



[Back to News](#)

Kohler Affirmed by Appellate Court on Jury Trial Question

JULY 8TH, 2011

Eric Macey, on behalf of Kohler Co., defeated warranty claims brought by plaintiff Indeck Power Equipment Co. (Indeck) after a three-week bench trial in 2010. Indeck appealed, arguing, among other things, that the trial court erred in granting Kohler's motion to reject Indeck's jury demand. Illinois' First District Appellate Court agreed with the trial court and affirmed the judgment in Indeck Power Equipment Co. v. Professional Power Products, Inc., No. 1-10-1506 (Ill. App. Ct., 1st Dist., June 29, 2011) (unpublished order under Supreme Court Rule 23).

Indeck purchased ten mobile generator packages from a dealer that housed generator sets manufactured by Kohler. Indeck argued that its purchase orders for the generators gave it the right to return them to the seller in exchange for the amount it paid for them. Because the seller refused to do so, Indeck argued this was a breach of contract, entitling it to a jury trial.

Justice Murphy, writing for a unanimous panel, disagreed: "The Illinois Constitution provides that '[t]he right of trial by jury as heretofore enjoyed shall remain inviolable' . . . , and thus ensures a right to a jury trial only for claims that existed under the English common law at the time the constitution was originally adopted At common law, equitable claims were tried without the right to a jury. . . ." Slip Op. at 13. The court noted that, in this case, Indeck titled count I of its complaint "contractual rescission" and sought to restore the parties to the status quo as of the time it purchased the generator packages. The court held that the title of the count as well as the allegations in the Indeck complaint demonstrated that it set forth a claim of rescission.

Macey said: "The decision makes clear that if the equitable claim arises from a breach of contract, there is still no right to a jury trial."