

IN THE COUNTY COURT IN AND FOR  
ESCAMBIA COUNTY FLORIDA

COPY

ALBERT FREED  
1312 Dog Track Rd.  
Pensacola, FL 32506

Plaintiff,

vs.

Case No. 2009 SC 003087  
Division 5

HANES BRANDS INC.  
1000 E. Hanes Mill Rd.  
Winston-Salem, NC 27105

Defendant.

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**FINAL JUDGMENT**

A final hearing in this product liability case was held in open court on October 9, 2009. Plaintiff represented himself; the corporate defendant was represented by counsel. In his Statement of Claim Plaintiff alleged his "dream trip to Hawaii" in September 2007, was ruined as result of defendant manufacturing defective men's briefs (underwear) which "gaped open and acted like a sand belt on my privates" causing personal injury.

The undisputed evidence established that plaintiff won a one week stay in Hawaii as a reward for selling more than \$20,000.00 of diet products.<sup>1</sup> The prize provided only hotel accommodations; plaintiff had to pay for his air fare and meals. Plaintiff testified that because he had not taken a vacation for more than 40 years he decided to extend the trip to two weeks. With the help of a friend/business associate who was also on the trip and agreed to share expenses, he rented a two bedroom condo for a second week.

Because this was a special vacation trip, plaintiff's wife felt he should have new underwear to take to Hawaii. She purchased eight pairs of Hanes men's briefs.<sup>2</sup> Plaintiff wore one new pair during the flight from Pensacola to Hawaii.

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<sup>1</sup> Plaintiff candidly admitted he is one of millions of Americans fighting the "weight battle" and that he weighs about 280 to 290 pounds, which is more than an ideal weight for him.

<sup>2</sup> Plaintiff did not make a claim against the retail vendor of the men's briefs.

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MLH/hrs

Plaintiff testified that by the second day in Hawaii he was in debilitating pain. However, he also testified that he ignored the pain until he returned to Pensacola two weeks later. He explained he was able to ignore the pain because he was enjoying himself so much on this long anticipated vacation that he did not dwell on or focus on the pain to any degree.<sup>3</sup>

Plaintiff testified he believed sand that he picked up in his swim trunks while enjoying the Hawaiian surf had irritated his penis. Over the next few days he and his wife "walked all over the place" until his condition worsened to the point that he "could hardly walk." Plaintiff testified his inability to walk was caused by defendant's defective manufacturing of his underwear which caused his "fly" to gap open. The gap resulted in his penis protruding from his underwear, whereupon the edges of the opening abraded his penis like "sandpaper belts." However, the court finds it significant that plaintiff candidly admitted he was unaware his penis was protruding from his underwear until the final two days of his trip. Plaintiff testified he was able to a "solve the mystery" of how his penis had been injured when he was alone in the condo and able to wander around clothed only in his underwear.

Under cross examination plaintiff admitted he never examined his penis to assess the problem and/or treat the problem. He testified he is a "belly-man" and his "weight" prevents him from looking down and seeing his penis. He further testified he declined to use the hotel mirror to view the "injury" because that is "not something he would do." He also testified he did not ask his wife to examine his penis because he would never ask her to do such a thing, nor would he want to let her know about his pain because it would have "ruined her vacation" as well. He believed it better he suffer alone on this "dream trip" and, besides, this was not something he was "focused" on because he was excited about his vacation.

Plaintiff has the burden of proof in this civil case. In order to prevail plaintiff must prove that the underwear manufactured by defendant was defective and that the defect was the proximate cause of his injury. In spite of having the burden of proof, plaintiff called no witnesses and offered only his own testimony about his actions (and inactions) in Hawaii and upon his return to Pensacola two weeks later.

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<sup>3</sup> The court expresses its appreciation to the prominent male criminal defense attorney (who will remain unnamed) who was conscripted by the defense as an "expert" witness. Apparently in the courtroom between other court appearances, this attorney was sitting on the back row of the spectators' gallery minding his own business. The only male spectator in a courtroom occupied primarily with females, he was unexpectedly called to testify about his sensitivity to penile discomfort, and whether it is necessary and/or appropriate to "adjust" oneself after donning men's briefs. He was a good sport about being put on the spot and offered surprisingly candid testimony despite the intimate nature of the questions.

Defendant presented, without objection, the expert testimony of Charles Brown, a chemical engineer with more than thirty years experience in the textile industry. Mr. Brown, who holds industry certification as an expert in quality testing, examined plaintiff's underwear and compared it with the defendant manufacturer's standard pattern. Although the underwear had been washed, Mr. Brown testified it was still well within manufacturer's specifications.

Both the plaintiff and the defendant's expert demonstrated the "tensions" that are placed on men's underwear. This was done by holding the allegedly "defective" underwear and placing it under various "stresses" while comparing it with similar briefs made by other manufacturer's, as well as other old, worn out Hanes brand briefs owned by plaintiff.

The uncontroverted expert testimony was that once a man's genitalia are adjusted in his briefs, "vertical tension" is far greater than horizontal tension and there is no tendency for the fly to "gap." The only circumstance which would result in significant horizontal tension would be caused by attempting to don briefs with a waist too small for the attempted occupant.

After considering the demonstrations and expert testimony, it was clear to the court that plaintiff's underwear would not have "gaped" open as contended by plaintiff because the tension load on men's underwear is vertical and not horizontal. As to the allegedly poor fit of this particular package of men's briefs, it was proved to the court that plaintiff's manner of getting into his underwear was far more likely to have caused his problem than defective manufacturing.<sup>4</sup>

Furthermore, even had plaintiff proved his injury was the result of a defective product, the plaintiff took absolutely no actions to mitigate any damages by failing to inspect his injury and treat it immediately. By his own admission, the abrasion was cured within a day or two following application of an over-the-counter ointment.

The bottom line is that the plaintiff himself decided that the injury to his penis was caused by sand in his swim trunks based on timing and the totality of the circumstances. Because he failed to treat the injury in a timely manner, it continued to get worse. He compounded the problem by "walking all over the place" with an untreated injury that continued to be exacerbated by rubbing against his clothing. Nearly two weeks later, after multiple trips into the surf, lots of walking and rubbing, he decided that his underwear caused the problem. However, he offered no expert

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<sup>4</sup> Plaintiff testified he dresses by placing his underwear inside the pants he plans to wear that day and then pulls both on together. He testified that he never puts his underwear on and adjusts himself to get comfortable – that is just not how he does things.

testimony or other credible evidence to support this theory other than his own self-serving comments which are contradictory at best. Having failed to prove the defendant manufactured a defective product, or even that there was any causal relationship between the fit of his underwear and his penile injury, it is

ORDERED AND ADJUDGED that plaintiff shall recover nothing from defendant who shall go hence without day. Although defendant asked that the judgment, if in defendant's favor, include a requirement that plaintiff remove any and all videos from the internet regarding the injury to his penis, the court does not have jurisdiction to address this request.

DONE AND ORDERED this 12<sup>th</sup> day of October 2009, at Pensacola, Escambia County, Florida.

**/s/ PAT KINSEY**

County Judge

cc: Plaintiff  
Michelle Hendrix, Attorney for Defendant