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Products Liability

Introduction

In few areas of the law has the New Jersey Supreme Court advanced the common law so definitively as in the field of product liability. Leading the way in the nation, our state Supreme Court re-prioritized society's agenda to promote product safety, by providing a legal remedy to the consumers of defective goods.

The modern law of Product Liability began as a response to transformative changes in the production and marketing of consumer goods during the first decades of the 20th Century. The small manufacturer whose products were personally inspected and selected by a series of individual buyers was replaced by the mass marketer. The buyer who was able to select both the manufacturer and the particular goods was replaced by the passive consumer who bought out of stock, knew nothing about production, nor was in a position to influence it. Moreover, people who suffered damage when mass marketed goods turned out to be defective were at an increasing disadvantage in their ability to be compensated for their loss.

1960: Common Law Responds to Mass Manufacturing

Prior to 1960, the law was ruled by the ancient Roman legal principle known as *caveat emptor*, or "buyer beware." The operative theories for recovery of negligence and warranty were of little-to-no value to the ordinary consumer. Negligence was difficult to prove against remote manufacturers engaged in elaborate production processes. It could not be proven against sellers who were reduced in role merely to stocking goods designed

and produced by others. Warranty, being a contract theory, was of no avail to anyone other than the actual buyer. In the early years of mass consumerism, warranties were narrow and strictly worded, non-negotiable "contracts of adhesion," greatly limiting a manufacturer's responsibility. By the 1950s it was widely perceived that if consumers were to have a meaningful remedy, then the ground rules had to change.

In 1960, the New Jersey Supreme Court, in its history-making ruling, Henningsen v. Bloomfield Motors Inc., 32 N.J. 538 (1960), looked beyond the very limited theory of express warranty in a contract of adhesion and held the manufacturer liable for a defective automobile driven by the Plaintiff, Mrs. Henningsen. In Henningsen, the Court declared that both a manufacturer who put a new car into the stream of commerce, promoting its purchase by the public, and the dealer who sold it, would be deemed to accompany that car with an implied warranty that it was reasonably suitable for its intended use. The Court further declared that this warranty extended not only to the buyer, but to members of her family and others using the car with her consent. A warranty theory had been chosen in order to eliminate the difficulties of proving the remote manufacturer negligent. In effect, the New Jersey Supreme Court was informing manufacturers across America that they could no longer rely upon tightly worded express warranties as a shield against consumer claims.

Henningsen changed the universe with regard to product liability. The language describing this new liability changed from that of warranty to strict liability. See Santor v. A& M Karagheusian, Inc. 44 N.J. 52, 64 (1965) and Section 402(a) of the Restatement of Torts (Second). The Court retained the warranty concept of liability without proof of fault

and added the tort concept that a duty was owed to all persons who might foreseeably be injured. If a product was defective and it caused damage to an ultimate user, the user would be entitled to recompense. Santor also expanded the theory of liability to items, there a defective carpet, that caused neither bodily injury nor damage to other property, but simply caused economic loss. Other cases also expanded the theory beyond purchased goods. See Schipper v. Levitt & Sons, 44 NJ 70 (1965) (houses); Cintrone v. Hertz Truck Leasing 45 NJ 434 (1965) (leased vehicles); Newmark v. Gimbels Inc. 54 NJ 585 (1969) (products used as adjunct to personal services, e.g. "permanent wave"); Michalko v. Cook Color & Chem. Corp., 91 NJ 386 (1982) (reconditioned goods).

Modern Products Liability Law in New Jersey, and the Nation

As the common law evolved, the Court addressed what conduct of the user, whether a worker or consumer, might be sufficient to defeat a strict liability claim. The seminal opinion written during this period was Suter v. San Angelo Foundry & Machine Company, 81 N.J. 429 (1979). Suter fleshed out modern product liability law in New Jersey, and its concepts influenced development of this area of the law throughout the country. Sutor treated both ends of the spectrum, the nature of the liability, and the defenses to such liability regulated by class: workers, consumers, and sophisticated users. It defined a defective product as one that was not fit, suitable, and safe for its intended or reasonably foreseeable purpose. It further defined classes of liability, namely manufacturing defects, design defects, and warning defects. It eliminated the assumption of risk defense for workers performing their assigned duties on plant machinery (later expanded to all workplace injuries). It limited the assumption of risk defense for non-worker consumers

using the product, unless they intentionally proceeded in the face of the known danger of the product's defect. For years, unto the present, the Courts had been refining the Suter principles

The Court faced a difficult problem where - given the state of the technology at the time - the defect in the product could not have been known by the manufacturer when the product was sold. In Beshada v. Johns-Manville Products Corp., 90 NJ 191, 204-209 (1982), an asbestos-exposure case, the Court held that manufacturers of defective products would be liable even if the hazards presented by their products could not have been known by them given the state of technology at the relevant time. This was consistent with strict liability theory. As the Court explained, "in strict liability cases, culpability is irrelevant. The product (asbestos) was unsafe. That it was unsafe because of the state of technology does not change the fact that it was unsafe. Strict liability focuses on the product, not the fault of the manufacturer." Id. As a policy matter Beshada was perceived as going to far. O'Brien v. Muskin Corp., 94 NJ 169 (1983), and Feldman v. Lederle Laboratories, 97 NJ 429 (1984), and Fischer v. Johns-Manville Corp. 103 NJ 643 (1986).

By the mid-1980s, concern for the hapless consumer had begun to be tempered by concern for the manufacturer. Broad exposure to liability leading to large awards, in particular, punitive damages, created the sense that the manufacturer was becoming unfairly burdened and that such burden would get in the way of the design and production exuberance which had characterized earlier decades and been such an overall boon to society.

New Jersey Legislature Responds to Court Rulings

In 1987, the New Jersey Products Liability Act, N.J.S. 2A:58C-1 thru 7 was enacted. It was intended as a "remedial" measure "to establish clear rules with respect to certain matters…including certain principles under which liability is imposed and the standards and procedures for award of punitive damages." N.J.S. 2A:58C-1. It was interpreted as evincing a legislative policy "to limit the expansion of products-liability law," Shackil v. Lederle Laboratories, 116 NJ 155, 187 (1989), and "to limit the liability of manufacturers," DePrimo v. Lehn & Fink Prod. Co., 223 N.J. Super 265, 273 (Law Div. 1987).

By no means had the pendulum swung back to the philosophy of "buyer beware." The Act was explicitly intended to "[preserve] the concept that manufacturers may be held strictly liable for harm caused by products that are defective." Senate Judiciary Committee Statement, No. 2805 and Assembly Insurance Committee Statement, No. 2805. The Act "was not intended to codify all issues relating to product liability…" N.J.S. 2A:58C-1. In other words, most of the common law developed since Henningsen remained unaffected. Nonetheless, the Act set certain limits on liability to "product sellers" and "medical providers," and made it yet more difficult to achieve punitive damages awards.

The New Jersey Supreme Court Historical Advisory Board would like to thank retired Judge William Dreier, who authored the initial draft of the products liability report.

For a more detailed discussion of Products Liability Law.