaler had complied with industry standards.

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